

**VARIANCE OR APPEAL
APPLICATION**



TOWN OF CHAPEL HILL

Planning Department

405 Martin Luther King Jr. Blvd.

phone (919) 969-5040

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www.townofchapelhill.org

Section A: Project Information

Parcel Identifier Number
(PIN):

978 858 4909

Date:

7/12/19

Project Name:

Ricky May Garage Appeal

Property Address:

410 - 412 North St

Zip
Code:

27514

Existing Zoning
District:

R-2

Description of
Request:

Appeal of HDC decision

Section B: Applicant, Owner, and/or Contract Purchaser Information

Applicant Information (to whom correspondence will be mailed):

Name:

Ricky May

Address:

408 North St

City:

Chapel Hill

State:

NC

Zip
Code:

27514

Phone:

702 - 210 - 2935

Email:

Rmay2727@yahoo.com

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature:

Ricky May

Date:

7/12/19

Owner/Contract Purchaser Information:

Owner

Contract Purchaser

Name: _____

Address : _____

City: _____ State: _____ Zip Code: _____

Phone: _____ Email: _____

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: _____ Date: _____



VARIANCE OR APPEAL APPLICATION

SUBMITTAL REQUIREMENTS

TOWN OF CHAPEL HILL

Planning & Development Services

Variances and Appeals may be granted by the Board of Adjustment for dimensional regulations, water and sewer regulations, steep slope regulations, house size limitations, Resource Conservation District regulations, Jordan Buffer regulations, and Watershed Protection District regulations. The following must accompany your application. Failure to do so will result in your application being considered incomplete.

	Application fee (<u>refer to fee schedule</u>)	Amount Paid \$	<input style="width: 100%; height: 30px;" type="text"/>
	Digital Files - provide digital files of all plans and documents		
	Mailing list of owners of property within 1,000 foot perimeter of subject property (<u>see GIS notification tool</u>)		
	Mailing fee for above mailing list	Amount Paid \$	<input style="width: 100%; height: 30px;" type="text"/>
	Written Narrative describing the proposal		

	Statement of Justification - Respond to subsection 4.12.2(a)(1-4) of the Land Use Management Ordinance.
	Recorded Plat or Deed of Property
	Stream Determination - necessary for all submittals
	Jurisdictional Wetland Determination - if applicable
	Reduced Site Plan Set (reduced to 8.5" x 11")

Dimensional Variance

Water and Sewer Variance

Steep Slope Variance

House Size Variance

Resource Conservation District Variance

Jordan Watershed Riparian Buffer Variance

Watershed Protection District Variance

Appeal

Standing: Explain to the Board how the applicant is an aggrieved party (NC General Statute Sec. 160A-388(b1) (1))

Statement of Justification: Provide justification for decision that is being appealed.



VARIANCE OR APPEAL APPLICATION

SUBMITTAL REQUIREMENTS

TOWN OF CHAPEL HILL

Planning & Development Services

Plan Sets (2 copies to be submitted no larger than 24" x 36")

Plans should be legible and clearly drawn. All plan set sheets should include the following:

- Project Name
- Legend
- Labels
- North Arrow (North oriented toward top of page)
- Property Boundaries with bearing and distances
- Scale (Engineering), denoted graphically and numerically
- Setbacks
- Streams, RCD Boundary, Jordan Riparian Buffer Boundary, Floodplain, and Wetlands Boundary, where applicable

Area Map

- a) Overlay Districts
- b) 1,000 foot notification boundary

Detailed Site Plan

**APPLICATION TO THE BOARD OF ADJUSTMENT FOR
APPEAL OF DETERMINATION OF THE TOWN OF CHAPEL
HILL HISTORIC DISTRICT COMMISSION**

**In the matter of: 410 & 412 North Street, Application No. 19-008
Dated July 15, 2019**

Statement of Justification

This Statement of Justification is submitted in connection with an appeal to the Chapel Hill Board of Adjustment, which appeal is timely taken from a decision of the Chapel Hill Historic District Commission (HDC) dated July 11, 2019. That decision denied applicant's application for a Certificate of Appropriateness for new construction of a garage at applicant's property located at 410 & 412 North Street in the Franklin-Rosemary Historic District.

Over the past six months applicant has testified before, provided evidence to, made revisions in response to comments from, and provided answers to questions from the HDC regarding the proposed demolition of two cottages located at 410-412 North Street and the construction of a new house and separate garage at that address. At the July 2019 meeting, the HDC voted to deny the proposed garage. It is that denial that is being appealed here to the Board of Adjustment.

Applicant submits that the evidence in the record makes it clear that the "incongruity findings" and "Findings of Fact" made by the Historic District Commission in respect of the garage structure were in error--inconsistent with the clear evidence presented and inconsistent with other decisions of the commission, including a 2017 decision, that allowed a two-story, three-car garage in the district, not far from applicant's property.

Following receipt of the transcripts from the HDC meetings in question, a more detailed statement will be provided that will provide details of

the evidence that will make clear the erroneous nature of the decision. In addition, applicant will provide details and quotations from the hearing transcripts that will demonstrate that the commission's decision was inappropriately motivated by an extreme level of bias against the applicant, a bias that stems initially from a successful appeal by applicant in 2014 of a decision of the HDC on an adjacent property that was overturned by the Board of Adjustment by a 9-0 decision, and the proposed demolition of two existing cottages in connection with applicant's current application. That bias was present at each meeting and culminated when two former members appeared before the Commission at the July meeting, and were allowed to tout their prior service on the HDC in an effort to influence the final vote, citing, among other things, the 2014 matter.

For all of these reasons, applicant will demonstrate that this appeal is justified and that the decision of the Historic District Commission should be reversed.

**APPLICATION TO THE BOARD OF ADJUSTMENT FOR APPEAL OF DETERMINATION OF THE TOWN OF
CHAPEL HILL HISTORIC DISTRICT COMMISSION**

In the matter of: 410 & 412 North Street, Application No. 19-008

Supplemental Brief in Support of Statement of Justification

Dated September 16, 2019

This matter is before the Board of Adjustment for the Town of Chapel Hill (BOA) on appeal from a decision of the Town of Chapel Hill Historic District Commission (the HDC) denying Applicant's Certificate of Appropriateness Application, in part, with respect to the portion of the application seeking a Certificate of Appropriateness to build a new garage on the subject lot in the Franklin-Rosemary Historic District of Chapel Hill.

Background

The record shows that applicant, Robert E. (Ricky) May, Jr. (Applicant), has a prior history with the HDC. In 2013, Applicant, after purchasing property on North St. including the subject property, proposed to the HDC a demolition, which was completed after a 365-day delay, and the building of a new home and garage at 408 North St, the property where Applicant lives. That property is immediately adjacent to the property that is the subject of this appeal. The HDC denied the Certificate of Appropriateness in that instance, but on March 5, 2014, that denial was unanimously reversed by the Board of Adjustment for the Town of Chapel Hill (the BOA) on appeal. The Certificate of Appropriateness was thus granted by the BOA, and the home and garage were completed in 2015. While that process and reversal should be irrelevant to the subject matter, the record demonstrates that it was certainly not irrelevant to the decision-making process of at least some of the members of the HDC.

On January 10, 2019, Applicant filed an Application for Certificate of Appropriateness (the Application) in two parts, first for the demolition of two old, small cottages on the subject property and second to build on the resulting vacant lot a modest, single-family, cottage home and detached garage. After a staff review, on January 24, 2019, the Application was noted by staff member Becky McDonnell, Planner II, to be "complete and accepted" (Application Cover Page).

On March 12, 2019, the first part of the Application was approved reluctantly by the HDC, "on the basis that it cannot be denied by law," (Application for Certificate of Appropriateness Written Decision, March 18, 2019; hereinafter, Written Decision), with a mandated 365-day delay, the HDC's most restrictive option with respect to a proposed demolition. (See, NCGS Section 160A-400.14(a)).

Applicant appeared before the HDC at each of its next four meetings with respect of the second part of his application. As the record shows, during that time he answered questions and made revisions in an effort to gain approval of the HDC for his proposed single-family residence and two-story, two-car garage. The proposed garage was modified during the process to a one-and-one-half story, two-car garage, in response to comments from commissioners and in an effort to gain approval of the proposed project.

On July 9, 2019, the HDC approved the Application in part, granting a Certificate of Appropriateness for the proposed home, and denied it in part, denying a Certificate of Appropriateness with respect to the proposed new garage. Applicant has appealed the HDC's decision denying a Certificate of Appropriateness for the proposed garage to the BOA.

Applicant is represented in this appeal by Richard L. Magee, NC State Bar #10984, 3231 Maymont Place, Charlotte, NC 28205, rick.l.magee.unc80@gmail.com.

Jurisdiction and Standards for Review

Applicant timely noticed an appeal from the decision of the BOA denying a Certificate of Appropriateness for the proposed garage in accordance with Land Use Management Ordinance of the Town of Chapel Hill, NC (LUMO) Sections 3.6.2(d)(6) and 4.10.1(b), and on July 15, 2019 filed a Statement of Justification in support of his appeal. Standing is not contested as Applicant is the undisputed homeowner of the subject property (see, General Warranty Deed dated May 31, 2013, included in the Application) and therefore is entitled to pursue this appeal. (See, NCGS Section 160A-388 and LUMO Section 4.10.1 (1) (a).) This appeal is properly before the BOA in accordance with LUMO Section 4.10.1 and NCGS Section 160A-388.

Per LUMO Section 4.10.1(a), the HDC's determination is to be "reviewed on the record" by the BOA. An examination of the entire record is appropriate as Applicant asserts that the decision of the HDC was not supported by competent, material and substantial evidence, was arbitrary and capricious, was influenced by bias in violation of Applicant's due process rights, and was based in part on an inaccurate determination of applicable law.

Relief Sought

Applicant respectfully requests that the BOA review the decision of the HDC, reverse and vacate the decision, and grant Applicant's Application for Certificate of Appropriateness to move forward with the construction of the detached one-and-one-half story garage based on the competent, material and substantial evidence in the record that demonstrates that the proposed garage is not incongruous with the character of the Franklin-Rosemary Historic District (the District).

Summary

This appeal requires the BOA to examine the record and determine just how much power and discretion the BOA will allow the HDC when it demonstrates a clear bias against any kind of change and development in the District, particularly if it involves the removal of old structures, and against the Applicant who is presenting such a proposal. The BOA must determine whether the HDC will be allowed to make a decision based on that bias and not on the competent, material and substantial evidence before it, and when it demonstrates a decision-making process that is arbitrary and capricious, inconsistent case-by-case, and impossible for residents to look to for precedent and guidance. Ultimately, the BOA will need to determine whether Applicant has presented competent, material and substantial evidence that demonstrates that his proposed new garage is not incongruous with the character of the neighborhood, as the evidence presented by Applicant was the *only* evidence presented in this case. Applicant contends that he has done so.

The HDC presented no evidence whatsoever to support any of its findings. There is no competent, material and substantial evidence in the record to support a finding that the design of the proposed garage is inconsistent with the Design Guidelines and LUMO. There is no competent, material and substantial evidence in the record to support a finding that the proposed garage is incongruous in relation to the average setback and placement of the nearest opposite and adjacent buildings. There is no competent, material and substantial evidence in the record to support a finding that the proposed garage is incongruous with the special character of the Historic District in that traditionally garages in the District were only one story in height. There is no competent, material and substantial evidence in the record to support a finding that the proposed garage is incongruous in relation to the architectural scale of garages in the District. There is no competent, material and substantial evidence in the record to support a finding that the Application for a Certificate of Appropriateness for the proposed garage should not be approved.

Applicant owns a lot with two small, old cottages that had fallen into disrepair prior to his purchase of the property on May 31, 2013. Applicant asserted that there is nothing impressive about the structures, nothing containing “important elements of social, economic, political, or architectural history.” (See, LUMO Section 3.6.2). They are just old and have been described by at least one neighbor as an eyesore and a “blight almost on the neighborhood.” (See, Arthur Finn testimony, March 12, 2019 HDC Meeting Transcript at p.19.)

Nevertheless, Applicant has maintained the cottages, at significant expense, for more than six years, but recently has made a decision that doing so going forward is cost prohibitive. So, much to the consternation of the HDC, with which he already had an acrimonious relationship stemming from the prior application previously referenced, Applicant determined to remove the cottages. Applicant expressed his willingness to donate them to enable them to be moved and restored in another location and his willingness to wait 365 days in hopes that someone will

move them. The HDC exercised its right to delay the demolition of the existing cottages for those 365 days, again expressing significant animosity toward Applicant and great regret that it was powerless by law to prevent the demolition. The record is clear that that demolition decision permeated discussions throughout the six-month period during which Applicant's application was considered, and it clearly and improperly impacted the HDC's ultimate decision with respect to the proposed garage.

With significant neighbor support, Applicant proposed to rebuild on the lot a modest, single-family cottage home and detached garage in the place of the old cottages, a home that Applicant demonstrated will fit well into the fabric of the neighborhood in all respects. As demonstrated through neighbor testimony, the cottage home will increase the highly desired owner-occupied occupancy on a street that has become overrun with overcrowded student rentals. Over five different meetings during the six-month period, Applicant answered questions, made suggested revisions, and in all matters made an effort to respond to comments and suggestions of the HDC in order to receive the Certificate of Appropriateness that he sought.

Ultimately, against all odds given comments of commissioners throughout the process, the HDC approved and granted a Certificate of Appropriateness in respect of the proposed new cottage home that Applicant proposes to build, demonstrating conclusively that in its judgment Applicant had met his burden and produced competent, material and substantial evidence that the proposed cottage home is not incongruous with the character of the neighborhood. (See, Written Decision, pp. 1-2). But the HDC denied a Certificate of Appropriateness for the proposed detached garage, which Applicant has proposed to site behind the proposed home. (See, Written Decision, p 2). This decision was made despite the fact that the same competent, material and substantial evidence that supported the approval of the proposed new cottage home also supported approval of the proposed new garage. In fact, the only issues the HDC was able to cite to justify its denial of the proposed garage were size and lot coverage. But Applicant demonstrated that the proposed garage, not even visible from the street, is consistent in size and scope with garages elsewhere in the neighborhood, and certainly harmonious with the character of the District. (See, LUMO Section 3.6.2.). Applicant presented competent, material and substantial evidence to that effect, and no competent evidence was introduced to the contrary. Applicant further demonstrated that the lot coverage of the garage and the associated setbacks are within all legal requirements and not at all unique in the neighborhood, particularly in the relevant portion of North Street, and the garage represents a very small part of the lot coverage proposed by the project. Applicant presented competent, material and substantial evidence to that effect, and no competent evidence was introduced to the contrary. Drawings of the proposed detached garage elevations are included as Appendix A.

A review of the evidence demonstrates clearly and conclusively that the size of the proposed garage is, if not common, then certainly well within the normal for the neighborhood and

“harmonious with the character of the neighborhood.” (See, LUMO section 3.6.2) Moreover, both the proposed garage and the proposed lot coverage are consistent with structures and coverage of new construction projects that have been approved by the HDC for other applicants in recent years, demonstrating that the denial of Applicant’s proposed garage is at best arbitrary and capricious and at worst based on the previously referenced bias.

Summary of Errors

1. The HDC erred in denying Applicant’s petition by failing to base its decision on competent, material and substantial evidence in the record demonstrating that Applicant’s proposed one and one-half story garage is not incongruous with the character of the Franklin-Rosemary Historic District and is in compliance with the Design Guidelines.
2. The HDC erred in that it based its decision in part on a flawed interpretation of the applicable statutes and LUMO.
3. The HDC’s decision was arbitrary and capricious and inconsistent with a number of its own recent decisions.
4. The conduct of the HDC and its dealings with Applicant violated Applicant’s due process rights.

Discussion

1. *Applicant presented competent, material and substantial evidence that his proposed garage is not incongruous with the special character of the Franklin-Rosemary Historic District and is in compliance with the Design Guidelines.*

Applicant presented competent, material and substantial evidence demonstrating congruency. Applicant’s application met all requirements for the grant of a Certificate of Appropriateness. The application was certified as complete by staff. There is no competent, material and substantial evidence supporting a finding that the proposed structure is inconsistent with the Design Guidelines or incongruous with the character of the District. The HDC approved the proposed cottage home that was also part of this application, finding that the materials, style, siding, porch elements, foundation, pattern, color and detail are all congruent. Nowhere in its findings or conclusions does the HDC contend that the garage is not also congruent in these elements. The proposed garage will be clad in horizontal lap siding with shake shingle siding in the gable, consistent with other structures in the neighborhood. The proposed exterior surface materials are architectural grade asphalt shingle roofing, painted cement board lap siding, wood porch elements, and brick foundation, which are similar to neighboring buildings in terms of module, composition, texture, pattern, color and detail. And the proposed window and door openings and the simulated divided-light windows and doors are reflective of those window and door styles found in the District.

2. *Applicant presented clear and convincing evidence that his proposed garage is not incongruous with the special character of the Franklin-Rosemary Historic District in terms of size, design, and siting and lot coverage.*

By its findings and conclusions, the HDC complains only that the design, siting, lot coverage of the approved house and disapproved garage result in a greater lot coverage and built-to-open space ratio than in neighboring properties, that there is “less open space provided in the setback areas of this site than typically seen in the neighborhood, and that the proposed garage does not comply with appropriate architectural scale because it is for a one-and-a-half story garage “while garages in the neighborhood are traditionally one-story.”

Applicant submits that these findings and conclusions are contrary to the competent, material and substantial evidence presented and based on a record that is completely devoid of any evidence to support them. There was no evidence whatsoever presented to support the assertion that garages in the neighborhood are traditionally one story.

In fact, staff’s draft motion and the motion initially read into the record by Commissioner Schwartz, stated that “garages in the neighborhood are traditionally one story or one-and-a-half stories.” (See, July 9, 2019 HDC Meeting Transcript at p. 37.) Mr. Ferrell stepped in to clarify the motion read into the record to get it right (see, July 9, 2019 HDC Meeting Transcript at pp. 37-38), but the entire exchange demonstrates that the words did not matter—the HDC was going to make whatever finding it needed to in order to deny Applicant’s proposed garage.

There was no evidence whatsoever presented concerning lot coverage and built-to-open space ratios other than the evidence presented by Applicant in support of his application. These findings concerning lot coverage and open space especially make no logical sense given that the proposed cottage home, by far the larger proposed structure, was actually approved. In fact, the arbitrariness of the determination regarding siting and lot coverage is made clear when examined in light of the siting of one of the small cottages that the HDC did not want removed from the site. That cottage encroaches well into the rear setback of the lot, right up against the rear of the lot line, so the setback from the rear of the property is actually improved by the removal of that cottage and the construction of the new garage.

Vice Chair Murphy debunked the setback argument well:

Well, it doesn’t make sense to me, because ***I don’t see where the setbacks aren’t congruent with the other properties, because I’m looking at the site plan right here, and 401, 403, 405, 407, and the zoning setbacks and the house is within—the proposed house is within all of those.***

July 9, 2019 HDC Meeting Transcript p.32 [*emphasis added*].

The evidence clearly demonstrates that the proposed garage will be subordinate to the proposed house in its height, massing, scale, and, in its proposed location. The proposed garage will not be

visible from the street, as it will be directly behind the approved new cottage home. The evidence shows that the approved new cottage home has a footprint of 2887 sq. ft. on the 11,388 sq. ft. lot, thereby covering approximately 25.5% the lot. The rejected new garage would add an additional footprint of only 660 sq. ft., covering only 5.8% of the lot's surface. The ridge line of the approved new cottage home is 31 ft. high; the proposed ridge line of the rejected new garage is 28 ft. high. The evidence clearly demonstrates that all are well within applicable ordinances and not out of character for the neighborhood. On the nearest adjacent property, 408 North St., the garage, also behind the main cottage home on that lot, has a 600 sq. ft. footprint and also has a 28 ft. high ridge line. The Alpha Delta Pi sorority house, a much larger and taller three-story building, is on the immediately adjacent property to the rear of the lot. The side and rear setbacks of the proposed garage, just like the existing garage on the adjacent property, exactly meets the 11 ft. setback requirement.

The record shows that Applicant initially proposed a two-story garage on the site, but revised his proposal to a one-and-one-half story garage based on comments and suggestions received from the HDC and in order to improve congruency in an effort to gain approval. In fact, Vice Chair Murphy responded to Applicant's garage revisions by stating that, "Obviously a **dramatic improvement** on the garage. I think Mr. May has **done what we've asked him to do** on the design of the garage and the overall aesthetic of the garage...." (June 11, 2019 HDC Meeting Transcript at p.11.) [*emphasis added*]

3. *Applicant presented compelling evidence that clearly demonstrates that a significant number of one and one-half and two-story garages exist in the District.*

Applicant presented competent, material and substantial evidence that clearly demonstrates that a significant number of one and one-half and two-story garages exist in the Franklin-Rosemary Historic District, presenting photographs of seven of those existing garages. Those photographs, of garages at 407 Hillsborough St., 115 Battle Lane, 500 E. Rosemary St., 506 E. Rosemary St., 611 E. Rosemary St., 204 Glenburnie St., and 208 Glenburnie St., are attached as Appendix B and will be shown at the hearing on this appeal before the BOA. Applicant did not purport to show all the one-and-one-half and two-story garages in the neighborhood, only those that were known to him or obvious and apparent based on his walk around the neighborhood.

"And then, another thing that came up was a lot of discussion about the garage that I'm proposing. And **I could have gone all over the three historic districts and found lots more examples, but I presented to you seven examples of two- and three-car garages that are two stories.** What I'm proposing, as you know, is a two-car, two-story garage [*revised to 1 1/2 -story, two-story after input*]. In the case of these seven, five of them, you can see the garages from the street; two of them, you cannot. In what I'm proposing, the garage would not be visible from the street. "

May 14, 2019 HDC Meeting Transcript at p.5 [*emphasis added*].

As previously stated, Applicant showed that the garage on the nearest adjacent property is similar in size to Applicant's proposed garage. Further, the evidence demonstrates that the rejected garage is significantly smaller than a two-story, three-car garage recently approved by the HDC and completed in the District, not far from Applicant's property at 407 Hillsborough St. (photo included in Appendix B). (See, discussion at April 9, 2019 HDC Meeting Transcript at pp. 20-21.)

Also, the BOA is entitled to take notice that the impact of its decision (made subsequent to the denial of Applicant's application) on Sept. 12, 2019, is that the construction of yet another one-and-a-half-story, two-car garage in the District has been approved, in that case by the HDC's inaction.

There was no evidence presented to rebut Mr. May's competent, material and substantial evidence that one-and-a-half story and two-story garages are now present throughout the neighborhood and have become an undeniable part of its fabric.

4. *The HDC erred in that it based its decision in part on a flawed interpretation of the applicable statutes and LUMO.*

The law clearly contemplates that the character of a neighborhood may change over time and that those changes must be taken into account in determining congruency. (See, the Purpose Statement, LUMO Section 3.6.2 at page 29.) The competent, material and substantial evidence here clearly demonstrated that the character of this neighborhood has changed to include a significant number of one-and-a-half and two-story garages. Applicant demonstrated through competent, material and substantial evidence that the character of the neighborhood has evolved to the point where garages of the type proposed by Applicant are not incongruous with the character of the neighborhood.

Applicant demonstrated that one recent example is the garage at 407 Hillsborough St. that was approved by the HDC in 2017, recently completed, and now forms an integral part of the fabric of the District, in addition to the numerous other garages presented into evidence.

Commission members cannot choose to simply ignore those structures, like the three-car, one-and-a-half story garage they recently approved for 407 Hillsborough St. that was recently completed, or write them off as "mistakes" made in the past that are inapplicable to their review process. This was the contention of then-Commissioner Kyser:

"I'm thank—very thankful to—for Mr. May for providing a portfolio of two-and-a-half and—one-and-a-half and two-story garages in the district that are completely inappropriate and support my view that ***these garages were approved by mistake***. Because they exist doesn't mean they're correct and that we must keep going down this path. And so, that's all I have to say on that."

These garages, whether approved or permitted by the HDC or existing at the time the District was established, are a part of the fabric of the neighborhood and are important to the review process. To simply ignore them was clear error based on an incorrect interpretation of the law.

Commissioner Schwartz also wants to ignore 40 years of development in the District. He stated, “...***I take the guidelines to encourage us to seek congruence not with what might happen—what may have been built or approved in the district over the past 40-odd years, but with the scale, the design, and whatnot that existed at the time that the district was established in 1976.*** (April 9, 2019 HDC Meeting Transcript at p. 20.) ***[emphasis added]***

But Commissioner Schwartz had previously expressed some confusion himself and had acknowledged how applicants could find it confusing:

“And so it’s my understanding that multistory garages were not characteristic of the district at the time that it was established. Now, ***some have been approved and built in the district since then***, and I think there’s some ***lack of clarity as to whether the fact that some have been approved, you know, in the past couple years*** means that—or the—you know, ***the standards or the guidelines of what’s congruent has changed.***

“And I can see how it could be ***frustrating and confusing*** for someone standing where you are, if there isn’t consistency across commissions and how they are applying the guidelines.”

April 9, 2019 HDC Meeting Transcript at pp. 9-10 ***[emphasis added]***.

(It should be noted that Commissioner Schwartz provided no evidence for his assertion about the character of the neighborhood at the time the District was established.)

Two commissioners, former Commissioner White and Vice Chair Murphy, understood and acknowledged the changes and their effect on the character of the neighborhood. Then-commissioner White said it very well:

“I think that you get to a point within a given historic district that there are over half a dozen two- or three-bay garages in the neighborhood, it becomes more and more difficult for me to say that this particular architectural form is anomalous or incongruous, because it has become, by this evidence, if not typical, at least not dramatically atypical in any way. It is quite possible, as regards the other examples of garages that were presented tonight, it is quite possible that those other examples were misbegotten, misguided, mistaken, either by this commission at the time those decisions were made or they may perhaps predate the establishment of the historic districts. ***Nonetheless, what I think is the status quo is that they are part and parcel, at the present time, of the fabric of the neighborhood. And again, to repeat myself one last time, it, for that reason, becomes more difficult for me to say that the—that this type of garage is incongruous.***

May 14, 2019 HDC Meeting Transcript at p. 22 ***[emphasis added]***.

And Vice Chair Murphy, who voted in favor of Applicant's Certificate of Appropriateness for the proposed garage, also said it well as the HDC prepared to vote:

"You know, just regarding the garage issue, you know, *we probably approved a half-dozen—I'll call it a one-and-a-half-story garage.* You know, *Mr. May started with what I would call more of a traditional two-story garage, he modified his design based upon our comments. There's numerous one-and-a-half-story garages in the historic district that—several that we've approved already this year, probably several more we'll see the remainder of this year.* So, you know, I think as a commission we need to decide what we're going to do and how we're going to interpret the guidelines here, because *I don't think it's fair to any applicant to have something denied that's been approved by us several times already this year.*"

July 9, 2019 HDC Meeting Transcript at p. 29 [*emphasis added*].

5. *The HDC's decision was arbitrary and capricious and inconsistent with the current character of the neighborhood, which includes a number of one-and-a-half and two-story garages that it has approved recently.*

Applicant produced competent, material and substantial evidence that there exist numerous garages of the size, height, proportion and orientation of garages and accessory structures in the District.

Applicant produced competent, material and substantial evidence that the HDC recently approved proposed garages in the District of a size at least as large as Applicant's proposed garage. The proposed garage is sited behind the main house, at the end of a shared driveway, in the logical location for a detached garage and the traditional location for garages in the District. All exterior details, materials, forms, and scales are compatible with those of the approved home. Applicant introduced evidence of seven examples of detached garages with second floors located in the District. Applicant's proposed garage is considerably smaller than most of those examples, most of which are for habitable space (while Applicant's proposed garage is for a potential office or artist's studio), and compatible in proportion, height and location.

As stated above, Applicant also demonstrated that a larger garage, at 407 Hillsborough St., was approved by the HDC in 2017, was recently completed not far from Applicant's property, and now forms an integral part of the fabric of the neighborhood.

Also, as stated above, as a result of the outcome of the BOA's meeting last month, another one-and-a-half story, two-car garage will soon be added in the District.

6. *The conduct of the HDC and its dealings with Applicant violated Applicant's due process rights.*

The conduct of the HDC and its dealings with Applicant violated Applicant's due process rights in that it and they were clearly and negatively impacted by a previous application of Applicant in respect of an adjoining property that was denied by the HDC, appealed to the BOA, and then approved unanimously by the BOA in a 9-0 vote, overruling the HDC's denial.

Commissioner Burns lamented that previous action when considering the demolition permit in connection with this application, commenting that he would vote to approve demolishing Applicant's residence on the adjacent property, "If you came here tonight and was—were requesting **demolition of the house that you've put up** and replacing it with the [the old cottage] that you took down, I would vote to approve it.... I think this is an application that I wish we could vote "no" on rather than delay...." (March 12, 2019 HDC Meeting Transcript at p. 12.) **[emphasis added]**

The HDC's dealings with Applicant were further tainted by its clear frustration with its inability to deny Applicant a demolition permit to keep him from removing the two old cottages from the property, and the bias that resulted from that frustration. That bias permeated the comments of commissioners, particularly the chair, and denied Applicant a fair hearing on the merits of his application. For example, even though the demolition of the cottages had been approved the previous month with the 365-day delay, Chair Epting addressed Applicant and said, "And when people buy historic structures in the District of Chapel Hill, they need to understand that there is a covenant created by the ordinance that requires them to maintain those properties and not let them deteriorate so that they can then come in and claim that, "Oh, well, it's too expensive to fix it up. I need to destroy it." **And so all of your application is considered in light of that fact.**" (April 9, 2019 HDC Meeting Transcript at pp. 23-24.) **[emphasis added]**

Chair Epting thus acknowledged that he could not give Applicant a fair hearing on his proposed project because of his bias arising from Applicant having exercised his right to remove old buildings on his property. This constituted a clear denial of Mr. May's right to due process before the HDC.

Then-Commissioner White called Chair Epting out on this in the following exchange during the May HDC meeting:

Epting: "...My objection to this application is much more fundamental, and it's based upon its **inconsistency with the existing historic character of this particular lot....**

White: "Could I—would it be—so it would be fair, then, perhaps, for me to characterize your statement about this application as saying that **the size, scale, architectural design and everything else that is or even could be proposed is going to be a nonstarter for you because you're opposed to tearing down the**

two little cottages and replacing them with something larger. Is that a fair way to characterize your comments?

Epting: “I think that the **removal of the cottages flies in the face of the guideline that Susan Smith read earlier tonight, about minding the historic character of the landscape.** I think that the character of this district is what we’re supposed to be talking about. The character of the district, to me, is built upon the traditional uses of the small housing form....

White: “So that’s a yes, I guess.”

May 14, 2019 HDC Meeting Transcript at pp. 30-31 [*emphasis added*]

The bias played out to the end, as Chair Epting recognized former commissioners Smith and Kyser to speak at the July meeting of the HDC, when Applicant’s application was considered again and finally voted on, and after their terms on the HDC expired. He recognized them in their capacities as “former HDC member” (Smith) (July 9, 2019 HDC Meeting p. 12) and “also a former member of the Commission” (Kyser) (July 9, 2019 HDC Meeting p. 14). After both had spoken as if they had the status of commissioners, Chair Epting coaxed them into once again discussing Applicant’s 2014 application and result, no doubt in an effort to confuse and influence new commissioners. (July 9, 2019 HDC Meeting Transcript pp. 12-18.)

Brian Ferrell, attorney for the HDC, then felt compelled to interject that, “A different approval and a different application next door I would say isn’t relevant to your determination tonight about whether or not the application before you is not incongruous with the special character of the district....” (July 9, 2019 HDC Meeting Transcript at p. 18.)

The invitation to the former commissioners to participate and their comments so outraged Arthur Finn, a neighbor of Applicant who was in the audience and had planned not to speak, that he stepped up, was sworn in and testified as follows...

“...I really want to express to the committee, commission, my—how terrible I feel about what’s just happened, and I’m certain—well, first of all, I should—I’m happy that the last two speakers, even though they’re no longer on the commission, choose to come to the meeting. I think it’s wonderful they do that. But I’m very troubled by the fact that these two people—I’m actually appalled by the fact that these two people made it quite clear throughout the last several months, because I’ve been here at many of the meetings, were opposed to the presentation by Mr. May. And I’m sure it’s legal what they’re doing, it just *feels really bad to a member of the public to see that these people who were on the commission and are no longer on it have a right to speak, but they speak as though they’re members of the commission, and there is no possible way that they won’t have a major effect on the way especially new members of the commission feel.* And it doesn’t feel right to me that they should stand here and sound like they’re members of the commission and are very much and have all

along been opposed to Mr. May's presentation. And as I say, I'm sure it's legal; it just feels to me that it's—I'm appalled by such a presentation....”

July 9, 2019 HDC Meeting at p. 18 [*emphasis added*].

The record is replete with comments from commissioners demonstrating this bias. The above-referenced quotations, in context, and other similar comments are set out in Appendix C to this brief.

Conclusion

In conclusion, Applicant submits that the record and the competent, material and substantial evidence support the relief sought in that his proposed garage is consistent with both the letter and spirit of the LUMO guidelines. As set out in LUMO Section 3.6.2., “... it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings, or to prohibit the demolition or removal of such buildings, or to impose architectural styles from particular historic periods, ***but rather to encourage design, whether contemporary or traditional, which is harmonious with the character of the Historic District***” [*emphasis added*].

Applicant has demonstrated by competent, material and substantial evidence that his proposed garage should be approved. The HDC denied the application based on its inappropriate bias against both Applicant and Applicant's proposed improvement of this property, which has been clearly shown from the record, based on an incorrect interpretation of the law, and without any competent evidence whatsoever to support its findings or conclusions. The decision of the HDC is therefore not entitled to any deference whatsoever in the BOA's review.

The BOA should reverse and vacate the decision of the HDC denying Applicant's proposed Certificate of Appropriateness in respect of the proposed garage and grant Applicant's Certificate of Appropriateness Application to permit Applicant to proceed with the proposed project at the appropriate time.

Respectively Submitted,

/s/ Richard L. Magee /s/

Richard L. Magee

NC State Bar #10984

Attachments

Appendix A: Elevation Drawings of Proposed Garage

Appendix B: Photographs of 1½- and 2-Story Garages

Appendix C: Statements Demonstrating Bias

Brief in Support of Statement of Justification
Appendix A
Elevation Drawings of Applicant's Proposed Garage

Applicant's Proposed Garage...



Brief in Support of Statement of Justification
Appendix B
Garage Photographs



407 Hillsborough St
Three car—1 1/2 story
Visible from street
(approved by HDC <2 years ago)



115 Battle Lane
Two car— 1 1/2 story
Visible from street



500 E Rosemary St
Two car—1 1/2 story
Not visible from street



506 E Rosemary St
Three car—1 1/2 story
Visible from street

Appendix B (cont'd)
Garage Photographs



204 Glenburnie St
Three car—1 1/2 story
Visible from street



208 Glenburnie St
Two car—1 1/2 story
Visible from street



611 E Rosemary St
Two car—1 1/2 story
Not visible from street

Brief in Support of Statement of Justification
Appendix C
Bias Quotations

- *Chairman Epting in March, before the demolition is approved with a 365-day delay...*

“And I personally grieve the decision of folks who come in and buy our properties with the intention of tearing them down and building something new because it costs money to maintain what a historic structure is, and has been, and ought to be maintained as. ***So there is every reason, it seems to me, to delay these things for as long as possible....***”

“Which is a shame. ***We ought to be able to deny it,*** where—in my judgment—where the ***only benefit of tearing something down is an economic benefit to somebody who bought it with, I think, a moral obligation, an obligation to the community to maintain it, and to preserve it for the next generation,*** as it has been maintained for our generation.”

March 12, 2019 HDC Meeting at pp. 9-10 [emphasis added]

- *And in April, a month after demolition was approved with a 365-day delay, Chairman Epting can't let the demolition issue go, and admits his bias...*

“And so, I mean one of the things that's really troubling about this, which we've talked a little bit about before, and I know I remember Susan asked you a question about it last time—I mean, ***here are two historic structures on that property which you have purchased for the purpose of destroying them....***”

“And when people buy historic structures in the historic district of Chapel Hill, they need to understand that there is a covenant created by the ordinance that requires them to maintain those properties and not let them deteriorate so that they can then come in and claim that, “Oh, well, it's too expensive to fix it up. I need to destroy it.” ***And so all of your application is considered in light of that fact.***”

April 9, 2019 HDC Meeting at pp. 23-24 [emphasis added]

- *HDC Chairman Epting, again in May...*

“And if we don't **preserve these things against the actions of people who are acting solely for—based on a profit motive and not on a motive of preserving the historic character of the neighborhood,** they will all be gone. Because the way our historic district ordinance is structured, it gives people with the means the right to buy what they can afford and to tear it down. It doesn't matter how historically important it is to the community, so long as they're willing to wait 365 days. And I don't know how many more periods, end on end, of 365 days I have left in my life. **But I hate to see every one of those periods tarnished by the destruction of historically important, small housing units in our historic districts. And that is what is happening, and that is what is proposed on this lot, and I am opposed to it for that reason.**”
May 14, 2019 HDC Meeting at p. 28 *[emphasis added]*

Appendix C (cont'd)

- *Exchange between Commissioner White and Chairman Epting, also in May...*

Epting: ...My objection to this application is much more fundamental, and it's based upon its **inconsistency with the existing historic character of this particular lot...**

White: Could I—would it be—so it would be fair, then, perhaps, for me to characterize your statement about this application as saying that **the size, scale, architectural design and everything else that is or even could be proposed is going to be a nonstarter for you because you're opposed to tearing down the two little cottages and replacing them with something larger.** Is that a fair way to characterize your comments?

Epting: I think that the **removal of the cottages flies in the face of the guideline that Susan Smith read earlier tonight, about minding the historic character of the landscape.** I think that the character of this district is what we're supposed to be talking about. The character of the district, to me, is built upon the traditional uses of the small housing form [ph].

White: So that's a yes, I guess.

Epting: No, I will not—I'm going to say what I'm going to say and you're going to hear it—you hear whatever you hear...

Epting:—I appreciate your wanting to understand, but I'm not going to—I would prefer that you not recharacterize what I've said. I would prefer to say that I've said what I said....

White: Then, without characterizing what you said, I would cite a different pressure that I think comes to bear in applications like this. And I'm—this—I'm not necessarily going to vote for or against this, but on the one hand, there is a desire on our part, appropriately, to preserve the existing fabric of the neighborhood, which, in this case, includes these two little cottages. There is a countervailing stress on the part of many of the neighbors, whose opinions I think count for a great deal. And that is dismay over the progressive transformation of this neighborhood into a neighborhood of rental properties. And the deleterious effects of that kind of a transformation can already be seen in the Cameron-McCauley District. And the desire of the people who live in single-family residences in this neighborhood to preserve a single-family residential fabric is also worth noting, I think.

May 14, 2019 HDC Meeting at pp. 30-32 [emphasis added]

- *Commissioner Burns further demonstrates the extreme bias against Applicant*

“If you came here tonight and was—were requesting **demolition of the house that you've put up** and replacing it with the [the old cottage] that you took down, I would vote to approve it...

“I think this is an application that I wish we could vote “no” on rather than delay....” *March 12, 2019 HDC Meeting at p. 12 9 [emphasis added]*

Commissioner Burns was referencing a previous application by Mr. May concerning an adjacent property, which application ultimately was approved unanimously by the Board of Adjustment on appeal from a denial by the HDC.

Appendix C (cont'd)

- *Then-Commissioner Smith...*

That the whole thing that happened before, I think, was **an anomaly and a mistake** on the part of the commission. Well, actually, it went to the Board of Adjustment, I think, and **it was overturned because—we won't get into that. But I think that's sort of important.** And I could go on, but I don't need to right now." March 12, 2019 HDC Meeting p. 8 [*emphasis added*].

Ricky May
Chapel Hill Historic District Commission
410 & 412 North Street
February 12, 2019

Epting: Robert Epting, Chair
Murphy: Sean Murphy, Vice Chair
Locke: James Locke, Commissioner
Kyser: Kimberly Kyser, Commissioner
Smith: Susan Smith, Commissioner
Schwartz: David Schwartz, Commissioner
White: James White, Commissioner
May: Ricky May, Applicant

[BEGIN TRANSCRIPT 03:54:02]

Epting: It is now 10:31. We ordinarily stop at 10:30. I know there are others here with other matters, including neighbors of the proposal, with respect to the North Street cottages. I am inclined to move that to the next agenda. I think that it will be contentious and it will take more time than we can—than we have in which we can deliberate, given the hour. What is your—what is the commission’s feeling in that regard? How many want to wait, want to do it tonight, or are there others who would agree with me, that we should—like, should postpone it till next time?

Kyser: I agree with you.

Epting: And please feel free to disagree with me. If you’re willing to stay, I’m willing to stay.

Locke: I’m indifferent.

Epting: Indifferent, willing, willing.

Smith: I would like to go.

Epting: Three goes.

- Schwartz: Yeah, I think I would provide better deliberation for the applicant.
- Epting: Maybe better attention?
- Schwartz: Yeah, but—
- White: Or at least [ph]—
- Schwartz: I'd like to hear from the applicant.
- White: And we also have this closed session that we have to do tonight.
- Kyser: That's right [ph].
- Epting: It will take three-and-a-half minutes—
- Smith: Okay.
- Epting: —to do the close [ph]. So that would not be a factor. But—
- Smith: But I do have a question, whether we are going to separate the proposed new construction from the request for demolition.
- Epting: Well, I'd just as soon deal with that as part of the agenda item next time.
- Smith: The whole thing.
- Epting: I will tell you that my inclination is not to deal with both of those at the same time.
- White: The application before us says, in the very—on page one, that it's just for the cottages. I don't know why the elevations for—
- Epting: Well, let's deal with it next time.
- White: —a new house were included, but—
- Epting: Let's deal with that next time. Now, having heard from the commission, its view that we might be better prepared next time, or our attention might be refreshed next time, would the applicants insist to hear it tonight, or would you—

May: Can I come forward?

Epting: Come up, if you would. Are you representing some—

May: I am the applicant.

Epting: Okay. You are the applicant.

May: Yeah. I'm Ricky May. I'm—

Epting: It is [ph]—

May: —the owner of 412 North Street.

Epting: Right.

May: And the owner of 408 North Street, where I live.

Epting: Right.

May: I hear that, you know, you normally stop at 10:30.

Epting: Yeah.

May: And I hear that you may be tired. But I did my part.

Epting: Yeah.

May: I submitted the application fully. And it actually does, sir, call for a vote on the removal of the two cottages, and I'm seeking a certificate of appropriateness for new construction, which is all in—as a part of my application.

What makes me most motivated to get this dealt with tonight is the fact that my friends, who live right beside me, two sets of them, took the time to be here at 6:30, and they've waited patiently, as I have, until now, 10:33.

Epting: Yes, I understand all of that.

May: And—

Epting: And I will recite to you, or remind you, that when we looked at the agenda tonight early on, we gave some indication that we thought we were going to be unable to get through the agenda.

May: Well, that wasn't communicated [ph]—

Epting: But we are not—you are not being treated differently than somebody else. You are simply being treated in sequence. That's the way we hear these applications, in the sequence in which they were filed. They are agenda'd [ph] in the sequence in which they were deemed complete, so.

May: Right. If I could, further—

Epting: We're not going to hear it tonight, Mr. May.

May: Okay. Then would you at least consider hearing the demolition permit part of the—[OVERLAPPING]

Epting: Not tonight.

May: Okay.

Epting: Thank you. We'll see you next time.

[END TRANSCRIPT 03:58:12]

Ricky May
Chapel Hill Historic District Commission
410 & 412 North Street
March 12, 2019

Epting: Robert Epting, Chair
Murphy: Sean Murphy, Vice Chair
Burns: Woodrow Burns, Commissioner
Locke: James Locke, Commissioner
Kyser: Kimberly Kyser, Commissioner
Smith: Susan Smith, Commissioner
Schwartz: David Schwartz, Commissioner
White: James White, Commissioner
Ferrell: Brian Ferrell, Commission Counsel
May: Ricky May, Applicant
Lowry: Patricia Lowry, Witness
Finn: Arthur Finn, Witness
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 02:48:35]

Epting: The next item for our consideration is the 410 and 412 North Street.

F: [INDISCERNIBLE]

Epting: You're ready to present?

May: Yes, sir.

Epting: Tell you—tell us your name and you—I think you were sworn last time.

May: Sir?

Epting: I think you were sworn last time, were you not?

May: I don't think—[OVERLAPPING]

Epting: Are you sworn in?

May: —have to be sworn, as the applicant? Okay. Then I was last time. So if I'm still good, I'm good.

Epting: Yeah. That's what I just said.

May: Okay. Yeah, cool.

Epting: You have already been sworn.

May: All right. My name is Ricky May. I'm the owner of the property known as 410/412 North Street. I'm also the owner of the property at 408 North Street, which is where I live. This slide gives you an indication of where the property is. It's on the Hillsborough Street end of the 400/500 block of North Street.

I'm here tonight for two reasons, and seeking two votes from you tonight. The first one is I'm seeking a demolition permit for the two cottages that exist on the property now. And then, second, after we get through that, I'll be seeking a certificate of appropriateness vote for the house and garage that I'd like to build back in the place of the two that will be taken down.

Here's a picture of 412 North Street and here's a picture of 410 North Street. I'm aware that you guys can deny me the demolition permit for up to 365 days, and I respect that you have the right to do that. Tonight, I'm asking you to grant me a demolition permit effective July 1 of this year. That will be three-and-a-half more months from now. It will also be—we've already been at this for two months. Preservation people, like yourselves, have been aware that I'm more than happy to let someone acquire one or both of these rather than demolish them. No one has come forward yet. My July 1 date would grant another three-and-a-half months where maybe somebody would. And I know that your number one priority would be—by your guidelines—would be for one or more of these to be moved within a historic district so that they stayed in the historic district.

Short of that, I've already had a meeting with the Affordable Housing Coalition, where I've let them know that I'd be willing to donate one or both of them. And unfortunately, nobody has expressed any interest whatsoever in that, for basic economic reasons. It would cost more to move it even to, like, north side, and to refurbish it, than it would to build a brand-new structure. So, again, they've already not expressed interest. So I think going beyond July 1 would be waiting for something that simply isn't going to happen.

So, that's the first part of why I'm here, is to request a demolition permit effective July 1 of this year.

Epting: Do you want to say as a part of that presentation why you want to demolish these historic cottages [ph]?

May: Yes, sir. I'm happy to.

Epting: I think that would be appropriate.

May: Sure. They're not economically feasible for me anymore to have as rental property. They're 150 to 160 years old, depending on whose area of—where they came from and how they got there. They are costing a lot of money to upkeep. The amount of rent I'm able to charge is not great. And one huge thing is the property taxes are significant. So I just don't think it's the best utilization of the property, for me, going forward.

Epting: You knew, of course, when you bought them that they were historic properties?

May: Absolutely.

Epting: And important to the historic fabric of the community.

May: In some people's opinion, that could be true. Yes, sir.

Epting: Yeah. So, you're suggesting that the necessity that you feel is your own economic necessity in terms of maximizing the income potential of the properties, correct?

May: That's one factor. Yes, sir.

Epting: Other questions of the applicant?

Smith: I guess, I was on the commission _____.

Epting: Thanks.

Smith: I was on the commission when you asked to tear down the cottage and put up 408, the 408 cottage, and put up the structure you have there now, as your primary dwelling. And I recall, but I wonder if you do, and my question is, do you remember saying to the commission that you would do everything you could to preserve these two cottages?

May: Yes, ma'am. I could tell you exactly what I said. I said that I would everything I could to preserve them. And that was well before I knew the expense that I was going to incur as they—have continued to deteriorate. And things like plumbing has to be repaired and replaced. So, yes, I absolutely remember saying that.

Smith: And do you also remember our discussion about the importance of the lawn, you know, in front of the property, in which you put a larger house, and you had to, you know, cut into that? You know, the big lawn in front of both [ph]—all three of these cottages.

May: I don't remember us talking about that. No, ma'am.

Smith: Okay. Well, that was part of the—you know, the land—the historic landscape of—on this property. And we had a discussion about—

- May: Okay.
- Smith: —the significance of that. And, yeah. Just a minute. I might have more, but anybody else could go.
- Kyser: No, you have all these good notes [ph].
- Smith: Pardon me?
- Kyser: Go ahead _____.
- Smith: No. I need to collect myself and see if there's anything else.
- Epting: Other questions? Comments?
- Locke: Do you think that the landscape has any value culturally?
- May: All due respect to Ms. Smith, it's grass. That's all it is, is grass. And so I can't imagine it rises to the cultural level at all, and certainly not to the level of cultural stuff that we've been lectured about for the last three months, relative to other properties that have been on your agenda.
- Locke: Right.
- Kyser: Are you aware that the pattern of development in the historic districts is part of the defining character? It means the space between structures and the spaciousness of these old properties are what contribute in general to the character, and when you start filling in—
- May: Sure. I do. And when we get to what I want to build back—I'm glad you brought that up because the existing cottages, 412, for instance, is one foot from the setback line. It's a—this is a nonconforming lot, as it is right now.
- Kyser: That's not what I'm talking about.
- May: Ma'am?

Kyser: I'm not talking about zoning. I'm talking about the historic—[OVERLAPPING]

May: Well, it's an R-2. I mean, it's zoned R-2.

Kyser: I'm not talking about zoning. I'm talking about the historic overlay, which is—

May: No, no, I get—but you were saying about space and all, and what I getting [ph]—trying to tell you is that the new house to be built there, when this—when these go away, will be within the current setbacks, which means it will be 11 feet off of the lot line for 500 North Street. So that neighbor is improved in terms of space.

I live at 408 North Street, and I'm very comfortable with the site plan that you'll see in a little while, for the new property. So I actually don't think it is hurtful in the particular issue you're bringing up.

Murphy: So I think—can we let the applicant go through additional—because you haven't finished your material—[OVERLAPPING]

May: Actually, I have finished with what I have to present relative to the—

F: Demolition.

May: —demolition permit—

[OVERLAPPING—INDISCERNIBLE]

Murphy: —okay, so that's—I just—

May: I'm done.

Smith: Well, this is still important, the setting. And also, the context, because when you came before the commission before—and I don't remember. When did you build that house? What year was that?

May: I've been in the house three-and-a-half years. So I would have been before you about five years ago.

Smith: Five years ago. So 19—2014. So at that time, it was the—it was suggested to members on the commission that these design guidelines for Chapel Hill historic districts were suggestions. They were not—they were guidelines. But they were not to be treated—with any degree of legality, only A through J, which was listed as—you know what A through J is, right?

May: Oh, yes, ma'am.

Smith: Right [ph]. So, that has changed since you have come before the commission, the—coming before the commission this time. That was a mistake, and which I fought against, but I didn't understand the legality of it myself. And that's what I was told.

So, on page eight, for example, referencing what Ms. Kyser is saying, it says, for example, what you're calling "just grass," it says, "The setting of properties within Chapel Hill's historic districts is the result of the physical context created by the visual and associative site characteristics of the neighborhood. In particular, the natural topography and well-established landscape play a substantial role in creating the setting of the Chapel Hill historic districts."

And then, on the next page, for our guidelines, it says, "Protect"—number two—"Protect and maintain the visual and associative characteristics of the district setting that are established by the relationship of buildings to the streetscape, including significant vistas, site topography, accessory structures, streets, alleys, walkways, walls, fences, and plantings." And it says in number three, "Introduce new site features, buildings, additions, new buildings, and other

structures in ways that are compatible with the visual and associative characteristics of the historic district.” And number four, “It is not appropriate to introduce or remove a site feature if it will significantly diminish or radically alter the visual or associative characteristics of the district setting.”

So that’s a lot to say that that grass is not just grass.

May: Okay.

Smith: That the whole thing that happened before, I think, was an anomaly and a mistake on the part of the commission. Well, actually, it went to the Board of Adjustment, I think, and it was overturned because—we won’t get into that. But I think that’s sort of important. And I could go on, but I don’t need to right now because—well, I’ll say one more thing. On page 11, on site features and plantings, it says, “Retain and preserve historic relationship between district buildings, structures, or streetscapes, and their site features and plantings. It’s not appropriate to significantly alter the topography of the district by excavating, grading, or filling.” And, “Protect and maintain the site features and plantings through appropriate methods,” blah, blah, blah.

Anyway, that’s all to say that the site and the context in which those cottages are, and your home is, is as—very important. And part of the fabric of the historic district.

May: Okay.

Locke: Do you consider the driveway historic at all?

May: No, sir. It’s a shared driveway, and in the proposal that—well, you’ve had a chance to review my proposal. You’ve had two months to review my proposal.

I'd be building back a shared driveway. There's already a curb cut there to utilize.

Locke: And you have some stone features that are on the site, and how old would you say those are?

May: They're three-and-a-half years old because I picked them up and moved them there.

Locke: There you go.

Epting: Mr. White, do you have any questions? Any of the rest of you have another question? I sort of want to make a summary paragraph of the way I feel about these things. It appears that more and more people are buying properties in the historic district with the idea that they are buying development property, which is a shame. For a long time, from the commencement of the historic district program in Chapel Hill, people saw the structures and historic features of the historic district to be things that were of value to the whole community.

And so, when you bought something like that, the idea was you bought it in order to fix it up. I did that in 1977, with a tiny house on Hillsborough Street, and fixed it, and never had a moment's doubt that I had done the right thing. It would otherwise have been torn down, and somebody would have built something else there, something newer, something not historic. I'm glad I did that.

And I personally grieve the decision of folks who come in and buy our properties with the intention of tearing them down and building something new because it costs money to maintain what a historic structure is, and has been, and ought to be maintained as. So there is every reason, it seems to me, to delay these

things for as long as possible. You said a while ago, we could deny it or we could delay it. No, we can't deny it. The law says—

May: Not delay. You're right. You cannot deny it. You can delay it [ph].

Epting: —we may not deny it.

May: Right.

Epting: Which is a shame. We ought to be able to deny it, where—in my judgment—where the only benefit of tearing something down is an economic benefit to somebody who bought it with, I think, a moral obligation, an obligation to the community to maintain it, and to preserve it for the next generation, as it has been maintained for our generation. And so I hope you won't hear this as a lecture. It is how I feel and the reason that I sit on this commission. But it does no good to ask me to vote to hurry up and let you tear it down a little faster.

Certainly, it doesn't do any good to ask me to do that because we have been about the business of doing our work here, in the previous two meetings when, yeah, you have sat through waiting for your matter to come up. We didn't do that on purpose. We did it because we were paying attention to our work. So I'm not going to support a motion to delay it for less than a full 365 days. I will note that you also have an application to put something else back on that property. And I don't know that—

May: Tonight. Yes, sir. Tonight [ph].

Epting: —tonight is the right night to actually consider that application.

May: I will be seeking an up or down vote on that tonight, as well, sir.

Epting: Well, we'll see how that goes. But is there further comment, or are there other— anybody else that has any presentation to make on this, or do you have any other evidence you want to offer [ph]?

May: About the demolition part?

Epting: Yes, sir.

May: No, sir.

Epting: Okay, well, then—

Locke: I would ask one question.

M: All right [ph].

Locke: Since this is an evidentiary hearing, and you're proposing that this is an economic standpoint, could we see your pro forma?

May: No. And that's not the only—I mean, it's just I don't think that's what's the best use of this property. I fully respect that all of you, probably, have opinions similar to Mr. Epting's about the sanctity of these two cottages. I just don't fall into that way of thinking. And I own the property.

Locke: Yeah, and I have the right to ask you for your pro forma.

May: And I'm saying, no, sir, I'm not going to provide a pro forma.

Locke: Counsel, evidentiary hearing.

Ferrell: You asked and he answered the question.

Locke: So we have no ramifications if we want information that he's holding and he's using as an argument? There's no way for him to actually give forth that information.

Ferrell: You know, I haven't looked into the issue. It hasn't come up before, whether the commission could subpoena evidence. I haven't seen if that's specifically in your authority. I haven't. I don't know the answer. I can look into that.

Locke: Yeah. Might have to happen. Thank you.

Epting: Dr. Burns?

Smith: I have—oh, go ahead.

Epting: Oh, I'm sorry.

Smith: Go ahead, Dr. Burns.

Burns: If you came here tonight and was—were requesting demolition of the house that you've put up and replacing it with the one that you took down, I would vote to approve it. But I think to ask us to continue to demolish these homes that have a history in this district, I would not give you the shortened time that you need. I would vote with the chairman, that it be delayed 365 days, and hope that in some way they could be preserved. It's been my experience since I've been on the commission this time that that doesn't happen. We've had other—call them “developers” come in and they have done what you do—asked to do what you have asked to do. Baby Hollow being the most recent one that we have dealt with, in which five historic homes or cottages have been removed.

I think this is an application that I wish we could vote “no” on rather than delay [ph].

Epting: If you don't have any further evidence, is there a motion to close the public hearing?

Smith: No, I just want to add—

Epting: I'm sorry, Susan.

Smith: Okay. In your information packet, you stated that the three cottages—quote, “The three cottages may have been connected as one building at some point, and been part of the Episcopal rectory prior to their relocation in 1915. If that is the case, then even now, they are not in their original location to—or condition.” Does that mean—I mean, 1915, that’s over a hundred years. So isn’t it true that they would be historic in the location that they are now?

May: I don’t know. I don’t know the Smithsonian Institute definition of what “historic” is. I’m merely pointing out that they are not in their original location.

Smith: Right. But if they’ve been there for a hundred years, I believe that that makes them historically significant in this location. Jamie?

Locke: Yeah, more or less. The rule of thumb is 50 years, but—

Smith: Right.

Locke: —if these—so if this was the rectory, it—and then it was moved, you know, 20 years ago, and so it was important because it was a rectory—

Kyser: It was moved a hundred years ago, is that right [ph]? Over a hundred years.

Locke: Right. And so basically what we’re saying is that it’s important also because it’s a residence. Because people live there, correct?

May: People live there now, yes [ph].

Locke: Right. So it’s been a residence in this capacity, on this plot of land, for more than a hundred years, so therefore it is historically relevant.

Smith: Okay. That’s what I just wanted to correct.

M: Okay.

Smith: And also, if this demolition does go through, you suggested that you will protect any mature trees on the property from damage during demolition. And I'd like you to provide a plan that shows where those trees are.

May: Well, there aren't any. And in there, I also say that the stuff at the front, by the road, will stay. So there aren't any specimen trees that need to be protected.

Smith: Okay, so you are saying you—

May: There are some dead trees on the back.

Smith: —protect something, but there's really nothing there to protect?

May: Correct.

Epting: Okay. Any other questions? Then without objection, we're going to close the public hearing. Thank you, sir. Discussion among the commission members?

Kyser: I'm in agreement with you and Dr. Burns, just—

Locke: We have to vote to close, right?

Epting: You don't have to vote. I just closed it, if there's no objection, so.

M: I thought we had to vote.

Smith: I thought we had to vote.

Epting: I'm trying to get through the agenda, so.

Kyser: No, I would—make it the maximum length of time to delay.

Smith: When does that start?

Epting: Well, let me ask staff and counsel. The 365 days of delay are calculated from the date of the application or the date of the action of the commission?

Ferrell: You're taking action tonight to approve the demolition certificate. And if I understand where you're headed, is it would be a 365 delay from the approval of the certificate, which would be tonight.

Epting: Well, except that we have one member who's asked for additional information. Another member who has suggested that the application may or may not be complete yet. And so we may not take action tonight.

Ferrell: It's from when you take action on the application.

Epting: Okay. All right. That's what I thought was the case. So.

Smith: I wouldn't base it on what I said because he said there's no mature trees there.

Epting: Okay.

M: Could I speak, please? [INDISCERNIBLE]

Epting: We have—you know, I failed to ask if there are other members of the public that wished to speak on it. And so, let me do so now. And I believe on this one, Pat Lowry signed up to speak. Nobody else is signed up to speak. So, Pat? My mistake, Pat. I'm sorry. I didn't mean to overlook you.

Lowry: Good evening, Chairman Epting and the HDC members. My name is Pat Lowry.

Kyser: Could you move closer to the—[OVERLAPPING]

M: Could you move the microphone down?

Epting: Just pull the mike to your mouth.

Lowry: And I have been sworn in. I live at 407 North Street, directly across from Ricky May's property. Before Ricky bought this property, the three cottages there were in disrepair, with large wild grapevines and English ivy taking over the trees and hanging over the parked cars on North Street across from my house. Ricky

offered the relocation of the first cottage he replaced with his own home. That relocation effort was unsuccessful. I asked to see the cottage before it was taken away. It would have taken more money than I would have wished to spend just to bring it up to code. If it had been more architecturally significant, perhaps the people who looked at it would have given it more consideration.

The HDC selected the plan for Ricky to build, to replace that first cottage. This finished home at 408 North Street fits in well with the neighborhood, and the landscaping is lovely. Now Ricky is offering the two remaining rental cottages for relocation. I find his plan to replace these rentals with a new single-family home very acceptable. This will increase the much-needed owner-occupied residences, rather than rentals on our street. Ricky has worked with Judy Johnson and others to find a new location for these cottages.

The new two-story home plan was selected jointly by Ricky and the new homeowners, a dentist in the UNC dental school, his wife, and two daughters. This plan is similar in front elevation to the older one-story cottages next to me at 403 and 405 North Street. The gable above the full-width [ph] front porch is similar with these two existing homes, as it is with Ricky's proposed plan for this property. This cottage home design is in keeping with these two existing homes next to me and with others in the neighborhood.

I believe it meets HDC guidelines and should be approved.

Epting: So you spoke on the demolition for a moment, but then mostly on the new structure that he proposes to build. We haven't gotten to that part of the hearing yet, but thank you.

Lowry: I understand.

Epting: Okay.

Lowry: But it factors into my decision to support him because—

Epting: I understand.

Lowry: —we have enough rental on our street already.

Epting: I understand. Yes, and I think in the previous meeting, I noted there were a number of residents from the street, certainly residents from the neighborhood who were—who have expressed reservations about how student—multi-student, non-related person occupancies in the district, and the impact that's had on being able to preserve historic properties in this [ph]—in the district. So I'm not unaware of that suggestion, and certainly not unsupportive of it.

I think our duty is to try to preserve as many of the historic structures as we can in town. And that—for that reason, we have to deliberate closely on the question of applications for permits for demolition. I am distressed to hear that Judy has engaged in conversations already about moving these properties because that is the province of the Historic District Commission under the statute. It is the second time that has happened.

F: Who's Judy?

Epting: And I expressed great—Judy Johnson is a planning staff member. I expressed great dissatisfaction directly to Judy about that having happened last time. And she stood in that hall, beyond those doors, and apologized for how that happened. So I don't know why that is happening again. But I'm certainly hoping this—somebody at the staff level will communicate to Judy my distress about that.

So, are there other members—thank you. Oh, yeah. I think there's one other person who probably is not signed up but wants to speak.

F: [INDISCERNIBLE]

Epting: We invite you to come forward, and say your name, and whether you were sworn last time. And if you were, then go ahead.

Finn: My name is Arthur Finn. I've been sworn tonight.

Epting: And welcome. Thank you for your note.

Finn: I was going to apologize for sending a note because I didn't realize when I sent it that it wasn't appropriate.

Epting: Glad you're here and that's why I didn't recognize you.

Finn: I have—I just have to precede this [ph]. I have lived here for 45 years and I've lived on—in the historic district since 1987. I live—my property is contiguous with Ricky May's.

M: Right.

Finn: And I have to disagree with you really strongly with the concept that you're presenting, that age is history. Because it's old, that does not make it historic. And it doesn't matter whether you disagree with me, it's a fact. Because we define—defined only by how we define “historic.” But within that, simply being old does not make it historic. And I, at the moment, repair clocks. I see a lot of clocks from the 18th century. And they are old. And trust me, some of them are not historic.

But anyway, with regard to this, to the demolition, my feeling about these cottages is that they're—it's true it's an economic problem for Ricky, but the fact

is that these cottages, if you look at them closely, are really not worth anything. They're a blight almost on the neighborhood. Yes, they're old. But because they're so old—I mean, it wonderful that you were able to, you know—to bring up a home into a wonderful condition, and you're to be credited for that. But these places are beyond that. And they do not make the place attractive. They really make it less attractive by their presence.

I also think that one other issue is important. If these places are demolished, we'll remove two rentals from the historic district and replace it. I know you—this is not part of the real issue, but it strikes us that increasing the number of owner-occupied residences in this district is a good thing for the historic district. And so that's why we're in favor of the idea of demolition. Personally, as I say, I don't see anything to be gained by keeping old homes that are falling apart in the historic district. Thank you. Any questions?

Epting: Thank you, sir. And let me disclose that I did have a communication with Art Finn about his fear that he would not be able to be here tonight. And I communicated back to him that I had seen him here at the last meeting, and was—regretted not having had a chance to talk to him. We did not talk about the application or about his testimony here tonight. But we are glad to see him here, as we're glad to see the other neighbors with concerns.

And you know, frankly, I'm happy when people disagree with me, because in the way our system of government works, if we don't have disagreement, we don't need—we don't even need to be here. Disagreement is what sharpens the perspectives of the disagreeing parties, and hopefully helps you

end up with a better solution. So I certainly agree with most of what Art—my friend Art Finn has said, and I look forward to talking with him more about it when we're outside this meeting.

On the other hand, there certainly is a valid perspective in the value of preserving the historic structures in town. And by "historic," I don't mean "old," I mean the historic fabric, the nature of the community as we have it. I remember living in Ms. Thomas's [ph] basement when I was a third-year law student in 1970. And I believe Ms. Brown owned those three cottages at that time. And she, on a Social Security income, managed to keep them painted, new roofs on the properties, and they were all done in a manner that suited you when you walked out of the front door of Ms. Thomas's house, or the side door of the apartment that I lived in.

And it—so it's a shame that a time came when they fell into ownership by people who thought of them only as economic resources, as opposed to part of the historic fabric of the town. But—and I do recognize that you are not of a mind to restore them or to take care of them in their present configuration. I doubt that the commission is of a mind to encourage their demolition any sooner than we have to. And I hope you won't take that as insult. It is our duty, in our view, to do that.

So having said all that, let me—is there any other comment from the public? I see several others who've been involved in restoration work out there, converting dilapidated properties into historic useful properties, and invite any of

you want to come forward, to come forward. Sort of our altar call here at the midpoint of our meeting, of our agenda item. So, thank you.

Smith: Oh, I—can I ask him a question?

Epting: Yes. We have not yet closed the public hearing, but we're about to.

Smith: Okay. Did you consider at all adding on to those cottages to make them more economically profitable?

May: No, ma'am.

Smith: Is there any reason why you didn't do that?

May: I didn't consider it because I don't think that would prove to be true.

Epting: Okay. Any other questions?

Locke: Yeah. On the 2013 site plan, the stone walls are there, so they're older than three years, and so I would like to also know how old those stone walls on that property are. Thank you.

May: All right.

Epting: Okay. Now—

May: Hang [ph]—if I could answer his question, because he's asked about it twice. When I bought—

Locke: I didn't ask. I think I just made a statement and then [ph]—

May: Okay. But you've made a statement. I'd like to respond to your statement.

Locke: Thank you.

May: And that's a good picture of it, right there. When I bought the property, that stone was completely covered with ivy. And during the construction of 408 North Street, the ivy got disrupted and came up. I personally moved the stone to the

other side of the lot. And when construction was finished, I personally moved it all back. And collected other stone so that—and also, so that you know, it's not tied together with cement in any way. It's just stones that I laid down. So when it was originally there, and how long it took the ivy to grow over it, I have no clue.

Locke: Yeah. And so that kind of gets to the point. So the idea is if these are very significant historic landscape features, then we kind of need to know that. And so—

May: I don't know the answer to that.

Locke: Right. And so—

May: And I don't know that anybody knows the answer to that.

Locke: So, you know—and so part of our charge here is to kind of figure that out. So we really need to figure out, is this a character-defining feature of this property or not. And so, there is some hesitation. I mean, some people in the audience obviously have an opinion that, you know, a single-family home that is the size of its neighbors is appropriate, and we haven't really gotten to that conclusion yet. We—you know, we're still in the evidence-finding phase.

And so, even if you were to propose something like that, if this is a historic fabric from the place, then you may not even have a case to even disrupt those. So your secondary phase may—this is just kind of looking forward [ph]—like, your secondary phase may not even be relevant if these are character-defining features. So, like, if you're going to disrupt theoretically hand-placed, non-cemented, freestanding stone walls that could have been put up by a slave, could have been put up by a master craftsman, we don't really know that yet.

And so, the idea—and the idea is that, you know, we can't just shake a stick at landscape and act like it's just grass. I mean, we're not talking about the grass. I think you're right. We're talking about stones.

M: Right.

Locke: And so this is like—this is a legitimate line of question. And I don't mean to be kind of short with you, but I mean, you said they were overgrown in ivy. So, I mean, if there's some aerials that are there, that it's not there in the 1950s, then that's a different story, right?

May: I have no idea [ph].

Locke: And so then these things are rotting, and they're—that can give us some type of evidentiary standing based on the landscape features. So that's all I'm really trying to figure out in this situation.

May: Right. My intention would be, when I build a new house back and have a different driveway, to personally, physically pick up those rocks, and move them to where they serve the same purpose in the new driveway that they do now.

Locke: Yeah. And once again, I think you need a COA to get that.

Epting: And all of that—

May: Which we're getting ready to get—[OVERLAPPING]

Epting: —may be relevant on the next phase of this application.

May: It is. Yeah.

Epting: But I doubt that it has limited materiality with respect to the certificate for demolition. So what we need to do tonight, in my view, and I would propose, is to get a motion with respect to the demolition, a date for—moving that date out to

365 days, and then we will determine whether to proceed with the rest of the application tonight or expect to receive further information that would be useful on that application.

So, is there a motion with respect to the demolition tonight, or is there a motion to defer further consideration of the matter to the next meeting? We are—

M: Have we closed the public hearing?

Epting: We have closed the public hearing, without objection.

Locke: I make a motion to move this hearing to the next month's agenda because I think we still have some evidentiary—evidence [ph] that needs to be sought after.

Thank you.

Epting: Is there—

Smith: Regarding the demolition you mean?

Locke: Well, we don't know if the demolition is going to disturb the historic landscape.

Ferrell: Mr. Chair, before you move on here, let me just point you out to the language in your ordinance, which says, "An application for certificate of appropriateness, authorizing the demolition of a building or a structure within the historic district may not be denied; however, the effective date of such certificate may be delayed for up to 365 days from the date of approval."

F: Yeah.

Ferrell: So you certainly—that's the timeline you asked about earlier.

Epting: Yes.

Ferrell: Given the limited discretion, I have some question about a further delay in the—in this context.

M: Right [ph].

Ferrell: And I can expand on that if you'd like me to.

Epting: Well, I think if there—if it were your judgment that the additional information requested was impertinent or immaterial, I would agree. But certainly if that part of the presentation, so far, suggests that further information needs to be produced, in particular with respect to this stone wall, then that seems to me to be a sufficient ground to go. But I'd be pleased to have you to tell me if you disagree, because I'm going to take your opinion as the stronger opinion.

Ferrell: You know, I haven't confronted the issue head-on. It just strikes me that the statute has an end date on the demo—the 365 delay period, the maximum delay period. And so, in my mind, there's a question about, you know, does a continuance essentially serve the purpose of extending or furthering the 365-day delay the statute gives you to 365 days plus. So that's the question in my mind. I don't have the answer to that. And I understand your position. I mean, I understand what you just said about needing more evidence [ph].

Epting: Yeah. And so on the one, if I'm the applicant, I could easily argue that they're just putting me off for another 30 days. On the other hand, if I am a commission member who has expertise, advanced degrees, and is otherwise fully qualified to serve, and is asked for additional pertinent information, it seems to me that, from that perspective, one could argue that there is a legitimate basis for postponing further consideration of the demolition permit application [ph].

May: Could I offer one more thing—[OVERLAPPING]

Ferrell: And I think that—

Epting: You're—the public hearing is closed on this matter. So thank you.

Ferrell: I think that's the issue exactly. And I don't—I could argue both sides.

Epting: So why don't we put it to a vote of the commission?

Kyser: Okay. And one more question, though—these are not two separate applications?
They're combined?

Smith: No, they are two separate.

Epting: I consider them as two separate applications. And in fact, that's what the applicant said when he stood up.

Kyser: Okay.

Epting: That he wanted to consider the demolition application first and then he wanted to consider—

M: So—

Kyser: Well, shouldn't we go ahead and vote on the demolition, just—

Epting: Well, the question—that's the question that I'm putting to the commission, if the commission wants to vote tonight, then—

M: For the—

F: [INDISCERNIBLE]

Epting: —we'll vote tonight. If the commission wants to defer it to receive information that Jamie has asked about, well, then we'll defer it.

Kyser: But that information pertains to the next statement [ph].

Epting: To the stone wall.

Keyser: This—but pertains to the—

Smith: Yeah.

- Murphy: Is the stone wall being proposed to be demolished as part of demolishing the cottages? I don't believe so.
- M: No.
- Murphy: So the stone wall would be related—
- Kyser: To the next.
- Murphy: —to the next phase, so.
- Kyser: Yeah. That's what I—my understanding is at least.
- Epting: Okay. So let's just take a little straw vote about how to proceed. How many want to vote on the demolition permit application tonight?
- Kyser: I do, because I don't want it said that we just were stalling.
- Epting: Okay. One, two, three, four. How many would defer that to the next meeting?
- Two. And I haven't voted. I don't think it's necessary for me to vote because it's four to two. So let's proceed to a vote. Does anybody have a motion with respect to the—
- Smith: Well, I just have a question for Jamie. So, within that 365 delay, can this information from a Sanborn map, or whatever, be brought to the commission when Mr. May comes for review of the—of his proposed house? I mean, can't we not get that information within the 365 days? Why should we need to delay?
- Locke: My understanding of the 365 delay is to create opportunity for potential other avenues, such as the removal of the property onto somewhere else, and I think that's in our guidelines.
- Smith: Right.

Locke: My concern is that we don't know, and the applicant is also unsure of how historic his landscape really is. And so, if there is more evidence, then there is a possibility that it sheds new light for the—everyone here. And so that is why I'm inferring about new evidence of this historic wall, that we have no idea. It was there, overgrown with ivy, as suggested by the applicant, and I think that it would be beneficial for us to know more.

Smith: Okay. One more question. Sorry. Is there anything in the state's law that says you cannot tell someone they cannot destroy a historic landscape?

Ferrell: So, the—landscape is an important thing to talk about. And if we want to talk about it now, we can certainly do that, because I do think we—it's come up a couple of times tonight. So let's talk a little bit about landscape generally.

So the demolition—just to bracket the discussion—the demolition permit tonight, as I understand it, is for structures, right? Maybe to include the wall, maybe not. But the way your ordinance reads, applications for certificates authorizing the demolition of buildings and structures, right, can't be denied but can only be delayed. But let's just talk about the significance of landscaping generally with relation to what your purview is.

So, the North Carolina General Statutes does—defines the authority of historic district commissions. And the enabling legislation talks about what it is that you're to do. It provides that if—the General Statutes provide that if specifically authorized by the governing body, the Town Council in this case, landscaping—significant landscaping features may be a consideration. The Land Use Management Ordinance is the embodiment of the Town Council's policy

decision about what authority the General Assembly allows, that it's the authority that they've delegated to the Historic District Commission. So the Land Use Management Ordinance then provides the authority for this body to act.

The criteria listed, the A through J that we talk about, the A-through-J criteria is what the Land Use Management Ordinance says the Historic District Commission is to use when making its congruity determination. The A-through-J criteria don't speak to landscaping or significant features.

The guidelines, in my view, that talk to those aspects then, have to be read in conjunction with the A-through-J criteria. So to the extent the guidelines inform the A-through-J criteria, and many of them do, then it's within your purview. The Town Council specifically—well, the specific language about significant landscaping features is not included in the Land Use Management Ordinance. Statute—the General Statutes allows the Town Council to delegate that authority. It hasn't delegated in the Land Use Management Ordinance as I read it.

Kyser: Okay. To boil it down, you can—we—can I tell someone they cannot tear down a structure, a house? Can—but can you—

Epting: Or a wall.

Kyser: Or a wall. You can tell—you can?

Epting: No, a house, a structure. A wall is a structure.

Ferrell: Right.

Kyser: So walls can be part—you can get permission to tear them down? Okay.

Epting: Yes [ph]. In fact, you have to have permission to tear them down [ph].

Ferrell: That's right.

Kyser: Okay. Well, then that's a part of it [ph]. Thank you.

Ferrell: Maybe I was long-winded. I'm sorry if I was.

Kyser: No, no, no. It's all right. I needed to know [ph].

Epting: Oh, no. I didn't mean to cut you off.

Ferrell: No. I know [ph].

Epting: That was a good explanation. The sum of all that is that the stone wall, or whether it is a stone wall, or ever was a stone wall, or whether it was just loose stones left on the yard, is an issue. And it is an issue pertinent to the demolition permit because, presumably, you'd be demolishing that wall in order to do the improvements that you're talking about. That right?

May: I think he's saying just the opposite, aren't you?

Epting: No.

May: I thought you just said that—

Epting: He's—

May: —stone—that walls had—that they had no purview over walls.

Ferrell: No. If I said that, you misunderstood me.

Epting: We—just to be clear—

M: [INDISCERNIBLE]

Ferrell: Yeah.

Epting: —the public hearing is over.

Ferrell: Right.

Epting: You're free to take your seat if you'd like.

Ferrell: Right. I—

Epting: And so the discussion now is up here at the front of the room.

Ferrell: Yeah. There should be no mistake—and this commission has spent a lot of time and a number of applications since I’ve been here—

Epting: Yeah.

Ferrell: —focused on the character-defining features in the historic district, which are stone walls.

M: Right.

F: Yeah.

Ferrell: So please don’t take anything that I’ve said to mean—

M: Yeah.

Ferrell: —that they’re not relevant to a certificate of appropriateness. What I read to you, though, is that an applicant, for better or for worse, the legislature has—and this is filtered down into the Land Use Management Ordinance—the legislature has said this—that a Historic District Commission may not deny a demolition application for building or structure, it can only delay it. So.

Epting: Got it.

Ferrell: Am I confusing you?

Epting: No. No, I was not confused at all.

Ferrell: Okay [ph].

Epting: That’s why I said “and walls” in the middle of that [ph].

Smith: Okay. But I don’t think we can delay the delay, is what I think Brian is saying.
We can’t delay—

Epting: Well, the commission has already voted in a straw vote to vote tonight on the demolition permit.

Smith: That's right.

Epting: And so I propose to ask for a motion with respect to the demolition permit. Is there such a motion?

Kyser: So moved.

Epting: I'm sorry. I didn't—

Kyser: So I—oh, you want me to make it a full one?

Smith: Yes.

Kyser: Oh, I will make a motion to approve the application for demolition with the restriction that it's—it doesn't begin for 365 days.

Epting: That it be delayed for 6—365 days.

Kyser: Yes, it doesn't begin. Yes.

Epting: Okay. Is there a second to that?

Burns: Second.

Epting: Dr. Burns has seconded Ms. Kyser's motion. Is there further discussion on that motion?

Locke: I would just like to urge y'all to let the applicant take the time to actually give us a plan of how the landscape will be handled during this demolition, because we are not sure if it's historic or not. And it could be a very historic, sound significance.

Epting: And so, Jamie's view is that the action of the commission would be—should be premised upon further information about how the demolition will affect historic structures on the property, including walls.

Locke: That's fair. Thank you.

Epting: Is that right?

Locke: Yeah.

Epting: A fair restatement. And so that would suggest that, perhaps—

Kyser: Friendly amendment, or what?

M: [INDISCERNIBLE]

Epting: We'd vote. We—

Locke: Oh, that wasn't my amendment. That was literally just commentary.

Epting: But your commentary suggests a "no" vote on the motion would be appropriate.

Locke: Exactly.

Epting: Okay. So, are you—

Smith: So a "no" vote would be what?

Epting: Would be appropriate, because from his perspective, further information is needed to see what the demolition—how the demolition might affect historic structures, such as walls, on the property.

Smith: So that would mean we would be continuing this application for demolition?

Epting: Well, I don't know how you could get further information tonight, so. I should think the applicant would want to bring that information at the next meeting. But that would be up to the applicant.

May: I'm right here.

Epting: So, what is the commission's pleasure? Are you ready to vote on the motion? All in favor say "aye."

M/F: Aye.

Smith: I don't know.

Epting: There are three votes in favor, is that right?

Smith: I do not know [ph]—[OVERLAPPING]

M: One, two, three.

Epting: Mr. White.

Kyser: Two, three, four, five. We got five [ph].

Epting: Four. I'm sorry I didn't count everybody.

M: Do you have it [ph]?

Epting: Did you vote?

Smith: I don't know.

Epting: Would you raise your hand—

Ferrell: Raise your hands—

Epting: —if you're voting in favor of the motion. Ms. Kyser votes "yes." Mr.—Dr. Burns votes "yes." The chair votes "yes." Jim White votes "yes." How many is that?

F: That's four.

M: Four.

F: Four.

Epting: Four, okay.

F: [INDISCERNIBLE]

Epting: Okay. All opposed, say—vote "no."

M: No.

Epting: And so the other three vote “no.” So the motion fails because it takes five votes to pass the motion. Now, that would leave us open to deferring the matter to the next meeting for further discussion and presentation of further information, or further discussion now. And I look at the clock and I see that it is—we have 12 minutes left until our adjournment time, or at least the time after which we don’t usually take another agenda item.

And I apologize to my friend, Mr. Shastick [ph], who’s patiently waiting in the back, and others who are patiently waiting. What is the commission’s pleasure? Do you want to have further discussion of this matter now, or do you want to defer it to the next meeting, hopefully to receive the additional information that at least Jamie thought would be useful?

White: Didn’t we just pass a motion, giving him the right to demolish these buildings after—

Epting: No, the motion got four votes.

White: Oh, you have to have five.

Epting: Have to have five votes, so there are not five votes to do that tonight.

Kyser: Well, I mean, that was confusing because we don’t have the right to—we have to vote to—we can’t say “no” to demolition.

Smith: Right.

Kyser: So it’s just a matter of which night we—

M: Right.

Epting: But you—

- Murphy: So do we want to have a new motion with, you know, for example, Jamie's information added to it, and take another vote on that?
- Kyser: Because that information could come in separately, couldn't it?
- Epting: Do you want to offer a—offer that motion?
- Kyser: Yeah.
- Smith: Well, what if the applicant does not want to provide any more information? Then we know tonight, and we can just move forward.
- Epting: Well.
- Smith: Can we ask the applicant if he is interested in providing that information?
- Epting: Yes. Why don't you ask the applicant?
- Smith: Okay. You have to open the public hearing.
- Epting: Why don't you go ahead and ask the applicant.
- Smith: Okay. I'm opening the public hearing. And Mr. May, would you be interested in researching the historic—like, through the Sanborn maps or whatever, to provide us with any historically significant structures besides those two houses on your property?
- May: I wouldn't know where to look.
- F: I think—
- May: I suspect that if you asked me to come back in another month, that the chances of me providing you any meaningful information are not large at all. Because I just would have nowhere to look. I can't imagine how we'd do that.

To this gentleman's question, while it's now back open in a public way, because I have demolished one before, and I know how easily it fits in a dump

truck, when these two get demolished, they will fit in a dump truck that will come down the driveway. The dump truck will get filled up. It will go to the dump. And the rock wall in question will not be disturbed at all. So during demolition, there will be no effect on the rock wall.

Smith: Okay. Thank you. That's helpful.

May: Sure.

Epting: Okay. Well, the motion with respect to the permit has failed.

Murphy: Do we need a new similar motion based upon the information that we just heard?

Epting: And we're going to formally close the public hearing again, without objection. If it's all right with the commission, I'm just going to declare that. If somebody objects, then we'll have a vote, but otherwise we'll save the time.

M: Yes.

Epting: So without objection, the public hearing is closed. Is there a successor motion in the last nine minutes of our meeting?

Smith: Well, I would move that we approve the demolition with the 365-day delay.

M: Second.

Epting: And is that the same motion that just failed to get five votes?

Ferrell: I think the distinction is, what I understood the applicant to say, is the demolition permit does not include demolition of the wall.

Epting: Okay.

Ferrell: So I think it's different in that respect [ph].

Epting: With the condition—

Smith: With the condition that it does not include the demolition of the wall.

Epting: May not demolish the wall.

Smith: Right. Correct.

Epting: Okay. So is there a second to that motion?

M: Second.

Epting: All—any further discussion? If there's no further discussion, then all in favor raise your right hand.

F: Excuse me.

Epting: I did that again, didn't I?

F: You did it again.

Epting: And all opposed raise your left hand. That one passes.

F: No, I—

Epting: Right? And Jamie voted against it, but it—so the demolition permit will be issued with a 365-day delay.

M: Okay.

Epting: Now, we are at 22 minutes after 10:00. Our usual cut-off for taking further items is 10:30. We do have to have a closed session at the end of the meeting. I propose that we continue the consideration of the other part of this application until the next monthly agenda, and that we go into our closed session with our council.

White: Could I, at this point, reiterate—

Epting: Yes, Mr. White [ph].

White: —my initial plea that the 723 Gimghoul application be moved to the very top of the agenda next month?

Epting: I will see that that is the case.

Smith: Thank you.

Epting: We will see that that is the case.

[INAUDIBLE]

Epting: Okay. So we do have the North Boundary Street application on the next agenda. We will certainly finish that up within the time allowed. But I think nevertheless, given that Boundary Street has now been here three times in a row, as well, that we ought to start our agenda next time with that. And we will conclude this item—or the bound—we will then conclude the North Boundary Street item and then we will conclude this item.

Smith: Well, then that's going against what Jim just requested.

White: No.

Epting: No. It's doing exactly what Jim requested.

White: I said next month, my plea, demand, whatever you want to call it, is that 723 Gimghoul be at the very top of our agenda, and that North Boundary follows somewhere farther down the line.

Epting: And is that the wish of the board then, and that [ph]—so to do it that way?

Smith: Yes, except for—

Epting: All right. And I misstated that. I misstated.

M: [INDISCERNIBLE]

Smith: Yes, you misstated that.

Epting: It was my fault. So I think that—

Smith: So, but maybe we should have Mr. May be second and Boundary be last, given the fact that he's also had to wait. I would like to suggest that, as well, that he come after Gimghoul. Because at least you got through part of your agenda tonight.

Epting: Right. Is that the will of the board as well then?

M: Sure.

Epting: Fine. We'll make the agenda in that way then. And just so you all know, the agenda meetings are generally held 10 to 15 days before our board meeting. We review what app—completed applications have been—what applications have been submitted and found to be complete and ready for hearing. And we set the agenda at that time. So that's how we'll set the agenda in accordance with the board's wishes, as expressed here tonight. So we'll see you at the next meeting.

[END TRANSCRIPT 03:49:10]

Ricky May
Chapel Hill Historic District Commission
410 & 412 North Street
April 9, 2019

Epting: Robert Epting, Chair
Murphy: Sean Murphy, Vice Chair
Kyser: Kimberly Kyser, Commissioner
Smith: Susan Smith, Commissioner
Schwartz: David Schwartz, Commissioner
White: James White, Commissioner
Locke: James Locke, Commissioner
Burns: Woodrow Burns, Commissioner
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 02:03:02]

Epting: Our next application is the application for the properties at 410 and 412 North Street. You've looked at the staff report, and are you ready to present?

May: Yes, sir.

Epting: Go ahead.

May: Thank you. My name's Ricky May. I'm here tonight to talk about part two of my application, which is what I would like to build back at 412 North Street. As I go through this, which I'm going to try to do as quickly as possible, because I am sensitive to your one-hour time limit, and I think that that would probably be best used by me trying to answer questions that you might have about my application and what I'm proposing. So I'm going to move relatively quickly.

What I'd like for you to keep in mind as I go through this and as the question and answer goes back and forth, I believe that what I'm presenting to you meets all nine of the guidelines for new construction. And I also believe it meets all 10 of the guidelines, A through J.

So with that in mind, the first thing that I wanted to show you is the site plan. And the key factors here is the shared driveway would move to the right-hand side of the lot of 412, if you were standing in the street. And then the house, obviously—oh. And one other thing. The existing shared driveway I'd like to keep in place, as it runs up to the left-hand front corner of the house. If—and I did this before I left the house tonight. When I left tonight, there were 10 cars parked on the street in my part of North Street. It renders that street pretty much a one-way street a lot of the day and night. So, especially for football games, graduation weekend, those kinds of things, I think it would be in the neighborhood's best interest if the existing shared driveway was allowed to stay. Obviously, there's a curb cut [ph] there. And just coincidentally, where the new shared driveway is being proposed, there's already a curb cut there. So I'm not—I'm going to have to seek a new curb cut from the town. It's already there. And those would be gravel driveways, just as the existing driveway is a gravel driveway.

The house and the garage, which will be hidden behind the house—so separate garage—are within the setbacks, 11 feet on either side and to the back and 26 feet to the front. And the garage would be a side-loading garage. There are side-loading garages in the historic district already. It's also a two-story garage. There are two-story garages in the historic district.

And the house, which I'll show you the front elevation of now, because of the nature of the lot is pretty narrow and deep, it's a pretty narrow house. A cottage look, in keeping with the neighborhood. As I've already said, everything

that I'm doing here is trying to present to you something that is congruent with the existing historic district, and it's in keeping with the character of the district.

So, front porch—as I think you may remember from my—last month, I also own 408 North Street and I live at 408 North Street. So all of the building materials that I would use on this house would be the same as the materials used on my house and materials that are used quite frequently throughout the historic district. Here's one side elevation, another side elevation, back elevation. And then, the garage—I'd dress this up and make it more of a carriage house look, with traditional lights on either side of the garage door. And then, the side views of the garage—you know, it's a 22-by-30 garage, 660 square feet. It does have an upstairs. Pretty basic rectangle. Fits into the site plan well. And then, obviously, the back.

So, you know, what I'm proposing is roughly 3,000 square feet. To the issue of its scale relative to houses around it, the house directly across the street, which is a rental property, is about 3,900 square feet. The house to the back of it, of this property, is the ADPi sorority house, which is almost 10,000 square feet. So in terms of scale, it's certainly not big compared to what's around it. It's probably in the midpoint of houses up and down the 4 and 500 block of North Street in terms of size and scale. And so, you know, again, all of that with an effort to make it congruent.

And, you know, I'm happy to answer any questions that you have about what I'm proposing. I know you've had my material for, now, three months.

You may know it better than I know it. But I'm happy to answer any questions that you have.

Epting: Questions of the applicant? Well, I'll start off. I have one question.

May: Yes, sir.

Epting: Is the—if you go back two or three slides from the one that's showing—

May: Okay.

Epting: —where you—it's—you're looking at the house itself. Is that a representation of the kind of house you want to build, or is that the house you're going to build?

May: This is a house I would like to build.

Epting: Okay.

May: These plans I can purchase off of SouthernLiving.com, which is where I bought the plans—

Epting: Right.

May: —for 408 North Street. And this is exactly the house that I'm proposing to build and hoping that you will vote in favor of.

Epting: So your application is for approval to build this house?

May: This house.

Epting: Now, one other question about the roof that's shown if you go to the slide I think maybe before that one.

May: All right.

Epting: That one before—yeah, that one.

May: Okay.

Epting: It looks particularly tall and steep, and it may just be the way it's drawn.

May: Well—

Epting: What would you say about that?

May: It's a story-and-a-half house. It's 31 feet at the ridgeline. Fits underneath the umbrella that the ordinances require it to, so it's not, quote, "too tall" relative to ordinances. And this—it will be gray shingle, so this doesn't really depict the shingles that I would be using.

Epting: Yeah.

May: And I think it may look tall because of the narrowness of the house. And again, that—you know, it's a quarter-of-acre lot, but it's a narrow quarter-acre lot from side to side.

Epting: I understand. And you did—one other question. I said I had one, and—

May: No problem.

Epting: —turns out I had three [ph]. You describe the ADPi house. Of course, that fronts on Rosemary Street. It doesn't front on North Street.

May: It doesn't front on North Street, but my understanding, or the way I read your guidelines is nearest and opposite and nearest—

Epting: Well, that's fine. That's fine.

May: Okay. Nearest—

Epting: I'm not objecting to your—

May: Yeah.

Epting: —mentioning it. What I wanted to know, what I wanted to ask you is, what about the house—now, your house is on the west side of this house.

May: Right. The right-hand side is—if you're standing on the right [ph].

Epting: Yeah. Right. If you're standing in the street. And then on the left-hand side—is the left-hand side the house that we did the—

May: Yes, sir.

Epting: —petition about?

May: The one you talked about tonight. It's 500 North Street, where you—

Epting: That's right. And its roof—it's a single-story too [ph]?

May: No, it's now—it's always been just like this—

Epting: Okay.

May: —story-and-a-half or two stories. There's living space above, and with the addition that you approved, there's significantly more living space above.

Epting: So how does the height at the roofline of what you propose compare to the height of the one just to the east of that house?

May: It would be roughly the same.

Epting: Roughly the same?

May: Yes, sir. Now, the topography—you know, there is a slope from 408 down to 412—

Epting: Correct.

May: —down to the street. But absent that slope, it would be roughly the same.

Epting: Right. Thank you.

May: Yes, sir.

Epting: Other questions?

Kyser: Could you—

Epting: Anybody else?

Kyser: Yeah. Could you show us again where this garage is positioned?

May: Yes, ma'am. If you look at—probably easier to see it there.

Kyser: No, I can't see it here. So I can see it [ph]—

May: You want me to point at it? Would that help?

Kyser: No, it's—I think I see it now in the [ph]—

May: Okay. It's at the very back of the lot. And so, someone—you know, the new owner of that house and me would drive up the shared driveway.

Kyser: Oh, it's there.

May: I would take a right to go to my garage. He would take—he or she would take a left and go into the side-loading garage that is that rectangle towards the back of the site plan. And again, I don't think it will be visible at all from the street.

F: Is it a car or two-car [ph]?

F: Ask him. Is it single?

F: Is this—

May: Ma'am?

F: Is it a double?

May: It's a two-car garage, yes, ma'am. It's 22 by 30.

F: And the height of that garage is what?

May: Twenty-eight feet.

F: And what is the height of the house?

May: Thirty-one.

F: Okay.

Schwartz: I have a question. What in the guidelines do you feel supports the design of a two-story garage? I know that you've actually—there's one already on the site, behind—the house that, I guess, that you live in.

F: Good point.

Schwartz: Is that correct? There's already—

May: Yeah. Mine would be—is the same.

Schwartz: Yeah. So that apparently was approved by a previous commission. But what in the guidelines supports the construction of two-story garages as being congruent with the historic character of the district?

May: I laid out why I think it's congruent in my application to you, for each one, A through J. And I'm happy to read them to you, if you would like for me to do that.

Kyser: We're not talking about A through J now. We're talking about guidelines.

May: Okay, well, in terms of new construction guidelines?

Schwartz: Specifically for a garage. Because what I take the—I take the guidelines to encourage us to seek congruence not with what might happen—what may have been built or approved in the district over the past 40-odd years, but with the scale, the design, and whatnot that existed at the time that the district was established in 1976. And so it's my understanding that multistory garages were not characteristic of the district at the time that it was established. Now, some have been approved and built in the district since then, and I think there's some lack of clarity as to whether the fact that some have been approved, you know, in

the past couple years means that—or the—you know, the standards or the guidelines of what's congruent has changed.

May: Yes, sir.

Schwartz: So I just wanted to know what your understanding was [ph].

May: Well, here's my reaction to that—

Schwartz: Yeah.

May: —as an applicant, and as a multi-time applicant.

Schwartz: Yeah.

May: If you're on this side of the table, all you have to go on are the guidelines. You know, in my mind, my challenge is to come up with a site plan, and a house and a garage in this case, that meet your guidelines. And I believe that mine has done that for all nine of the new construction guidelines, which this is new construction; this is not an add-on or anything. And it meets all 10 of the A through J.

Further to that, someone—I don't want to do it, but someone could have an argument about do things that all of us as applicants can see in the neighborhood matter, like two-car garages, like two-story garages, like 3,000-square-foot houses. That might be a discussion for another day and another group. Certainly, I don't want to participate in that. But, you know, when I look around me, as a property owner in this neighborhood, what I see is what I'm proposing. There is nothing that I am proposing that doesn't already exist, whether historically exists or has been built in the last 5 to 20 years.

So, while I don't believe I just directly answered your direct question, that's how I feel.

Schwartz: And I can I see how it could be frustrating and confusing for someone standing where you are, if there isn't consistency across commissions and how they are applying the guidelines.

Murphy: Couple questions if—

M: Yes, sir.

Murphy: Are you done?

M: Mm-hmm.

Murphy: As far as the application materials, I didn't see any exterior materials, exterior lighting fixtures, types—

May: Yeah. I—

Murphy: —of windows.

May: In my application, I wrote to you that the house would have cement lap board [ph] siding—painted cement lap board siding, asphalt shingles, four-over-one windows, wood slats at the—on the front porch. And all of those materials are the exact same materials that I used when I built 408 North Street. And I believe those materials are very consistent with what exists in the historic district.

Murphy: Okay. I'll read through that as we go on.

May: Thank you.

Murphy: I didn't see the—I didn't see photographs or other graphic representation, so.

May: It was verbal.

Murphy: So, another question for you. I know that you bought the house from a set of house plans and it looks to be fairly well detailed and complete, although there's no description of heights or where certain materials are. For example, what is the—I see the chimney there. What is the material going to be of that chimney?

May: Actually, I don't think I'm going to build a chimney. I think I'm just going to have gas logs.

F: You what?

Murphy: So that will dramatically alter the look of that house, if you were to—

May: If—

Murphy: —remove that.

May: That may be your opinion, yes, sir. I don't think it dramatically alters the look, but if you'd like for me to build—if the way for me to get your vote is for you to, when you make a motion, require me to use a specific material and build a chimney, I'm cool with that.

Murphy: It's not up to me to tell you what you need to build.

May: Okay. Then—

Murphy: It's up to you to submit what you are going to build in a complete package for us to review and then act upon.

May: Okay.

Murphy: And I'm willing to do that, but I need to ask you a few questions—

May: Sure.

Murphy: —because it seems to me that in a few places, the application is incomplete. And one of those is what's the material on the chimney. So—

May: Okay. It would be my preference not to build a chimney at all. Again—

Murphy: Okay.

May: —I've used these plans off of SouthernLiving.com and have not altered them to reflect the lack of a chimney.

Murphy: Sure. So the next question, related to the garage, the garage documents appear to be—I mean, I don't think you purchase those from the same—Southern Living.

May: Correct.

Murphy: I mean, can you purchase a garage that is compatible in style and character and proportion and form to the house? Because the garage is submitted with a—I think it's a 12-on-4 pitch, is substantially different and not in the same character or context as the home. So that would be a concern that I have. It's—you know, you're submitting for two buildings on the same site—

May: Right.

Murphy: —but they're very different in character, roof form, proportion, window fenestration, as well as detailings, which we cannot—without further detail, I can't comment on that.

May: Okay. I don't have a great answer for that because I know this won't resonate with you, but my answer is the house plans are coming from Southern Living, which is where I got them for 408 North Street, and the garage plans came from the same architect out in Seattle that I purchased them from for the garage that also is two-story, standalone garage that I have at 408 North Street. And in that case, the pictures are different. And as I said before, and as I did with the other garage, would dress it up some so that it looked more like a carriage house than

just a basic rectangle. But again, the other thing that I think matters to some degree is the garage won't be seen from the street, so it's, you know, not visible.

Murphy: I mean, I think the guidelines—I mean, what we have to do is make sure that the garages and accessory structures are compatible with the main structure, regardless of whether they're seen from the street, so.

May: Okay. I get that. And my proposal to you is that I believe it is compatible.

Murphy: Okay.

Locke: I have some concerns with the completion of your application—or this part B of the application since this was a part of another one. Last time, we talked about the stone walls, and you have not clearly addressed those, as it does indicate in the LUMO under 3.6.2 under B. Certificate of appropriateness is required when no exterior portion of any building or other structure, including masonry walls. So we're going to include masonry walls into that, and you do not address that anywhere within your application. Could you please address that?

May: Sure. To begin with, you caught me flat-footed about what you're calling a wall, what I call a border, at the last meeting. So, you know, please accept that you just caught me flat-footed. Those rocks, whether they're a wall or a border, they're not mortared together.

Locke: As an architectural historian, I'm considering that a wall. And there is also precedent to have stacked stones as colluding a wall, which I believe is also in our guidelines, so if you could refer to that as a wall from now on, thank you.

May: Cool. All right. Then, the wall, as you're asking me to refer to it, was covered in ivy, and it was not nearly as complete as what you see now. Again, you caught

me flat-footed. When I got home that night, I'm like—I went and got most of that rock from Marty Lindsey's [ph] house over on Battle Lane when he got through using what rock he used at the end of his reconstruction. So the wall is, at most, three-and-a-half years old. And it's not historic, in—I can't imagine by anybody's definition three-and-a-half years old is historic. What I would like to do is move those rocks so that they border—and the wall—so that they border the new shared driveway and create the same outline that they do now.

And also, I'd love for that to be included in your approval of my certificate of appropriateness, but if you would prefer for the wall to not come back at the new shared driveway, then I'm okay with that too. It is, you know, based on your guidelines, in the appendixes—appendices, whatever the right word is—the staff can deal with walls that are less than three feet. This one's about a foot and a half. So, you know, I'm flexible on whether we all agree that I'm going to move them over or we agree that that's a bad idea.

Epting: Well, part of the difficulty is it's not shown on your drawing. That is, what you will—what you want us to approve is not shown on a drawing. And the reason that's important is that, as you go along, if your certificate is approved and you build something, the question of whether you've built it in accordance with your certificate of appropriateness means you have to have something to refer back to—

May: Yes, sir. And—

Epting: —and right now, there's nothing to refer to about it at all [ph].

May: Well, and I think that problem can be solved—

Epting: And likewise, the same problem exists with respect to the chimney.

May: Yes, sir, and I think any of that can be solved by your motion. You can make a motion to approve my application with these alterations, and then that will be in writing because it will be your motion that either got voted up or down. And that would make what you see as a problem taken care of, I believe.

Epting: Well, it is a problem because it doesn't exist on the application. Now, another way to fix the problem would be for you to revise your application so that you—

May: I could do that [ph].

Epting: —draw exactly what you want approved so that after what you—after you finish building and the building inspector comes around to see whether you've complied with your COA, he's got a complete plan in the COA application to refer to.

May: Okay.

Epting: What you are asking us to do is to take time to revise your application in the middle of the meeting [ph].

May: Well, that's one way of looking at it. The way I would prefer that we look at it is I'm here tonight, hearing your feedback. I believe I did have a completed application. The staff thought my application was complete; otherwise, it would never have gotten on your agenda.

And it seems to me that part of the—and I've seen it in other—we had it just happen in the application right before me. They wanted to do, on those windows, B. You guys ended up approving D. So, you know, you showed some flexibility and some creativity in dealing with differences of opinion and you talked about the flat roof versus the not-flat roof. You were—some of you were

on the verge of making a motion to change that to a flat roof. So I know that it is possible for you to make motions that take into account the conversation that is going on between you guys and me as an applicant.

Epting: Well, I'll tell you what let's do. Let's see if others want to talk about this application. And when we finish with the evidence, let's see what the motions are.

May: Sure. That'd be great.

Epting: You ask us to proceed, we—

Smith: I still have questions—

Epting: —maybe we'll—

Smith: —for him.

Epting: Okay. Go ahead.

Smith: I mean—I do have difficulty with your application because I feel like for us to have findings of fact we need examples, concrete examples from you, not just your opinion. So, in number three, for example, it says, “The massing of the house and detached garage is similar to other neighboring structures on the street.” In the past, for example, there are specific examples on the street of the massing and of the size, of the setback, because that's another point that you make, a setback, that it's compatible with the others. I find that this house you're proposing is way forward on the lot compared to the others, but it's a little bit hard for me to understand that.

So I personally need some more concrete examples for B, the setback and placement, and for your number three, the size and the scale of your—so that it

doesn't overpower the other neighboring buildings. I need to see that. And just, I don't—and I also know that—I was on the commission when 408 came before us, that your COA was denied. It was reversed in the Board of Adjustment—based on our sloppy job with A through J, is basically what it came down to. It's my recollection of what happened there. But I have never seen people come before the commission not having an architectural drawing—they just have the gist of what they want to put up there—and I don't feel comfortable making a decision based on that, especially in light in what Sean has brought up in terms of the difference in the garage and the house that you're planning, the rooflines there, and the changes you want to make. My recommendation is that you come back with some more concrete examples so we can, you know, really understand what you're looking to put here.

May: Okay, well—

Smith: And I have concerns about the congruity in terms of how it fits in with that—you know, your street and the neighborhood. And the burden of proof is not on what I come up with and go out and research. The burden of proof is with you. You need to bring that information to us so we can all see it at this public hearing.

May: Yes, ma'am. All due respect to everything you just said, the building plans that I've presented to you tonight, absent the issue of the chimney, is exactly what I want to build. And the site plan shows exactly where I would like to build it. My application deals with setbacks in this way—the front setback—in that, I point out to you, in my verbal presentation, that there is no standard setback in the 4 and 500 block of North Street. It is extremely random. So, while some of them are all

the way to the front, 26 feet, of the space that they could be, which is similar to what this one would be, others are indented or set back from the street further. So, you know, I could bring you pictures of every house on the block, and that may or may not satisfy you that there is a randomness to that street.

I mean, in terms of overpowering or not, as I've said before, the house directly across the street is larger than what I'm proposing. So it's not overpowering that. And the house to its rear, which is a sorority house, is more than three times larger than what I'm proposing. And so, while it may be your opinion that what I'm proposing is still overpowering, I just don't believe it is, and I believe it meets your guidelines.

Smith: I have to disagree with you comparing your house to a sorority, which is obviously going to be—or a fraternity—I forget what—

Kyser: It's a sorority.

May: It's a sorority.

Smith: —three times the size. It doesn't matter.

May: Well, I hear you—

Smith: It's not a residential house.

May: —but again, my obligation under the guidelines is to talk to you about the scale of what I'm proposing relative to the nearest and opposite houses.

Smith: That's only through A through J. That's part of the LUMO listing. That is also—it's different in the guidelines, and the guidelines are more generalized to the neighborhood. And that—the guidelines are supported by the LUMO. But right now, that's sort of an error in the LUMO—

May: Okay.

Smith: —frankly. But when I talk about overpowering, I'm looking at what was there. Two cottages were there, set back, and instead, now, there's a very long, rectangular house being placed that's going to fill that lot number two, with a garage behind it. That's what I mean by overpowering that particular lot and the space around it. And I agree that there's variety. What would help—in terms of the setback.

May: Yes, ma'am.

Smith: You don't need to give me pictures. What I would like to see is sort of, what are some of the setbacks? What are they? I'd like that information. How many are 26 feet set back, like the one you're proposing? Are 50% of them more like 50 or 75 feet set back? You know, that information would be helpful for me to make a fair determination of whether what you're proposing is congruous and fits in—or not incongruous with this area of the district.

May: Okay.

Smith: That's why—and I'm just trying to indicate that the burden of proof is more with you to provide that, not for me to come up with it, or other members. Because we can't talk to each other about any of this stuff. [LAUGHS]

May: Right. I know you're not supposed to [ph].

Smith: So we only have what's here, and this to me seems like a brief listing without enough concrete examples for me to really understand if it does fit with our guidelines or not.

Kyser: May I add one thing? Is—sir, have you considered a single-story garage?

May: I have considered that, but the house that I'm proposing has three bedrooms, it has no home office, and I'd like to build a two-story garage so that there's a room for a home office above.

Kyser: Do you think a two-story garage is part of the historic character of the neighborhood? Do you think it fits in the guidelines' description of—

May: Yes, ma'am. And again—

Kyser: And why? And—

May: —to restate something I said earlier—

Kyser: Why?

May: Well, just walking around my neighborhood and the other two historic districts, I see many two-story garages. And—

Kyser: Do you know when they were built?

May: One's at 407 Hillsborough—is a three-car, two-story garage.

Kyser: And when was that built?

May: It isn't even finished yet, and you guys approved it. The one at 307 Hillsborough, again, a hundred yards from me, is a side-loading two-car garage. So—the one very close to where you live—

Kyser: 307 Hillsborough Street is a—

Smith: [OVERLAPPING] is very well taken [ph].

Kyser: —two-story garage [ph]?

May: It's a two-car garage.

Kyser: I don't think [ph]—

May: And the one—Ms. Kyser, the one right beside your—

Kyser: That's my house [ph].

May: —where you live, Marty Lindsey's house, is a two-car—

Kyser: It's a two-story?

May: —two-story garage that was completed four years ago.

Kyser: [INDISCERNIBLE]

Epting: Let me suggest that—we will take a lot of time if our interchanges with each other really devolve into arguments as opposed to—[OVERLAPPING]

May: Yeah, I'm just trying to answer the questions.

Epting: So if you would let her ask the question, and if you would let him answer it and not interrupt each other—

May: Sure. That's cool.

Epting: —it would suit me a lot. And I might say, as a footnote here, just to let everybody catch their breath, that it occurs to me that one reason your house—the house you're proposing is pushed so far towards North Street is because you're building a garage behind the house. That is—isn't that garage—was it 20 feet wide or 30 feet wide?

May: Twenty-two.

Epting: Twenty-two feet. So the house actually could be 22 feet further back from the street, except for the fact that you would like to build a garage behind the house.

May: Yes, sir.

Epting: And it seems to me that we need to consider whether or not that need on your part defeats our obligation to try to make sure that what we approve is congruous with the character of the district.

May: Okay.

Epting: So. Other questions of the applicant? I don't want to cut anybody off.

Schwartz: Question, I don't think it's been answered yet, is, do you know what will be the change in the proportion of built to unbuilt area on the lot?

F: Mm-hmm. Good question.

May: It's in my application. I don't remember the exact—

Schwartz: It is? Okay.

May: —percentage of—

Schwartz: But that is in there?

May: Yes, sir. I don't remember the exact percentage of—

Schwartz: But it is—

May: —change in impervious surface.

F: Let's see if we can find it [ph].

Schwartz: But there will be an increase in the—[OVERLAPPING]

May: Absolutely. Yes, sir.

Schwartz: The reason I ask is because one of our guidelines is—I just turned myself off—
one of our guidelines is—

F: What page?

Schwartz: Page 55, item three. It says, "Limit the size and scale of an addition." Then, skipping down, "It is not appropriate to introduce an addition if it substantially alters the proportion of constructed area to unbuilt area on the site." So that's something that we're supposed to take into account.

May: And do you believe that what you just read is applicable to any construction? Or, in my case, I'm talking about new construction. Because in the new construction guidelines, that's not there.

Schwartz: That's on page 55, the guidelines for additions.

May: Yeah. Well, I'm not making an addition. This is all new construction.

Epting: Well, but doesn't the same—

F: Same thing [ph].

Epting: Doesn't the same principle apply? I mean—

May: I don't know.

Epting: —the idea is that you have a historic district which has structures on it which are of a certain size and proportion in relation to each other and to their neighbors.

And so, whether you're building on an enormous addition to an existing house—

F: This is the two [ph].

Epting: —so that you have a lot more—

F: This is it [ph].

Epting: —of the lot covered, or whether you're building something new that covers a lot more of the lot, the concern is the same in terms of congruity. And so, I mean one of the things that's really troubling about this, which we've talked a little bit about before, and I know I remember Susan asked you a question about it last time—I mean, here are two historic structures on that property which you have purchased for the purpose of destroying them, and building something else that will make more money, you say, for you than what you make with the historic structures there. Well, guess what? Our duty is not to protect your ability to make more

money. Our duty is to protect the historic character of the neighborhood. And that is why we ask you these questions. Not because we don't like you, but rather because it is our duty to protect the character of the neighborhood, and a primary function of doing that is to protect the structures that are there.

And when people buy historic structures in the historic district of Chapel Hill, they need to understand that there is a covenant created by the ordinance that requires them to maintain those properties and not let them deteriorate so that they can then come in and claim that, "Oh, well, it's too expensive to fix it up. I need to destroy it." And so all of your application is considered in light of that fact.

May: Okay.

Epting: Okay?

May: Could I react to that?

Epting: Yes.

May: Okay. My reaction is that I believe that you should make a judgment about what I'm proposing to build back on a vacant lot. You decided last month to approve the demolition permit with a 365-day delay. So I don't believe that what is there now, other than your emotion, which I grant is—you're allowed to have emotion. But other than your emotion, I don't see how what was there—or is there now, won't be in, now, 11 months—plays to what I'm proposing to build back. And I believe that what I'm proposing to build back is congruent with the neighborhood, fits in with the character. When it's completed, I believe that any reasonable person or persons would go by there and see the finished product and say, "That

looks really nice,” and they would not say, “It does not fit into the character of the neighborhood.” And so, you know, I hear you, but I respectfully disagree.

Epting: Are you finished?

May: Oh, yes, sir.

Epting: Okay. Any other questions of the applicant?

Murphy: I have a question.

Epting: All right.

Murphy: On the site plan there, I wanted to know, what’s the distance between the back porch of the proposed house and the new garage? There’s no—

May: Five feet.

Murphy: So—okay. So, five feet off the back porch, there’s going to be a 20-foot tall wall of a garage? If—can you pull up your side elevation there?

May: Sure. Hang on.

Murphy: So I think what would be important for us to see, either one of those—you know, that wall of the garage is going to be—if you could go back to your side elevation, one of your side elevations. That one right there would be fine.

May: Right.

Murphy: So right off to the right there, five feet off of that back porch would be that wall of the garage.

May: Correct.

Murphy: So that’s pretty tight. I think—I for sure would like to see the garage and the house in a single drawing so that we could evaluate them together, because—

May: Okay.

Murphy: —I'm not sure. Is that the closest—is there a requirement that you're to—what is the requirement there? I don't know, I guess [ph].

May: I don't know the answer to that either.

Murphy: Okay. Five feet is—yeah. I don't know. That seems—

May: I don't know.

Murphy: —awfully close.

May: My impression is, because I've never been told that there was a requirement for a guideline—not a guideline; that's your terminology, but a standard to meet is, internal to the lot, that that's not an issue.

Murphy: Right.

May: Another counter way of thinking about it would be if what I was proposing as an attached garage, then it would be attached, then even less than five feet separating it. I'm not proposing that, though.

Murphy: Yeah. I understand. It's just—you know, the character of the structures are very different, and then they're so tightly sited together. I'd just like to see them in context.

May: Okay.

Locke: I've got one last question. How old is the driveway? Do you have any idea?

May: Sir?

Locke: How old is the driveway?

May: I don't know. I suspect it's very old. I mean—

Locke: Yeah.

May: But I don't know.

Locke: Cool. Thank you.

May: Mm-hmm.

Epting: It's at least 50 years old because it was there when I lived in Ms. Thomas's [ph] house across the street.

M: There you go.

Smith: I can illuminate his question there. I used your drawings to figure out the square footage of what you're proposing. So you're proposing a house that's 2,890 square feet, using the plan that you—from Freehold Land Surveyors [ph].

May: It's 3,070 square feet.

Smith: It's two—well, first, I'm just doing 2,890 square feet. That doesn't include the garage. I am multiplying roughly 34 feet at the front by 85 feet in length. Okay. And that's what I come up with. Then, the garage is 22 by 30 feet, so that comes up to 660 square feet. So the total that you're proposing to put on that lot is 3,550 square feet. Now, what is there now, in those two houses, according to your information, is 1,160 square feet. So that's a substantial change.

May: And the only problem I have with your math is that you made an assumption which is not accurate, that the 35-by-80 rectangle is a rectangular house. It has indentions that are smaller than what is presented on a site plan. So it is the 3,040, I think it is, square feet of house. Obviously, the footprint is not that big. And then the garage—

Smith: Well, that's—

May: —you did have accurately calculated.

Smith: Oh. So you're saying that the house is actually larger than what I calculated.

May: No, ma'am. I'm saying it's smaller.

Smith: You said 3,400. I said two—

May: No, I said 3,040.

Smith: Three-thousand forty. I said 2,890 square feet.

May: And what I'm saying is, in places, it's a two-story house which takes up some of the square footage that we're talk—that we're bantering about.

Smith: Okay. Well, that sort of just argues for the fact that we need clearer documents to understand what you're proposing.

May: Okay.

Burns: I'd like to—I would like to clarify one thing, that you mentioned that we gave you approval to tear down the cottages.

May: Yes [ph].

Burns: We did not give you approval to tear down the cottages. We voted to delay the teardown for 365 days. If we had the authority to prevent you from tearing down the cottages, I think we would have voted that you could not tear them down, because they represent what is the historic character of that part of North Street. What you are proposing, in my mind, is totally incongruent with the historical character of that part of North Street.

Epting: Okay. So how are we going to proceed? We—are there others who would like to testify with respect to this matter? Or do you have any other presentation?

We're—

May: No.

Epting: —coming up on an hour now.

May: Yeah. Could—before I get cut off in—

Epting: I'm not cutting you off.

May: I know. In the public comment part, where I can't have anything else to say, I want to be—I don't want to get to that point without saying the following. It's clear to me that many of you, probably a majority of you, are not inclined to vote in favor of my certificate of appropriateness. And what I would like to ask of you is that you at least vote and state the reasons why you're denying my certificate of appropriateness, and do that tonight. That way, I'd know, you know, what it was for sure that made it so that each of you that do vote against my certificate chose to do so.

Epting: Well, I think what I hear the commission saying is that it deems your application incomplete at this point. And my own sense is that we'd be better served to defer this matter to the next meeting and have you fill in the missing parts that have been described to you tonight. Is there a motion to that effect?

Smith: So moved.

Epting: Is there a second?

Locke: I second.

Epting: Is there a discussion of that motion?

Locke: Yes. Should we discuss what we want?

Epting: All right.

Locke: All right. I would like documentations of the rock wall that we're talking about, and so I would like for you to go and look back at some historic documentation to see whether or not that is—because I don't know. I'm taking your word that it's

three years old. I'm not sure. It's up to you to bear that proof to me. So I would like that.

Epting: And Susan, you had several items that you were concerned about?

Smith: Well, I had the—in number three, I would like, along that street there, to get an idea of what the different size and scale of the different houses are there and have that presented so I can see if what you're proposing is in character—fits with that character. And also, I ask for the setbacks. That's B. The set—I would like some concrete examples of the different setbacks. You said they are varied, but that's too general for me to understand there. I would piggyback on Sean's. I—

Epting: Sean is going to—[OVERLAPPING]

Smith: He's going to say what he wants? Okay.

Murphy: Yeah. I'd just like to see a set of drawings that—for the main house that represent actually what you're going to construct, whether it is removing the chimney, or for example, it appears that this house plan shows a corrugated metal roof or some type of metal roof. At least if you could describe—put written descriptions of what materials are where, that would be helpful. And then as far as the garage goes, you know, I think to redesign that garage so that it is compatible with the house structure, both in roof form, roof pitch, window type, window spacing. Right now, it still appears, in my opinion, to be a completely differently designed structure from the main house.

May: Okay.

Epting: Other specific requests?

Schwartz: Yeah. For me to judge that a two-story garage is congruent, I would need to see some evidence that two-story garages were characteristic of the district or of that street at the time that the historic district was established, which was, I believe, 1976, or would need to make an argument why that should not be a criterion for—

May: Okay. Thank you.

Schwartz: —consideration.

Murphy: You know, I would just make one final comment. What makes this a little unique is that we have a one-and-a-half-story house design with a two-story garage, which is a bit unique. Typically, we'll—you know, we'll have a two-story house with a two-story garage. So, that—I'll just throw that in there for—

M: Or, historically—[OVERLAPPING]

Murphy: —or two-story house with a one-story garage, but—

May: To that point, the main roofline in the house is 31 feet. The main roofline in the garage is 28 [ph]—

Locke: We're talking.

Kyser: Is it closed?

Locke: It's closed. Right?

Smith: No, we didn't close the public hearing.

Locke: Did we—didn't we close public hearing?

[OVERLAPPING—INDISCERNIBLE]

Epting: It has not been closed.

F: No.

M: Not yet.

Locke: Sorry, my bad [ph]. I thought we closed public hearing. I thought we were just—
I thought we were specifically talking—

F: No.

Locke: —about what it is that we're—

Epting: So—just a minute [ph]. Mr. May was saying that—comparing the roofline of the house to the roofline of the garage. What was that comparison?

May: Yeah. The roofline—the ridgeline of the house is 31 feet, of the garage is 28.

Epting: Okay. Thank you.

Murphy: Let's get that on the next application.

Epting: Yeah. Let's get all that straight.

May: It's in this application.

Epting: Let's get it all straight. We're going to leave the public hearing open so you can come back and present again. And—so, did you want to—

White: Yeah. There's—I think this is the kind of thing that's in the GIS system and ought to be—shouldn't be a great burden to you, but if you could calculate the footprints of all the houses on that block of North Street as a percentage of the lot size, that would be helpful.

May: Sure.

Epting: Okay. Now—

Locke: Yeah, one second. I apologize for interrupting. I really thought the session was closed. And I was going to recommend exactly what he said. Like, see some proportionality of, like, what the lot coverage is for the building as to—compared to what the lot size is.

Epting: Okay.

Kyser: Yeah. I am not familiar with the plans of the house that already exists that he built next door. I don't—I mean, the height and—but—

Epting: I was not here then, so [ph].

Kyser: No, I know. But I want to make it—for the record, that house was not approved. Your house that you're living in was not approved by the Historic District Commission. It was—you got that by default of the Board of Adjustment.

May: Well, actually, that's not true. In—and Ms. Smith, you were on the commission at that time and none of the—you were too, I think, Mr. White. I'm not sure. But—

Epting: Do we really want to have this argument?

May: No, it's not an argument.

Epting: I mean, we are [ph]—

May: I just want to just make sure that, for the record, as she said—

Epting: Very quickly. Very quickly.

May: —actually, what I did was I presented five house plans to the commission four years ago, and said that I would build any one of them and let you pick it out. And you picked it out. You picked out house number two, which is the house that sits at 408 North Street right now. And then, as you correctly said, you guys got to squabbling amongst each other and you ended up turning down a house that you hadn't [ph] already picked out.

Epting: Okay, I—

May: So when I went to Board of Adjustment and made that case, they did reverse
[ph]—

Epting: Mr. May—

May: —your certificate of appropriateness [ph].

Epting: —we'll be glad to hear from you again in the next meeting. I—we're about to
take a vote on deferring this matter to the next meeting. There's a motion, a
second. Any further discussion? If not, all in favor say aye.

M/F: Aye.

Epting: The matter is deferred to the next meeting.

May: Thank you.

Epting: We'll see you then.

[END TRANSCRIPT 02:52:54]

Ricky May
Chapel Hill Historic District Commission
410 & 412 North Street
May 14, 2019

Epting: Robert Epting, Chair
Murphy: Sean Murphy, Vice Chair
Locke: James Locke, Commissioner
White: James White, Commissioner
Burns: Woodrow Burns, Commissioner
Kyser: Kimberly Kyser, Commissioner
Smith: Susan Smith, Commissioner
Schwartz: David Schwartz, Commissioner
Ferrell: Brian Ferrell, Commission Counsel
May: Ricky May, Applicant
Finn: Deborah Finn, Witness
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 01:11:24]

Epting: Our next item of old business is the application with respect to the lots at 410 and 412 North Street. You have the staff report. You have the application materials. Some supplemental [ph] application materials have been forwarded. The applicant will be invited to discuss the supplemental materials at this time.

[INAUDIBLE]

Epting: And if you will say your name and that you have been sworn.

May: Good evening. I'm Ricky May, and I'm the applicant for 410 and 412 North Street. I'm sure you'll remember that last month, we had a long discussion about my property and my application. You asked me to come back to you with seven or eight items for further information and clarification, which I've provided to you and you've had for the last couple of weeks to review. I know you do have a full agenda tonight [ph].

Epting: Mr. May, let me just say, procedurally, that it's going to be up to you to present those materials in tonight's meeting. You need to present your revised materials in tonight's meeting. Do not rely on the fact that they may have been included as a part of a package.

May: Yes, sir. That's what I'm—

Epting: It's your burden tonight to present those material.

May: And I'm doing that.

Epting: Just so you won't be misled.

May: Okay. Thank you very much. And I'm going to do this as expeditiously as I can because I know you've got a full agenda and I want to leave some time for you to have questions or comments about the additional information I am provided—providing.

One of the things that you asked me to provide to you was the building materials for the house and the garage that I am proposing. This slide shows that I'm using architectural shingles, cement board siding, a brick foundation, and simulated divided-light windows, both on the house and on the garage. So I've tried to clarify that.

The next slide—several slides. You also asked for me to show you the elevations of the proposed cottage without the chimney. So with a little bit of airbrushing and some work, I've eliminated the chimney. Here is one elevation. Here's another. Side elevation, no chimney. Rear elevation, no chimney. So I've hopefully clarified for you the—what it would look like without the chimney.

There's been some discussion a couple of times about—Mr. Locke was—been on me about this, about the brick wall that is currently running down the side of—the right-hand side of the driveway. And I had testified before you that when I bought the property, there was some ivy there and there were some rocks underneath the ivy. I didn't believe it constituted a wall in any way. And lo and behold, when you Google Earth this address, this picture is on Google Earth from about the August to September 2015 time frame, when the house that I built at 408 North Street, which is the major structure and—which is the house I live in—it's the major structure in this picture. You can see that there is not a brick wall there. So that's my new testimony on that, or additional testimony.

Another thing that came up at the last meeting was some questions about the percentage of impervious surface and the degree to which houses and driveways filled up existing lots near the applicant's property that we're talking about. And as you can see, 401, 403, 405, and 407, which are very close to the subject property, all have significant coverage and impervious surface that butts up against the current maximum, which is 50%. My application calls for impervious surface of 48%. And this data is taken from the Town of Chapel Hill GIS website.

Additionally, in my testimony and in my original application, I talked to you about, when it comes to setback, that the 400 to 500 block of North Street, the setbacks were very random, very varied, and one of you asked for me to show that. Which, again, this is taken from the Town of Chapel Hill GIS. And you can see that there is—it's not like a subdivision of today's makings, where every

house fronts the street with the same degree of setback. And hopefully this shows to you that it is very random.

You also asked about the fact that my application calls for the house—or the front porch of the house to be at the 26-foot mark on the front setback and 26 feet is the minimum—or the maximum—the minimum, excuse me, distance from the street or from the right of way now. Again, looking at 401, 403, 405, and 407, you can see that all of them, plus a couple of houses a little further up in the 500 block, are all significantly less than 26 feet. And in fact, 401 and 403 are only 12 feet and 13 feet. So, again, it speaks to the randomness [ph]. It also speaks to the fact that I'm not proposing something that is the closest thing, by any stretch—there are six houses in very close proximity that are much closer.

Another thing that came up in our last month's discussion was the notion of scale and is something overwhelming, what is around it. This is a property—it has a Battle Lane address, but it's—it fronts on Hooper Lane, 119 Battle Lane. And as you can see in this picture and the next two, this house was approved as being congruent, as being in keeping with the neighborhood or the character of the neighborhood, and yet this was the left-hand setback. It's under construction right now. And you can see how much it puts pressure on and crowds the house to its left from the street. And in this case—this is to the right, and again you can see—and what I'm proposing doesn't come anywhere close to this. So in terms of relativity, I don't believe what I'm proposing is overwhelming or pretentious in any way.

And then, another thing that came up was a lot of discussion about the garage that I'm proposing. And I could have gone all over the three historic districts and found lots more examples, but I presented to you seven examples of two- and three-car garages that are two stories. What I'm proposing, as you know, is a two-car, two-story garage. In the case of these seven, five of them, you can see the garages from the street; two of them, you cannot. In what I'm proposing, the garage would not be visible from the street. So this is 115 Battle Lane; this is a three-car, two-story very close to me at 407 Hillsborough Street that's under construction now; 500 East Rosemary, two-car, two-story; this is 506 East Rosemary, three-car, two-story, which is visible from the street; right next door, 611 East Rosemary is two-car, two-story, not visible from the street; and Glenburnie, and then the seventh one here is the two-car, two-story on—at 208 Glenburnie.

In addition, there was a question about, in what I'm proposing, that the pitch of the house and the pitch of the garage were not exactly the same. That would be true of existing properties in the Franklin-Rosemary District plus the other two. This is one example. 407 Hillsborough Street has a hip roof with its pitch. And then, this is that same three-car, two-story garage which has a gable roof. So this would be an example of not only are the pitches not the same but the—this gable versus hip.

Murphy: Mr. May, could you just go back one slide for a minute, please?

May: Yes, sir.

Murphy: Think I missed—just one more. Okay. Sorry.

May: Cool.

Murphy: Thank you.

May: Then, the next issue—excuse me. Let me take one minute here to look at my notes. You did not ask me about this, but I wanted to take the opportunity to reinforce what is in my original application, which is that, in my judgement, nothing that I'm asking for in the house and the garage do not already exist in the historic district. I'm not asking for anything unique. I'm not asking for anything special. I'm not asking for anything, I don't believe, that isn't in keeping with the historic nature of the neighborhood, nor am I asking for anything that isn't congruent.

And in doing my due diligence that you asked me to do in the last month, I came across some of the materials in the Battle Lane application, and you guys approved a bridge-slash-walkway going from Hooper Lane over to the second floor of this three-story house that, again, is the one I'm suggesting is certainly more overwhelming than what I'm proposing. And in this case, the applicant received a variance for height and they received a variance to build within the setback. What I'm proposing to you does not require any variance for your approval. I'm not seeking any variance. And so I wanted to make you aware that this situation exists and again, I believe, is unique and special in terms of what you approved.

That's really all I have for you tonight. I hope I've answered the questions that you gave to me last month. I hope I've put you in a position where you can

approve my certificate of appropriateness. And I'd be happy to answer any questions or field any comments that you have.

Epting: Are there any questions by commissioners of Mr. May? Thank you, Mr. May.

Smith: Well, I have a quick question.

[INAUDIBLE]

Epting: Go ahead.

Smith: 408, how far is that set back from the street? The house you live in?

May: I don't know the answer to that.

Smith: It's probably at least—

M: Thirty [ph].

Smith: Is it maybe 50 feet? It's way more than 26.

May: I would not guess 50. I would guess more like 40.

Smith: Forty.

May: Right.

Smith: I'll have to look at my notes to see any others, so go ahead.

Epting: And Jamie, did you have a question?

Locke: Yeah. Did you want to go [ph]?

M: Go ahead.

Locke: When you did the house adjacent—I forget what address that is.

May: 408.

Locke: Yeah. So—

May: The house I live in.

Locke: Yeah. So that was the—the picture that you showed on the Google Maps picture was the construction of that house, correct?

May: It was what comes up when you put in—

Locke: Right.

May: —410, 412 in Google Earth, but because the—you know, they're in—side by side—

Locke: Yeah. But—

May: —that's what you could see.

Locke: Perfect. So, like, real quick, I believe in some of the other testimony that you gave, you said you removed those when you were doing—you moved the stone wall when you were doing that construction, right?

May: I—no. What I said was I removed the rocks that were underneath the ivy—

Locke: Right.

May: —which was not the entire length of that driveway. So if you were under the impression that I removed a rock wall the entire length of that driveway—

Locke: Right.

May: —as you see it today, that would be—you would not be correct. And further, what I've also testified is that I personally harvested rocks from around my property—the two lots—and from 115 Battle Lane. The person that owns 115 Battle Lane is a friend of mine who said, "You can have all of my extra rocks." So, you know, to your original question and what may be your question today, is what you see now a historic rock feature? The answer is no.

Locke: Right. And so I think last session, I was just concerned with this idea of documentation. So, I know that you tried, but this Google Image shot is just—it shows after you've already moved the rocks so that I have no idea if they were there before you moved them, you put them back. And that was really the intent of the last time, because if they're not historic, then, yeah, let's get you approved, but at this point, I don't—I still feel that I'm lacking just significant documentation of this rock wall.

May: I hear you, and not to be flip or—

Locke: Yeah.

May: —snippy with you, I would just remind you that earlier tonight and at the other four meetings that I've been to with you—

Locke: Yeah.

May: —I've raised my hand and sworn that the testimony I gave was the best—to the best of my knowledge—

Locke: Right.

May: —and accurate and truthful. And that's what I'm doing.

Locke: Thank you.

May: Yes, sir.

Schwartz: I mentioned when we spoke last month that the guideline that I think is most salient when thinking about the—you know, the proposed garage is this, on page 21 of our guidelines for garages and accessory structures, that we are—you know, we are instructed to maintain the traditional height, proportion, and orientation of garages and accessory structures in the district, and I interpret traditional height

and proportion to mean the height of those structures that existed or were known to have existed at the time that the district was established in 1976.

And when you asked me what information you should provide that would—so it would meet that concern, I asked you if you could provide any examples of two-story garages that existed at the time of the establishment of the district or were known previously to have existed, and I didn't see that in the supplementary material, and I was wondering if that was—that you looked for examples and couldn't find them or that's just not something that you were able to get to.

May: Well, the honest answer is I went around—walked around looking for garages and two-, three-story garages in the closest proximity—the nearest and adjacent closest proximity, and the seven that I provided you is what I saw. I did not walk deep into people's yards or around back, looking for other garages that might exist, nor did I go into the other historic—the other two districts looking for examples. So this is what I have for you, and if—and I don't know if all seven of those have been built since 1976, but if they have, all seven of them have been deemed congruent and in keeping with the historic nature of the neighborhood by at least one iteration of the HDC.

Schwartz: Thank you.

May: Yes, sir.

F: ACC?

Schwartz: HDC.

Murphy: I have a couple questions.

Epting: Go ahead.

Murphy: First, thank you for providing all that updated information. I think you've alleviated a number of our concerns and comments from last month, specifically regarding the proposed house. I still have a concern with—architecturally with the garage as proposed. You know, you've created essentially a two-story rectangular box.

May: Yes, sir.

Murphy: And garages—I forget exactly how it's termed in the guidelines, but, you know, they should be subservient to the main structure of the house. And the house that you're proposing is essentially a one-and-a-half story, where the second story is hidden under gabled or dormered or shed-dormered roofs. And all of the garage examples that you showed in the neighborhood are exactly that as well. They're essentially one-and-a-half story structures, where sort of the gable top of the roof aligns almost with the top of the second story. And so your garage is a full two stories, then, with the gable roof on top.

So, if I try and compare that either to the historical context of the neighborhood or to the main structure on the property, it's not congruous, in my opinion, with the character of the neighborhood or the guidelines. And so, I—

May: Okay—

Murphy: —you know, I'm trying to—I want to go back and forth and get your take on that—

May: No, I hear you and I appreciate that.

Murphy: —because I'd like you to sort of maybe try and revise the garage so that we could get it—

May: Right. If you would—if you want me to come back next month, I would certainly be—I will do everything I can to bring to you the height of the ridgeline of these—of all—I can go to all three historic districts, if that's what you're asking me to do, and get the height of the ridgeline for any two- and three-story—any two- and three-car, two-story garages so that we're talking apples to apples. And I would suggest to you, though, that's hard to do because I'd have to have a bucket truck and go up and do that, if I could. And what I would suggest is that it's—

F: Is this a three-car—

May: —from me going around the lot and eyeballing this stuff and it being my application that I've focused on, my 28-foot ridgeline for the garage that I am proposing would not be any tall—it would not be the tallest one in the—in there, and I don't believe it would be anywhere close to the tallest one [ph].

Murphy: So, I think you're misunderstanding. I'm not talking about overall height. I'm talking about the proportion and the setting of the roof in relation to the second floor. So, if you go to the—if you could flip back to a few of the garage examples that you—

May: Sure.

Murphy: —had from the neighborhood.

May: All right. Well, that's it [ph].

Murphy: Go to another one. Would be—like—

May: That one [ph].

Murphy: —okay, so that. So, do you see the second story is essentially tucked under the roof?

May: Yes.

Murphy: And I think there was a couple more like that.

May: Okay. Hang on.

Murphy: If you keep going back. That one. Same. That one. Same as well. That one has a hip roof. It's a little different.

May: Right. That's a large building.

Murphy: Yeah. I would say that's out of proportion with the intent of the guidelines. Now, I don't know when it was designed or built, but—if you keep going back. So, again, that's a more traditional—

May: Okay.

Murphy: —garage. And so now, if you go to yours—or that, for example. Again, the—

May: Right. This—

Murphy: —shed dormer.

May: Right.

Murphy: That as well is essentially the—

May: Right.

Murphy: —you know [ph].

May: And mine is a rectangle. I get it.

Murphy: Yours is a flat, two—so go to yours for a minute, just for the sake of clarity for everyone on the commission and the public. So your house is very similar, right? You have a two-story—

May: Right.

Murphy: —essentially just a flat, two-story garage; whereas you have a one-and-a-half-story house.

May: Right.

Murphy: So.

May: Okay. I mean, I hear you.

Murphy: Okay. I just didn't want you to not understand what I was commenting on, so thank you.

May: Yes, sir.

[INAUDIBLE]

Epting: Others? Mr. White?

White: Uh-uh.

Epting: No? Dr. Burns?

Smith: Just to clarify—

Epting: Ms. Smith?

Smith: —then, so the—from the street, you will see the roof of the garage over the height of—that's what—that's the point you're making. Is that right, Mr. Murphy [ph]?

May: The ridgeline of the house is 31 feet. The ridgeline of the garage is 28. So it should be that the garage is hidden behind the house.

Smith: Okay.

May: From a straight-on look at the house from the street.

Smith: Okay.

Schwartz: Is there a change in elevation from the street back to the garage?

May: Slight. Slight from running downhill from—back to the street, yes.

Murphy: I think last month—

Smith: Uphill [ph] from the street?

Murphy: —we also commented that maybe it'd be helpful to have a view from the side of the house and garage to see that relationship of the two structures.

May: Okay.

Smith: Yes. We wanted that.

Epting: One of the things that I am curious about—you shown a drawing of a house, which apparently has come from something. I think you might have mentioned it came from Southern Living?

May: Southern Living. Yes, sir.

Epting: Yeah. But there are no drawings showing dimensions of the building in the— like, you'd have sheet drawings from an architect or a designer—

May: Right.

Epting: —to show how large the house is, how wide the porch is, how tall the roof is—the things that would ordinarily be shown on a set of plans. And so, without that, it seems to me that Chapel Hill's inspectors would not really have a way of determining whether what you ultimately build—it may look like this drawing, but there's no way that they can tell whether you've done—

May: Right. Well, actually—

Epting: —I mean, and there's no way we can tell what your application is if we can't see—if we don't see that. So I'm wondering whether—I mean, if this is a set of plans that is available from Southern Living, you might at least provide as part of the package the architectural drawing that shows dimensions and heights and widths and so forth [ph].

May: A couple—

Epting: That would be a big help to me.

May: Okay. A couple things. One is that you may or may have not noticed me at several of your meetings, but I come to your meetings—

Epting: I notice you every time you're here.

May: Yes, sir. And I don't believe you've asked that of—that level of—

Epting: Yeah [ph].

May: —detail from other people. And secondly, I have not bought the plans yet. I've not spent any money on the plans yet. So—

Epting: How do we know what we're being asked to approve?

May: Because I've shown it to you. And if you approve it, then I will buy it. And I'm sure you know that after an applicant gets a certificate of appropriateness, he has to then file an application for a building permit.

Epting: I understand that.

May: And that building permit will have to be what is approved by you. So, you know, all of that will fall into place, and then the building inspector will be inspecting the house that you approved.

Epting: Well, I would only say in response to that that it is the applicant's burden of proof, and I would find it useful to see dimensions on a drawing so that I knew what it was I was being asked to vote for. I did make a suggestion in an earlier meeting that I thought it was odd that the only rendering we had to go by was a rendering out of a magazine, not something that an architect or a—

May: Right.

Epting: —builder's set of plans would reflect. So I'm sorry if you didn't take from that that I thought this would be useful. I'm glad we're getting that clarified tonight. Because if you're—

May: Okay.

Epting: —going to come back at another meeting, well then, we—that shouldn't be difficult for you to provide, without buying the plans, even. But show us how large it is. Show us how high it is. Show how wide it is. Make some measurements. Put something on—

May: Right.

Epting: —a piece of paper—

May: Yes, sir. And again—

Epting: —other than a drawing that comes out of a—

May: —not to be argumentative with you, Mr. Epting—

Epting: Well, you're interrupting me, so—

May: But all of that is in my original application.

Epting: Well, I just went through your original application and there are no drawings with dimensions on your original drawing. That's the point I'm making tonight. And

I'm not prepared to vote on this until I see what the dimensions of this proposal are.

May: Cool.

Kyser: May I add to this? I think the reason, if you've been in these meetings and you've never heard anybody be asked to include measurements, most every one of them comes in with measurements. We don't need to ask. They are presented.

May: Okay.

Murphy: I'm not going to debate that with you. I just wanted to ask you—I see on your original application, you did have the height of the garage at 23 feet. I did not see any dimensions for the home itself. Were they in some of the text, maybe, or—

May: Yes, sir.

Murphy: Okay.

May: It was. Thirty-one.

Murphy: Okay. I'm going to read back through that.

Epting: Okay. So, let's see if there are any other people who want to testify before we close the public hearing.

M: Sure.

Epting: Any other people who want to make a statement about this application, please come forward, say your name and whether or not you've been sworn. And if you haven't been sworn, the clerk will swear you.

Finn: Also, speak into the microphone, which most people around here do not do. And so it's very difficult to hear. And I would respectfully ask that you all speak into

the microphone. It's a public hearing, but it's—the public can't hear you, at least I can't.

Epting: Very good suggestion.

Finn: So, with all due respect, I want to thank you for listening to me. I just want to make a couple of rapid points. My name is Deborah Finn. I live at 214 Hillsborough Street. I am the backyard neighbor of Ricky May. And I would like to say that I have followed Ricky's journey from the very beginning, and I think he's stuck with it and done an excellent job and he's been very detailed and tried to do everything according to the book, as far as I can tell. So I would like to thank him for that. And I like this house, actually. So, that's one point.

Another point is that I'd like to point out—I'm sure you all have seen North Street. It is a hodgepodge. It's a hodgepodge of historic houses and nonhistoric houses. And how to make anything congruent with anything on North Street is very—would be very difficult in my mind. I wouldn't want to try it. So I think that, given all of that, this is going to be a very attractive place.

And I'd like to point out one other thing. And—with all due respect, again—I think, and it's only my opinion, and I am a citizen, that if the house on that—on Hooper Lane that was referred to earlier could be approved, then almost anything could be in the historic district. Thank you.

M: Thank you.

Epting: Are there other members of the public who wish to make a statement about this particular application?

F: Way too big [ph].

Epting: If—

F: Oh, sorry. It's not me [ph].

M: He's not talking to you [ph].

[INAUDIBLE]

Epting: Thank you, Ms. Finn, for your comments. Are there others who wish to comment? If not, then I'll hear a motion to close the public hearing.

[INAUDIBLE]

M: So moved.

Epting: And a second?

M: Second.

Epting: All in favor, say aye.

M/F: Aye.

Epting: Any opposed? Nobody's opposed. So the public hearing is closed. Now, comments by commissioners.

Kyser: I have several comments. I'm thank—very thankful to—for Mr. May for providing a portfolio of two-and-a-half and—one-and-a-half and two-story garages in the district that are completely inappropriate and support my view that these garages were approved by mistake. Because they exist doesn't mean they're correct and that we must keep going down this path. And so, that's all I have to say on that.

Epting: Others? David?

Schwartz: I'd be curious to hear from those of you who are—have longer tenure on the committee, what were the circumstances of the approval of 119 Battle Lane, which—[OVERLAPPING]

Epting: I don't think it is relevant or pertinent to go into the basis for approval or disapproval of other applications. If you have particular questions about that one, perhaps we could get answers to those, but—

Schwartz: Well, the reason I introduce it is because Mr. May has cited that as an example of, you know, supporting for his claim for congruence, that if this is congruent and his is less of a modification of the neighborhood than this one, then if there were reasons for the approval of 119 Battle Lane, certain extenuating circumstances that don't apply in the present instance, then that might speak against the suggestion that the approval of 119 Battle Lane, you know, mandates the approval of what he's proposing.

Kyser: May I respond to that?

Epting: Sure.

Kyser: The context of 119 Battle is entirely different from North Street. I mean, not that it—to justify it, but the landscape, the lot size, the positioning of the lot is completely irregular to begin with and—so I don't think that that's pertinent.

M: Thank you.

Epting: Other comments? Suggestions? Motion? Does anybody else—

White: Yeah. I've got a comment.

Epting: All right [ph].

White: I think that you get to a point within a given historic district that there are over half a dozen two- or three-bay garages in the neighborhood, it becomes more and more difficult for me to say that this particular architectural form is anomalous or incongruous, because it has become, by this evidence, if not typical, at least not dramatically atypical in any way. It is quite possible, as regards the other examples of garages that were presented tonight, it is quite possible that those other examples were misbegotten, misguided, mistaken, either by this commission at the time those decisions were made or they may perhaps predate the establishment of the historic districts. Nonetheless, what I think is the status quo is that they are part and parcel, at the present time, of the fabric of the neighborhood. And again, to repeat myself on last time, it, for that reason, becomes more difficult for me to say that the—that this type of garage is incongruous.

Murphy: If I may comment, maybe add a little to what Jim just said. I don't have a particular issue with the houses presented. I understand there might be some dimensional questions we have, but I think Mr. May has provided all the information that we've asked for in the last several meetings, including setbacks, ratios, clarification of materials. And I think the overall proportion of the house is fairly consistent with probably the guidelines and the character of the neighborhood.

I think the garage is just simply, as designed, as we can see it up on the screen there, is not in character or kind with either the proposed house or the garages that were shown as an example by Mr. May, in the neighborhood. So I

would be inclined to possibly move forward with a motion to approve the house but not the garage, and—but, you know, I would be open for more conversation from the commission in whether we'd like to approve part of the application or have it come back with everything a bit more congruous. So.

Kyser: Well, I think the chair has asked for dimensions, and I think we need to respect that. And I also think that—I personally would not vote to approve this garage. So, if that's any indication to make some changes or to delay, that's my input.

Epting: Dr. Burns?

Burns: [INDISCERNIBLE]

Epting: Susan?

Smith: Yes. I appreciate all the work you did in following up our concerns. I took a very serious, detailed look at what you presented in terms of lot coverage, for example, and I find that the 407 North Street is much more typical of the houses on the lots on North Street. That—401, 403, and 405 that's right at the corner there, those are unusually large houses compared to the lots, with 50%, 42%, and 46%, as you said, of the lot size. I think it's more typical, like at 407, that there's 35% of the building per lot. And I could just—took a quick look at Google Maps and see that there were at least nine other properties on that street with much more space around the buildings. And I looked to our guidelines on page nine and also in the staff's report, and what's mentioned is that, in the setting, that it's—number four, “It's not appropriate to introduce or remove a site feature,” that's—“introduce” is the one that's appropriate here—“if it will significantly diminish or radically alter the visual or associative characteristics of the district setting.” That's my

difficulty in general with the mass of what you have presented on this very narrow lot.

In addition, there are two others that were mentioned in the staff report. I can just refer to those. Number—I think it was number one and number two on that page, to retain and preserve the visual and associative characteristics of the landscape and buildings that are important in defining the overall historic character of the district. So I have an issue with that.

When I look at your setback information, again, you use 401, 403, 405 and added two more that were—had less than 26 feet from the street. And I know that yours is set farther back, but compared to your house right next to it, yours is 40 feet back and this one is going to be up front. And from the drawing that you have from the survey, I don't see the outline of your house. You just have a big rectangle that says "House, Plan B."

And so, I agree with the chair. And I've served on the commission a long time, and I've never seen an application come that does not have architectural drawings that show specifics about the size and the heights and so forth. And so—to get the sense of volume of what you're putting there on that plot. So, I have concerns about that.

I do think that—I agree with you that 119 Battle Lane is really an anomaly. If you just were to pick one thing—I mean, they caution us against cherry-picking when we're making an argument. To me, that is sort of cherry-picking to make an argument. And so that doesn't—didn't hold water for me, in terms of that information.

And in general, about garages, I just wonder if you—you, or whether people living in these historic districts feel that these two-story garages are—fit in with the historic character. I mean, anything that I see in our guidelines book, in just—most of the houses I do not think have these big garages with—and so we're looking at the whole historic district and not just a street, or not just a few garages here and there. I think predominantly, there's got to be at least—I would guess at least 50%, if not more, lots that do not have large garages with rooms above.

M: Or any garage.

Kyser: Or any garage.

Smith: Or any garage. Right. So, that's the kind of character and setting I'm trying to preserve when I sit on this commission. Thank you.

Kyser: And I'll add to that, just for the discussion about garages. These large garages are, in many cases, just an excuse to get another whole footprint as big as a house crowding a lot. And one of the main components of the character of the historic district is this spaciousness around—modest houses with spacious unbuilt structures. So it's the contrast between the solid feature and the void around it, the landscape, that is so important to maintain as far as we can. Yes, we nod to modernity, but so did the people in the 1920s when the automobile became routine in Chapel Hill, and—I think my great uncle had the first car in Chapel Hill, in 1900. And he didn't have a garage. He has a barn that's left on the property, but—

M: Is it a two-story barn or a one-story barn?

Kyser: No, a one-story.

[LAUGHTER]

M: One and a half.

Kyser: One story. A little red barn, the way it always looked. That wasn't—it was not built for the car. It actually held a cow. So, anyway, this—I don't think any of the ones shown in this portfolio of large garages that we've been presented with today were built before 1976. I can assure you they were not.

Locke: I still have concerns about the documentation of this wall that we're talking about. And I've also just noticed—I looked back at the original, and even on the architectural drawings, it shows on the east side—so, we were talking about what was on the west side, because in some of the original pictures it shows stacked stone. So I'm still not satisfied with that documentation. We haven't seen the aerials from—you can go to USGS, other type of historic documentations, to find some of this stuff. So I would like to see part of that.

I would also like to actually understand the eastern stone wall that is actually on the landscape drawing of 2013 that says “stone wall” along the drive. And actually, I totally missed this the first time I looked at it, but it always says that there's a stone wall abutting his property. It looks like it's on the interior of his property and it just says “stone wall.” And it's going to be—it's—I believe it says 2.8 feet away from the existing structure as it lies right now. And so we're not talking about the demolition, but during the construction phase, I would like to know that if that's historic, which we won't know it's historic yet, I would like to know that that would be—at least how they're going to prevent demolishing that feature of the property when this thing gets constructed.

Schwartz: So it seems we either need to make a motion to vote on or to—okay.

Epting: Well, let me have two words or so first. I want to speak to honor the historic character of this neighborhood, the historic character of North Street. You all know, because I'm proud of it, that I used to live in Ms. Thomas's basement. And that street is one of the unique streets that contributes in a unique way to the character of the historic district, of that historic district. Its character—you—I forgot what word Ms. Finn used, but I don't think it was a positive word—eclectic, maybe—

F: Hodgepodge.

Epting: Hodgepodge, I believe she said. I don't find it to be a hodgepodge at all. I find it to be a friendly agglomeration of disparate, small housing units. They are placed on historically sized lots to serve the historic rental population of Chapel Hill. Ms. Brown lived in one of the cottages, which is now gone, and Mr. May's house has replaced it. The other two cottages, which lent a distinct character to that side and end of North Street, especially when added to what I'm going to call the Manning rental cottages and units just to their east, on the same side of the street, establish the character of that street.

And what has happened is, not just in this historic neighborhood, but in other historic neighborhoods, where a cottage culture was the historically important feature of the neighborhood, is being destroyed so that people can build larger houses, either for themselves or to sell to others or to rent to others with the idea that they can make more money off a larger, newer structure than they could

make off rental of the cottages. And it is a shame. And I think it violates our duty under the guidelines to maintain the historic features of the landscape.

That was the historic character of that landscape when you turn down North Street. And I—Art Finn knows that I used to live right around the corner in—on Hillsborough Street and bought that house years ago from the Preservation Society and was my first restoration project. And so it all feels very much like home to me. It all feels very much like who I am and where I have been and what I value about our community.

And if we don't preserve these things against the actions of people who are acting solely for—based on a profit motive and not on a motive of preserving the historic character of the neighborhood, they will all be gone. Because the way our historic district ordinance is structured, it gives people with the means the right to buy what they can afford and to tear it down. It doesn't matter how historically important it is to the community, so long as they're willing to wait 365 days. And I don't know how many more periods, end on end, of 365 days I have left in my life. But I hate to see every one of those periods tarnished by the destruction of historically important, small housing units in our historic districts. And that is what is happening, and that is what is proposed on this lot, and I am opposed to it for that reason.

Now, if somebody has a motion, I'll entertain it. If somebody has a motion that would suggest that the matter should go over so that—well, before that, I had one other point I wanted not to miss. It is the applicant's burden of proof to come into our meetings and to show how the applicant's proposal is not

incongruous, which is to say, congruous with the character of the district, not how it is congruous with one or more particular other projects that have been approved at some time in the past. It is the applicant's burden of proof to show why a particular project is or is not like his project.

And that is why it's inappropriate to call upon the commission to explain why this project is like or unlike another project. We don't know what the particulars were of that application. We don't know of all the particulars. And to rehash each one of those applications as we go through this application, I think, is a misuse of our time and resources. That's just to answer better than I answered a while ago, not to fuss about it.

But I think the idea that this commission ought to say "Oh, well, you've taken pictures of five other structures that are of the form or shape or function of something that's proposed in this application" is simply not enough. Is simply not—it doesn't bear the burden of proof. And so I think it's important that we make sure the burden of proof doesn't get shifted in these things. We should call upon the applicant to show us why a particular garage is just like the one he wants to build, and that there is no difference and that that the time and circumstances don't make a difference in this particular case. It's not up to us to say why it's different.

I'm always concerned when I hear somebody say, "Oh, well, if we approve this garage, that will mean we're approving all garages." That's not the case. We work application by application. If we're going to change the guidelines, we revise the guidelines. But our actions on any particular application

do not count as binding precedent for every other building that serves the same function that may have been approved before. And we ought to get that idea out of our mind [ph]—and that’s not disagreeing with what you said. It is to say simply that we need not buy the argument because it’s a false argument—that if somebody has built a building that serves the same function, within the district, that we’re bound by that previous decision. We are not. So, I’ve talked way too long, and I apologize.

Kyser: What would you [ph]—

Epting: Took up way too much time, but that’s my view on it, and it’s why fundamentally I oppose this application.

Kyser: What would you like us to—would you like a motion to—

Epting: It’s not—to be fair to Mr. May, it’s not going to make a difference to me when I see the dimensions. I think that they should be a part of the application, but to be fair to him, it’s not going to make a difference to me. My objection to this application is much more fundamental, and it’s based upon its inconsistency with the existing historic character of this particular lot.

Schwartz: Well, it sounds like you’d be ready to vote tonight, then.

Epting: Well, if—

F: I am.

Epting: —there was a vote, I could not vote for this application, but it’s not up to me. It’s up to the commission.

White: Could I—would it be—so it would be fair, then, perhaps, for me to characterize your statement about this application as saying that the size, scale, architectural

design and everything else that is or even could be proposed is going to be a nonstarter for you because you're opposed to tearing down the two little cottages and replacing them with something larger. Is that a fair way to characterize your comments?

Epting: I think that the removal of the cottages flies in the face of the guideline that Susan Smith read earlier tonight, about minding the historic character of the landscape. I think that the character of this district is what we're supposed to be talking about. The character of the district, to me, is built upon the traditional uses of the small housing form [ph].

White: So that's a yes, I guess.

Epting: No, I will not—I'm going to say what I'm going to say and you're going to hear it—you hear whatever you hear—

White: No.

Epting: —and I understand—

White: No, the—[OVERLAPPING]

Epting: —I appreciate your wanting to understand, but I'm not going to—I would prefer that you not recharacterize what I've said. I would prefer to say that I've said what I said.

White: Okay. Then—

Epting: Sort of Popeye said that, I think [ph].

White: Then, without characterizing what you said, I would cite a different pressure that I think comes to bear in applications like this. And I'm—this—I'm not necessarily going to vote for or against this, but on the one hand, there is a desire on our part,

appropriately, to preserve the existing fabric of the neighborhood, which, in this case, includes these two little cottages. There is a countervailing stress on the part of many of the neighbors, whose opinions I think count for a great deal. And that is dismay over the progressive transformation of this neighborhood into a neighborhood of rental properties. And the deleterious effects of that kind of a transformation can already be seen in the Cameron-McCauley District. And the desire of the people who live in single-family residences in this neighborhood to preserve a single-family residential fabric is also worth noting, I think.

Epting: Yeah. I think that's right. I also know from all the years since 1969 and '70, when I lived in Ms. Thomas's basement, that North Street has been predominantly—especially the smaller houses have been predominantly a rental street during that entire—what is that, 50 years.

M: Okay.

Epting: And so—and I am absolutely four-square behind the idea that we ought to be careful about actions that convert houses like Ms. Thomas's into a house with 12 students living in it. That was a single-family residence and the Thomas family grew up in it, and I wish it were still the same.

But you know what? Those are concerns that need to be taken to the Town Council. The Town Council needs to create an overlay district to protect the historic district from those kinds of conversions. And it has the authority to do that. And now that the idea is out in the public, I hope that those who are here and listening will pick it up and run with it. I know that the neighbors over there are certainly in favor of such an overlay.

And it's time we get about the business of protecting the historic district with that kind of an overlay, an overlay that would, for example, say, "You may not come in and tear down existing historic properties and redevelop them into multi-unit rental housing." That can be done. And it should be done, in my view. But that's not something this commission can do. That's something the Town Council does through its zoning authority.

Schwartz: I just wanted to point out that rental property should not be treated as synonymous with student-occupied rental property. One of these two cottages there is currently rented by a man who teaches, I believe, in the English Department, and his dog, who I met on the street when I went to visit the property. So it also provides, you know, reasonably priced housing for faculty and staff, not only for students.

Epting: Yeah.

Ferrell: Mr. Chairman, as a matter of process, I just want to remind you, if you need reminding, that state law doesn't allow the commission to deny a demolition permit as you stated, Mr. Chair. It only allows this commission to delay the certificate of appropriateness for a demolition by 365 days, and that's what the commission has done in relation to the demolition—COA application in these houses. So the—in that context, the demolition has been decided by your prior action, as required under state law. And so what's before you is the congruity of the present construction [ph].

- Epting: Understand that he is permitted—after the passage of 365 days, he is permitted to demolish the cottages. Nothing in what we have done requires him to do so in 365 days.
- Ferrell: Certainly not. That was just his application that was approved [ph].
- Epting: That was the point I was making.
- Ferrell: I understand [ph].
- Epting: All right. You know, we owe it to other folks on the agenda to try to come to a conclusion about what we will do, this application tonight. What is the commission's view about what should be—what we should do tonight? Do you want to see more information? Do you—
- Kyser: I think we are ready for a vote.
- Epting: You ready to vote? If you're ready to vote, we can't vote until there's a motion. Who would like to make a motion?
- Kyser: Susan? Susan has one ready. [LAUGHS]
- Smith: No, I don't—
- Epting: Susan?
- Smith: —necessarily have one ready, but I'd like to make a motion to deny this application for many—the reasons that have been stated and the findings of fact that—in the proposed finding of facts. Do I need to list those—
- M: At least one or two.
- Smith: —from the staff—huh? That the staff has made. Okay. I would say number two, design and site a new building so it doesn't compromise the overall historic character of this site, including its topography. Three, design new buildings so

that their size and scale do not visually overpower neighboring historic buildings. Design new buildings to be compatible in roof, form, massing, and overall proportion with the neighboring historic buildings. Maintain and protect significant site features for—no, that's not appropriate.

I would say, also, from the LUMO, that B, the setback and placement on lot of the building, even though there's great variance within that street, I'd say that that setback is not congruous with the majority of buildings on that street. I would say J, the architectural scale of that building. In general, it's hard to vote on something you don't know exactly what it looks like and what the footprint will look like. So I have that issue as well. And G, the general form and proportions of buildings and structures. Those are the ones—

[INAUDIBLE]

Kyser: Yeah. Number seven.

M: Garage [ph].

Smith: And number seven, under garages. Introduce—

Kyser: Page 21.

Smith: Page 21. Introduce compatible new garages and accessory structures as needed in ways that do not compromise the historic character of the site or district. Site new garages in traditional locations that are compatible. It's—

M: It's the last sentence.

Smith: It's the last sentence that's the most important. Maintain the traditional height, proportion, and orientation of garages and accessory structures in the district.

Those are the reasons I state that I find that this application is incongruous, or not congruous, with the historic district.

Kyser: I second.

Epting: I wonder if you would consider adding one of my concerns to that list. And that concern is that, in my view, the applicant has failed to carry his burden of proof to persuade the commission that the proposed improvements are not incongruous [ph] with the historic character of the street and of the district.

Kyser: Are not incongruous?

Epting: Are not—

Kyser: Congruous?

Epting: —congruous.

Kyser: Okay.

Smith: Yes. I would accept that.

Epting: No, his burden of proof was to show that it was—

F: I would say that the—

Epting: —not incongruous. And so I'll make sure it's worded right. So.

Ferrell: And Mr. Chairman, Mr. Murphy made some pretty specific factual comments about the application, particularly as it related to the garage and the main house. In your discussion, in your further discussion, I'll ask the commission, in addition to reciting the particular guidelines and Land Use Management Ordinance criteria that you believe applies in your—as you go about your work tonight, if you will also say how the facts of this particular application inform your decision as to the criteria you cited from the LUMO and the design guidelines.

So, just as an example, you cited Historic District Guidelines for New Construction number two: design and site new buildings so it doesn't compromise the overall historic character. So the next step would be the fact that X is present in this application—right—compromises the historic character. So if you will inform the guidelines that you cited with the facts related to the particular application, that would be helpful for the staff's work, to create an order for you.

Epting: Well, and a large part of my conclusion that I was arguing about was that the historic character—and I wish this would go in—that the historic character of that street and neighborhood—of that district, really, is defined by the small housing unit historic character of those, the separation—the yards and so forth that will be destroyed by this particular—the improvement contemplated under this application. And it is our duty under that guideline to act so as to preserve that historic fabric. And in my view, we are contributing to the destruction of that historic factor—fabric if we should vote to approve this. And so, it is, for that reason, not congruous with the historic character of the neighborhood. The—it seems to me that for us to try to draft in particular every word of every finding, rather than having a look at the record and what was said as we get through, is very difficult to do.

Ferrell: I understand. It is difficult.

Epting: We'll be having a look at the motion, but—

Schwartz: It's very hard to do all that on the fly. It would be helpful if we were provided with templates.

Ferrell: It is very difficult, and one option is to have templates to choose from. As staff has refined its process over the years that I've been here, that has been an option that has come and gone at some length. Because there is a requirement, both in the Land Use Management Ordinance and statute, that quasi-judicial bodies make findings of fact and conclusions of law. So what I'm encouraging the commission to do is in addition to citing the law that you think applies in the particular case, to go that step and cite the facts that lead to the legal conclusions that you're making about congruity.

And I think an example of that is—and I mentioned Commissioner Murphy's discussion about the garage, when he went into some detail about, well, you look at the shape and size of the roof compared to the house, you look at the placement of the garage in relation to the house in relation to these other examples. I mean, drilling down into the factual aspects of this application that would give a reviewer the ability to say, "Oh, okay." Right? "We're talking about the special character of the district, and this is how they made that—these are the facts on which they made that determination."

Epting: Right [ph].

Schwartz: If that's what needs to be provided, then I would suggest that we continue the hearing and put this together between now and then. We don't have to reopen the hearing. We just have to present the—you know, the findings of fact.

Epting: We could present a proposed motion at the next meeting.

Schwartz: What's that?

Epting: We would prepare, for presentation at the next meeting, a motion based upon the comments that we have just made.

Schwartz: Yes, I think that would—

Epting: I think that would be a—

Schwartz: —be better [ph]—

Epting: —a useful suggestion [ph].

Schwartz: —than trying to do it here in open session.

Epting: Is that—would that be suitable to the rest of the commission?

Ferrell: And so just so you know, the commission couldn't participate in that. That would be a staff-level work, to attempt to distill what you've heard—what they've heard tonight into, you know—for motion, and then, of course, you'd have the option of approving as well. Right? So distill the discussion into a proposed order, if you will; that would be something staff would have to do because of course the commission can't discuss the application, you know, outside of the context of the hearing.

Smith: Well, I can respond to your comment because in my testimony here, when Mr. May brought several examples related to lot coverage, three of them—401, 403, 405, for example—were unusual compared to what else is on the street. And 35% coverage is more typical, or even less than that, from what I could see. So when I'm talking about the setting and when you're introducing new site features—buildings, additions—that's number three on page nine—that are compatible with the visual and associative characteristics of the historic district, I'm looking at the massing of this, which relates to J, architectural scale, in the LUMO. And that's

how I put that together. That's the facts that I'm using to make this proposal. But I would be open to the ones that Sean or Bob want to add.

Epting: Well, I think we can add these. And I do recognize that it is—and I hope council members will recognize the difficulty that is presented if the motion and findings of fact and guidelines all have to be put together in—during the consideration of the agenda item. I mean, we could easily take the entire evening to do that. That was one of the suggestions made by the Council's Committee on Boards and Commissions, that is that—to make sure that you've got your order all together with findings of fact and citing the relevant evidence and what testimony it's all based on. If we were to do that, we couldn't do but one item a night in four hours.

Ferrell: Right. And—

Epting: And so that's why that's not a practical suggestion.

Ferrell: I hear that, but what I'm saying is in my experience—

Epting: I hear you, and I'm not disagreeing with you.

Ferrell: Right. It's just difficult to [ph]—

Epting: I'm simply suggesting that we give it a try. And let's have staff have a look at this over the intervening time between now and the June meeting, and let's see what they come up with. It will at least give us a place to start.

M: Right.

Epting: Maybe it will be 95% done and we can do the other 5% and get us over the hump. I apologize for the extra work, folks. And I also realize that I can't come across the street and help you with it.

M: No.

- Epting: I mean, and I'm not proposing to do that. But I do think—
- Ferrell: Staff is—[OVERLAPPING]
- Epting: —if you'll make an effort and take a stab at it, that it will help us next time. It is not fair to everybody else who's here for us to take two hours more on this after taking two hours and two hours in previous meetings. So.
- Kyser: Where are we, though? If we've closed it [ph]—
- Epting: So where we are is that we would ask the staff to do that and come back at the next meeting with a proposed order. We will consider the proposed order. It will be in the agenda package.
- Kyser: Do we have to open the public—
- Epting: We're not—it's not public hearing.
- Kyser: Okay.
- Epting: It is—
- Kyser: Good.
- Epting: —a board—commission discussion. Okay? I think it's a great suggestion, David. So—I am sorry that it will extend—
- Smith: I hope it's not setting a precedent.
- Epting: —Mr. May's business to us for another month, but I think it's—
- Smith: That's what I'm concerned about [ph].
- Epting: —useful to do that. I think it's useful to do it. So without objection, we will proceed in that manner, and we'll go to the next agenda item, which is the North Boundary Street one [ph]. And I am recused.
- Kyser: May I ask one more question?

Epting: Yes.

Kyser: Is the information that Susan has entered to be—that's her motion, is—will that be folded into your—

Epting: That's what they're working on—

Kyser: Okay.

Ferrell: But what I'll ask—

Epting: —is a motion.

Ferrell: —is to the extent was there—there was a motion. Was there—there was no—

F: There was no [ph]—

M: She didn't finish it [ph].

F: —second [ph].

Ferrell: There was no second.

M: She didn't finish [ph]—

Ferrell: We never finished it.

Kyser: I second it, but then—[OVERLAPPING]

Ferrell: Well, no, I don't think we [ph]—

Epting: [OVERLAPPING] I said wait a minute.

M: Yeah [ph].

F: Okay.

Epting: I have something to add.

Ferrell: I think that what we'll—what staff will work to do is what we've been talking about the last several meetings. Using you're A-through-J criteria, and the—

M: Yeah [ph].

Ferrell: —design guidelines that inform those criteria and using the facts that you have been discussing, staff will work to put together a draft order—

M: Don't take more than I have [ph]—[OVERLAPPING]

Ferrell: —on the congruity. And usually what staff does is they give an A and a B. They give a motion that's congruous for approval and then the contrary for disapproval. But they'll work to put together—staff will work to put those orders together so you could then edit those to the commission's choosing. I think that's the work that I understand you want us to do.

Epting: That's fine. That's the work [ph]. Thank you very much.

M: Can I request a two-minute rehydration?

[END TRANSCRIPT 02:22:30]

Ricky May
Chapel Hill Historic District Commission
410 & 412 North Street
June 11, 2019

Epting: Robert Epting, Chair
Murphy: Sean Murphy, Vice Chair
Locke: James Locke, Commissioner
Kyser: Kimberly Kyser, Commissioner
Smith: Susan Smith, Commissioner
Schwartz: David Schwartz, Commissioner
McDonnell: Becky McDonnell, Staff
Ferrell: Brian Ferrell, Counsel to Commission
May: Ricky May, Applicant
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 01:56:16]

Epting: Now, 410 and 412 North Street, Mr. May, come up and let's finish your item next.

[INAUDIBLE]

Smith: I thought we had to do the one that was—

Epting: We're going to do that one, but we're going to do Mr. May next.

Smith: Okay, got it.

Ferrell: And if staff will just remind us where we were on this item in the last meeting.

McDonnell: So, during the last meeting, we did close the public hearing. The applicant has requested that we reopen it. He's heard your comments about the garage and has brought forward a new design that he'd like to present to you all, and so I'll let you take it from there.

Epting: My inclination is to reopen the public hearing for the purpose of hearing Mr. May's responses and any suggestions he might make arising out of the questions

asked by the commission last meeting. And we did see the information you left at our places tonight.

Smith: I didn't see anything.

Kyser: No, I didn't either.

Epting: Well—

M: I didn't leave that—

[OVERLAPPING—INDISCERNIBLE]

Epting: Well, I propose you read this into the record, then.

McDonnell: No, it's actually you had requested—let me put the mike on, I apologize.

F: Are those extras [ph]?

McDonnell: So, at the last meeting, the commission had requested that staff prepare some draft motions for us.

F: Right.

McDonnell: We had proposed those in the staff report, but after talking to counsel and hearing some of the commissioners' concerns, we drafted up a more formal response, and that's what's in front of you. It is a draft response. And I have it here as well and we can enter it into the record, and you can modify it as needed to reflect your decision [ph].

Epting: Okay. But before we consider that, we're going to reopen the public hearing as Mr. May requested so you could make that response.

May: Yes, sir. Thank you. What you're looking at here—and we have hard copies, if you would like a hard copy—is my effort, my continuing effort, to react to the comments that you have about my application. Two months ago, you gave me

like seven or eight things to come back with some updates for you. Last month, I gave you those updates, and during the discussion, I believe it was Mr. Schwartz—it may also have been you, Mr. Murphy—made a significant point about, and which you've also made earlier tonight about the previous application, about changing the roofline of the proposed garage to one that includes dormers to break up the second floor. And so what I have—what I'm asking you to do tonight is to accept into the record what I'm calling an option B relative to the garage. What I'm proposing here, this is a front view. I'm hoping that when I push this button, it'll keep going—we'll see. What am I doing? Hang on, Becky [ph] is going to help me. There you go. Back elevation. And then the next one if you could. This one [ph]. And then the side elevation.

The option B garage that I'm proposing is the exact same size as the previous one—option A, I guess we can call it—22 by 30. It has the same height, ridgeline, 28 feet. So there's no—I'm not asking for any site changes or proposing any site changes. I'm merely offering a second option that is in response to the feedback that I got from you last month. And again—and I know you're on the precipice of making motions and voting—throughout this whole process, what I've tried to do is present a proposal that is not asking for anything that doesn't already exist in the historic district, nor am I presenting anything that's new and unusual and, you know, again, doesn't already exist.

So I'm hoping that you will all be able to see it at this point with option A on the garage or this option B—I'm happy to build either one—that I have been successful in presenting information and material that shows that my application

is not incongruous with the keeping of the neighborhood. I'm happy to answer any questions you have about this latest information that I'm putting in the record tonight or anything that you might have thought of in the last 30 days since we were last together. So that's really all I needed to accomplish tonight.

Epting: Sean, I think you had questions about the garage. Do you have questions tonight for Mr. May?

Murphy: Well, thank you, it's a dramatic improvement from the garage we saw the last few times. I was just trying to read through some of my notes from the last meeting, because I believe the chair had also asked for some dimensional—some dimensions and other information on the main house to compare it to the garage. I'm not sure. So I was just looking through the application just to see.

May: And I can—

Murphy: Because I do know one of our concerns was the proximity of the garage to the house and sort of the relative heights of the two structures.

May: Right. One second, if I could. I might can get where you are with a little bit of effort here. Hang on. I don't have a diagram to show you, but in your—in the staff report that was sent to you originally for this meeting, which is different than the pieces of paper that you have in front of you now about example motions that you might use later tonight, the staff put together—and I'll read it, although it's already in the record because it's the staff report: "A new single-family house with a footprint measuring 34.17 feet by 84.5 feet. The height of the house will be 31 feet, measured from the foundation to the highest ridge point." And then—and so that's what's in the staff report, which reflects what's in my application

and has been in my application all the way back. So the house is relatively narrow, at 34.17 feet, and deep—because the lot is narrow and deep—at 84.5 feet.

F: Where is that [ph]?

May: That's what I have for you on that one [ph].

Epting: Other questions of Mr. May? Susan?

Smith: I had a chance to look over your submittal too [ph], and I noticed a couple of things that were concerning me. One is, I've never seen, for a plat, this disclosure that says, "Preliminary plat, not for recordation, conveyances, or sales."

Ferrell: I can help you with that.

Smith: Can you?

Ferrell: Surveyors in North Carolina, when they go about doing their work, but they prepare a map that's not meant to be recorded in the register of deeds, are—have an industry standard to include that notation on their plats.

Smith: Okay.

Ferrell: That is just a technical surveyor requirement. It's not unique to this application or maps in general.

Smith: Okay, thank you. I've never seen that before. Okay. I did, like Sean mentioned, have concerns about actually seeing the footprint, but then, when I was looking at the scale that you have listed—and I do have a question about which side that is. Is that what you called the left elevation before?

May: That is the—

Smith: Which I don't really know what that means, the left elevation.

May: Okay, if—to refresh your memory, with the garage, you would be driving up the new shared driveway between 408, my house, and the new proposed 412, let's call it—

Smith: Right.

May: —and you would take a left at the back of the lot into this proposed garage. And so what you're looking at there is the left-hand side of that as you're driving into it in your vehicle. That dormer is mimicked on the other side—we'll call it the right-hand side—with a similar dormer. So both second floors are broken up, as I thought I was hearing y'all request, with a dormer.

Smith: Okay. But that is actually—that's not where you would drive through. So that's what you called the left elevation, and the one with the garage door, is called the front elevation.

May: Yes. And let me—there you go, that's the front elevation, which again, is similar—it's not changing the footprint, site plan, in any way from what was previously proposed. So you drive up to the back of the lot, top of the driveway, and—

Smith: Hang a left.

May: —and hang a left into that garage.

Smith: Okay.

May: Which as you can—hopefully be able to see the two dormers on either side of the ridgeline in this picture [ph].

Epting: So those doors face your house?

May: They'd be beyond my house, they'd be deeper, but they'd be facing that way, correct.

Smith: Yeah, but they face—right.

Epting: So that's the west elevation.

Murphy: Existing house.

May: Yes. 408.

M: From the west.

Smith: Yeah. So now you've put two garage doors there instead of one in your original application.

May: Right.

Smith: And you've added the dormers there.

May: Yes, ma'am.

Smith: Okay. So, when I was looking at your scale that you have here, I came up with two different—I used a scale.

May: Yeah.

Smith: And that's quarter-inch, and what I—when I measured it, I measured that garage to be 13-point—and-a-half feet tall, and 17 feet to the ridgeline, but in the description, it's indicated as something much taller, I believe. And so part of my difficulty that I was going to add to the finding of fact is that your drawings don't match—they don't match. So, like, on your preliminary front elevation—well, that's the—well, anyway.

M: About the garage or [ph]—?

Smith: No, that's the house, that's different. But I—maybe I'm confused, but I was trying to use that as a—use the scale here as it's written.

May: I don't know how to answer what you're suggesting, asking. All I can—

Smith: Is the scale accurate, then? If I use the scale, can I be assured, then, that what you're proposing is this garage that's 13-and-a-half feet tall?

May: No, ma'am.

M: No, it's 23.

May: Again, I don't know how you're doing your calculation, but my draftsman [ph]—

Smith: I'm just putting a scale on a piece of paper.

May: I just—I don't know. What I am telling you and testifying to you and committing to you is that this is an option B of a garage that is 22 feet wide by 30 feet deep, and 20 feet tall, 28 feet tall at the ridgeline.

Smith: Okay, could you go slower? Twenty-two feet wide by—

May: Thirty feet deep.

Smith: Thirty feet deep.

May: By 28 feet at the ridgeline.

Smith: Twenty-eight feet, ridge.

May: Yes, ma'am, which is exactly the same as the dimensions—the width, depth, and height dimensions of option A that has been in my application from day one. The change is—the biggest change, which is the change I was trying to be reactive to your suggestions, is the dormers on either side to break up the second floor.

Murphy: Can I ask a question, a point of clarification?

May: Yes, sir.

Murphy: This proposed garage is 28 feet tall. Your original application garage was 23 feet tall.

May: No, sir [ph].

[INAUDIBLE]

Schwartz: The original application, the drawing, the draft, indicates that the height is 23.

May: Well, then, I have personally been saying the number 28 through this whole thing, because that is what I had in my head. If it was originally drawn to 23, then that's what it would be.

Murphy: So what's the height of the highest ridge on the house?

May: Thirty-one. I thought it was—I'd be—I mean, I am fully capable of making a mistake like that, but I have lived this thing [ph]—[OVERLAPPING]

Murphy: I just wanted to clarify, because I was looking—I finally got the old application to open.

May: Yeah, sure [ph].

M: Yeah, in the write-up [ph]—

Smith: It says for the house, it has 40 feet, 39.9 feet to the top of the ridgeline for the house, on the elevation, the front elevation in the initial packet.

[INAUDIBLE]

M: I believe that's just the zoning diagram.

Smith: I know, but we don't have anything else. That's part of the problem.

M: Right.

Smith: That's the issue, is that on these drawings of the house, we don't have dimensions, which seems irregular to me, and how can the city even sign off on it

if—and how can we approve something if we don't have clear drawings? That's my concern.

Epting: That's why I asked for dimensions last time [ph].

Smith: So I guess I just repeated what you said.

Epting: No, it bears repeating.

Murphy: Well, so I think Mr. May testified the highest ridge on the house is 31 feet, and we've established that the revised garage plan has a ridge height of 28 feet.

Smith: Right.

Murphy: So three feet lower than the—from the house.

May: If I could just—so that y'all don't think I'm completely nuts. In my original application, in the attachment called "Justification for Appropriateness," number A, the height of the building in relation to overage height of the nearest adjacent and opposite buildings, the second paragraph of that, I wrote, "The detached garage will stand at 28 feet and will be built on a concrete slab." So there is, I guess, a possibility that there's conflicting 28 versus 23 in some places, but I am proposing a 28-foot at the ridgeline, option A or option B.

[INAUDIBLE]

F: So this is different [ph].

Epting: Okay. Are there other questions of Mr. May? Thank you, sir.

May: Thank y'all for your time.

Epting: Now, is there a motion to close the public hearing?

Kyser: So moved.

Epting: Second?

- Murphy: Second.
- Epting: All in favor say aye.
- M/F: Aye.
- Epting: The public hearing is closed by unanimous vote. Discussion by the commission?
David? I thought you were about to raise your hand.
- Schwartz: I was just tapping my fingers—[LAUGHTER]—thoughtfully.
- Epting: Susan?
- Smith: I think I've said enough.
- Epting: Kimberly?
- Kyser: Well, I think we have a problem with both not having enough documentation of the scale of the house—there's no plan [ph]—we don't have—I can't believe you'd buy a plan from a magazine and it doesn't send you dimensions with it, and I have still a problem with the two-story garage and its proximity to the main house. It's too close and too massive for that space.
- Epting: Sean?
- Murphy: Obviously a dramatic improvement on the garage. I think Mr. May has done what we've asked him to do on the design of the garage and the overall aesthetic of the garage. Two things that we had asked for last month were the dimensions of the house, and then the second item was a drawing showing the house with the garage accurately depicted so that we could get a general sense of the proximity as well as the general scale of the two structures comparatively, because I get the sense that it's possible that the scale of the garage could overwhelm the scale of the

house, although I don't know that without trying to scale them and paste them on a piece of paper myself.

Locke: Yeah, and then also third, I think what we talked about last time is that we—the documentation wasn't adequate for us, but I also had mentioned that documentation about the wall, so that was the third thing that I had mentioned, and it's not in the—I don't know. Like, I'm reading this motion—there's not really much about the idea of the documentation in the application being incomplete. So I don't know—this is kind of the first time we've done this—maybe it was just left off unintentionally.

Epting: The—just so you will know, that I think the timeline for us to take action would run before the next meeting in this matter. What is the—that's not right [ph]?

Ferrell: I asked that same question of staff earlier today, and what's the 180-day deadline?

McDonnell: July 23rd is when the 180 days is up.

Epting: July 23rd, okay, fine. All right, well, those are several items that—by which the application appears still to be incomplete. Are you—I'm looking at Mr. May—is that information you could provide for the next meeting?

May: I will make every effort to provide whatever information you _____ as I have been trying to do all along.

Epting: I know you have, and so have—those having been specifically itemized—

Smith: Can I add something to that?

Epting: Yes.

Smith: I would really like to see the different—especially now with your new proposal, the rooflines, a drawing that shows all the different rooflines, because there's an

application tonight that's just great about that, it just shows, okay, this is going down, this is sloping down this way and that way. It's a plan view of the rooflines, and that would really help also to see how these two buildings go together, besides the elevation.

And then the second thing I'd add is, I wonder, Jamie keeps talking about the wall over there, but I wonder if we have any obligation to trying to preserve that driveway that went through that property in some way. It's a historic driveway that connected those three cottages, and I know we can't just do it completely, but it's really cut off, the way this proposal is. I don't know that we have—that's a question to other commissioners, whether that is something that we are required to preserve or protect.

Epting: I would note that the commission approved Mr. May's house before I was on the commission, and so I don't know what the application for his house showed with respect to where the original curving driveway that served all those cottages—

Smith: And it wasn't touched.

Epting: —was or whether it was being preserved or whether the approval given for Mr. May's house included approval for the road or the driveway as it now exists, as it has been prepared and serves the existing house [ph].

Schwartz: It was my understanding that it wasn't approved by the commission but rather by the Board of Adjustment [ph].

Epting: That's right.

Kyser: That's right.

Epting: It did—it was approved at the board—

Smith: But also, I remember—because I was there—I don't think that that driveway was shifted at all, because Mr. May had plenty of room on his other lot, 208, to put the house there.

Epting: Well, those are things that we don't know at this point. I mean, what we are saying is, we don't know those things.

Locke: And that we would like documentation.

Ferrell: Well, your purview, let me just remind you, is to consider alterations to buildings or other structures, and you have a listing in your ordinance of what those include, right? Masonry, walls, fences, light fixtures, steps, pavement, and other pertinent features or any above-ground utility structures or any type of outdoor advertising sign shall be erected, altered, restored, removed, or demolished within the historic district until an application for a certificate of appropriateness has been approved. So that's your—that's the purview, that's the list of what's within your purview, if that's helpful.

Kyser: I thought I read something that included driveways. That's why I brought it up.

Ferrell: That's what the LUMO says about it.

Schwartz: Yeah, I have a question—[OVERLAPPING]

Smith: It says streets, alleys, walkways, walls, fences.

Ferrell: There may be additional information in the design guidelines about that, but particularly within your LUMO purview, that's what you have control over.

Smith: Oh, within the LUMO purview.

Schwartz: I have a question for the commissioners. As a result of last month's action, we denied a certificate of appropriateness for a proposed two-story garage at 306

North Boundary. Earlier this evening, we gave feedback that we weren't thrilled with a two-story garage that had been proposed for 412—

Kyser: It's not a garage.

Murphy: Accessory structure.

Schwartz: Is there something different about what Mr. May is proposing that would incline us to approve it after having not approved the other two that I've just mentioned? I mean, is there something that differentiates it from those that the commission has already, at the last meeting and earlier at the same meeting, been inclined not to approve? Is that clear?

Epting: That's a good question [ph].

Schwartz: Because one of the—I want us to be consistent.

Kyser: Well, I do too. I agree, and I want us to be consistent also, and I think I'm really getting tired of the argument that you—that almost anything that you want to do, you can find another example—excuse me—in the district, even though those structures were built after 2005, 2010, and many of us were not on the commission and they really have nothing to do with decisions we make now to preserve the historic character. So that's really not a potent argument, and so—

Epting: Well, here are your alternatives. We can leave the matter open until the next agenda and receive further information from Mr. May and not be afoul of the 180-day rule. We may receive a motion to approve the COA based on findings the moving party might make, or we can receive a motion to deny the COA based on findings that the movant would propose. So how do you want to proceed?

Schwartz: Well, I just want to communicate to my fellow commissioners and to Mr. May that, while I appreciate the effort he's made to improve the design of the garage, still, the fact that it is a two-story garage and is not consistent with what we take to be the traditional height and proportions of accessory structures would make it very difficult for me to approve it. Just—and especially given that we've denied a COA to an application for a two-story garage at 306 North Boundary Street and gave feedback that we were unlikely to approve a proposed two-story accessory structure at 512 East Rosemary [ph]—[OVERLAPPING]

Ferrell: Let—can I—every application for a certificate of appropriateness is to be considered on its own merits based on the substantial, material, competent evidence in the record as to that item. The overarching standard is whether or not the application as proposed is not incongruous with the special character of the district. And what I want to caution you against is saying, “Well, because we did something over here, we're not going to approve this application irrespective of the merits of this application.”

Now, if it is the conclusion that this application on its merits, because of the ordinance requirements and the design guidelines is incongruous, then that's the commission's determination. But I think that is the analysis, not, “Well, we didn't do it over here or we did do it over here.” Now, there's some—may be some evidence about other structures in the district, other similar structures in the district that you could consider, but at the end of the day, your analysis is whether or not the evidence and the record lead you to a conclusion about incongruity or congruity on this particular application.

Schwartz: So let me rephrase. Thank you for that, Brian. That the incongruity that led me to vote to deny a COA for the application at North Boundary Street, at 306 North Boundary Street, and the incongruity that I called attention to with respect to—what's the number, 412?

Epting: 412.

Schwartz: 412—also seems to apply here, notwithstanding the improvements that Mr. May has offered up, that that fundamental incongruity that I see between—well, an incongruity, you know, that I would see in any two-story accessory structure proposed, still exists.

Epting: Well, as I said, I see three alternatives, and so let me tell you why I prefer one of those alternatives.

I don't know how essential the garage is to the whole project. Obviously, the house is essential to the whole project. We can't vote on the house, it seems to me, until we know the dimensions of the house, which we asked for last time, and that was overlooked, and which Mr. May promises he can bring us next time. So it seems to me that the way to proceed is to receive that additional information with respect to the house and the other questions that have been raised next time, with some certainty that there will be a vote at the end of the presentation next time. That seems to me to be the way to proceed.

If some commission member wants to make a motion either to approve or deny the entire application, or to approve or deny the application except for the garage, then that would be an appropriate motion to be heard right now. I just don't think that we will have considered all the information we asked for until we

get it next time, and I'm certain that—I'm very confident that Mr. May has heard us clearly about what we want for next time.

Smith: I just want to add to what you're saying, because in the motion to deny, the staff has written something supportive of what you are saying.

Epting: Correct. I understand [ph].

Smith: And so I call your attention to look at that as well, because we don't want the new house and garage resulting in a greater proposed lot coverage and built to open space ratio of the new—you know, with neighboring properties, and that follows LUMO Criteria B and also supported by Design Guideline 1 on page 52 or 53, depending on which version you have.

Epting: Right. Okay, so is there some consensus about pushing this to the next agenda so we can get the additional information, with the assurance we're going to vote when we have that information? Because the 180 days will run out after the next meeting, before the August meeting.

Kyser: And Susan is going to run out [ph].

Epting: Have we reached a consensus about that? Well, then so be it. Thank you, sir.
We'll see you next time.

[END TRANSCRIPT 02:27:00]

Ricky May
Chapel Hill Historic District Commission
410 & 412 North Street
July 9, 2019

Epting: Robert Epting, Chair
Murphy: Sean Murphy, Vice Chair
Locke: James Locke, Commissioner
McCormick: Nancy McCormick, Commissioner
Kunz: Diane Kunz, Commissioner
Schwartz: David Schwartz, Commissioner
Ferrell: Brian Ferrell, Commission Counsel
Grahn: Anya Grahn, Staff
Lindsey: Marty Lindsey, Witness
Lowry: Pat Lowry, Witness
Smith: Susan Smith, Witness
Kyser: Kimberly Kyser, Witness
A. Finn: Arthur Finn, Witness
D. Finn: Deborah Finn, Witness
Vogler: Mary Frances Vogler, Witness
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 00:16:15]

Epting: The next item is agenda item number five, 410 and 412 North Street. Anya [ph], will you remind us where we are in that matter?

Grahn: I will. So, this application has been in front of the Historic District Commission for several months now. The applicant is proposing to construct a new single-family house and a detached two-car garage. I would like to remind you that the Land Use Management Ordinance does require the Historic District Commission to take action within 180 days. The application was deemed complete on January 24th, so a 180-day deadline is July 23rd. Should no action be taken tonight, the application would be approved as submitted. In the past, the HDC had requested that the staff propose motions for action on this item, and they have been included

in the packet as drafts. And I want to stress that they are a draft, and so you should amend them to reflect the determinations and your reasoning for whether you approve or deny the item. So I think that sums it up, and I'll leave it to you and the applicant.

Epting: Let's have on the record an assurance by our new members, who were not members at the last meeting, that they have or have not reviewed the proceedings from the last meeting, including the applications and the proceedings that are recorded of that meeting. And I did talk to you before the meeting, and I understood that you both have done that. So your assurances are shown on the record, then. Is that sufficient, mister lawyer?

Ferrell: It is. Your rules require assurance to the chair that the—that any member who wasn't present for each time the matter was heard by the commission, that they make the assurances that they have reviewed the minutes and the application materials and otherwise familiarized themselves with all of the proceedings in the case. So that's the standard, and if they're prepared to make those assurances to the chair, the chair can rule on their participation.

Epting: And they have nodded their heads that they have indeed done so. So the chair will accept those assurances as sufficient. Now, Mr. May, you wanted to make further presentation.

May: Yes, sir.

Epting: Okay, proceed.

May: Thank you. A couple things from the last meeting that you asked me to come back with was some further clarification on the historic or not historic rock wall

that runs down the right-hand side of the driveway. This is the picture that—from Google Earth that I presented earlier. It’s a couple of months ago, and there are a couple of neighbors that are here tonight that will speak and hopefully give more clarity on that. So if it’s all right, I’d like to set that aside until the public comment part of this.

You also asked me in the original site plans, the house was—I just presented as a simple rectangle, saying that the house would fit within the rectangle, and you asked me for more clarification on that, and so this is the footprint of the first floor. You can see that it’s pretty narrow and runs pretty deep, which is in keeping with the kind of skinny and narrow and deep lot. So I wanted to provide that to you, so this would fit inside of the rectangle on the site plan that’s been in front of you for several months now.

The—I thought that it would be a good idea, and I won’t take a great amount of time, because I know you have a full agenda—I thought it would be a good idea, too, for the new members and for the incumbent members who’ve been at this with me for now six months, to make sure that I emphasize some of the things that I’ve brought up and reasons why I believe that my application should be approved, and I’ve titled this “19 Reasons to Say Yes.” You can use all 19 of them or any number of them that you choose to.

All the exterior construction materials are consistent with materials that have been used for a long time in the district, so there’s nothing unusual being requested there. The highest ridgeline of the house and of the garage is lower than the house to its rear and one directly across the street. This gets to the point

of the nearest and opposite guideline that you have to go by. As noted in the building envelope exhibit, which was in the original application, the house and garage fit under the height restriction, so there's no issue about whether they're too tall or not.

The proposed setbacks—we've had a lot of discussions about that over these months—are 26 feet at the front, 15.7 feet on the sides, and 11 feet on the back, which is within the guidelines that are—that I'm required to meet. Relative to the whole setback thing, you remember we discussed, there are several properties very close to mine that are significantly closer now than what I'm proposing, the closest one being 12 feet from the street.

The proposed house has a cottage look with a front porch, and it's very consistent with other houses in the district. Nothing unusual in terms of lintels or cornices, which is one of your guidelines. The proposed house and garage both feature gabled roofs. There are many of those, so there's nothing unusual there. The proposed windows and doors and hardware and lights are all, again, in keeping with the neighborhood.

The scale and the house are not overwhelming or pretentious. The sorority house behind me is almost 10,000 square feet, and those houses around me and garages around me are obviously different sizes, but certainly not any way that you would consider what I'm proposing to be overwhelming of them.

In my mind, what I'm proposing meets all of the guidelines, A through J, and that's been my consistent position all six months that we've been together.

There's a separate section in the guidelines for new construction. I believe that

what I'm proposing meets all nine of those guidelines. The percentage of impervious surface to be utilized is below the maximum, and it's lower than the lot coverage of several of the properties in the immediate area in the 400 block of North Street. This also kind of gets to the whole overwhelming issue. I don't believe that what I'm proposing is overwhelming in any way.

I think this one's important, and I've said it before: nothing about what I'm proposing, house and garage, does not already exist in the neighborhood. So when you're an applicant like me and you go around the neighborhood looking at what exists in advance of making a proposal to you guys, you see things and you want to replicate those, and I believe that I've done that with the house and garage that I'm presenting. There's nothing unusual being proposed here to risk congruity.

And I know I made a pretty large point in one of our other meetings a couple months ago about what I call the Hooper Lane house [ph]. Its real address is 119 Battle Lane. And this is something you guys approved—well, some of you approved—back in September of 2017, so a little less than two years ago. And the Hooper Lane house has a rock bridge going to a second-floor front door. It has a really—small really skinny windows, about this wide, maybe 9 or 10 inches wide, and it also has floor-to-ceiling windows. And none of those features have ever existed, to my knowledge, in the historic district. So my point of bringing this up is that, if this house met the standards, then I think that mine, what I'm proposing, easily meets your standards.

In fact, on this one, Mr. Epting would remember that he actually seconded the motion to approve this, and it was approved six to nothing. Now, I know in some of our other meetings, some of the members have said that this was a mistake and should not have happened. Well, it's there, it's real, you can see it; someone's going to be living in it soon, it's almost finished. And so, you know, I'm just asking for the same level of consideration that was obviously given to the applicant for Hooper Lane.

The Hooper Lane, you know, house also requested and needed two variances, one for the height and one to be within the setbacks. I'm not requesting anything. My—what I'm applying for and proposing to you does not need any variances whatsoever.

And I think this is also important. Three different neighbors with properties in my immediate area have come to speak in favor of my application as proposed during the course of these six months that we've been together. You're going to hear from two more in just a few minutes, about the rock wall, and they may have other things they want to say in support of my application.

Per the recently released HDC survey data, if you've all read it—I suspect that you have—there are several themes in there. One of the themes was that creating more single-family houses on North Street is very desirable to those people that own property and live on North Street. The other one was, in the survey, another thing was that there's just too much street parking on North Street, and it's rendered the street to be a one-way street in all of the 400 block

and almost all of the 500 block of North Street. My application, which is for a single-family home, actually will help in a small way reduce street parking.

Again, in response to feedback that I got from you guys, I presented a second garage option, and after the first one that was part of the initial application. Neither is as big or tall as the recently approved three-car, two-story garage at 407 Hillsborough Street. That one was also approved in September of 2017, and you know, one thing I would like—I know there's been some discussion; maybe it's Mr. Schwartz, I'm not sure, at times has asked to you guys during your discussions, "So are we going to never approve a garage again?" I would just remind you that there's a special section in your guidelines for garages. So as an applicant, and just looking around the neighborhood, there are lots of garages, and my job in all of this was to present something that was in keeping with the neighborhood, and I believe that we've done that.

The next thing I'd like to go over—after I take a drink of water—is—and this'll be the end of what I have to say tonight, unless you want to ask me some questions, is—gets to the proposed draft motions that were presented to you guys last month. These were prepared by staff and by your lawyer, and I think it's really important—I'm going to read the—I'm going to use the one that's the motion to approve, because I hope that's where we end up tonight, but in the motion to approve, the last sentence is, "Based on these findings of fact and conclusions of law, the proposed application is not incongruous with the special character of the historic district and should be approved." Not incongruous. And the reason I want to emphasize that to you folks tonight is that I believe that your

staff and your lawyer is saying that's the threshold that I have to meet and that you have to base your decision on. And I believe I have met the threshold of not incongruous. What they're not telling you is that it has to be perfect or that you have to like it, or that if you owned a vacant lot on North Street, that this is what you would propose to do. All they're saying to you is, make a judgment on whether what is being presented is not incongruous, and I believe that I've met that standard in every way.

So I thank you all of the time that you've granted me over this six months. I do know there's at least a couple people that want to speak about this. I'm happy to entertain questions now or later, however, Mr. Epting, you want to do it.

Epting: I think you should go ahead and make your presentation. If there are others who want to speak on the application—

May: I'm done.

Epting: —then they should come at this time.

May: Okay.

Epting: We didn't really—I didn't really foresee that we would reopen and have a new public hearing. I thought that what you were going to do is respond to the several questions and requests that were made at the end of the last hearing, and I think you have done so in your presentation. So, completely up to those who have come to testify. If they wish to testify, fine; if they feel that your presentation is sufficient, that's fine as well.

May: All right.

Epting: It's your presentation, not ours. So.

May: Yes, sir. I suspect when you ask for—"Does anybody want to speak up?" that at least two people will.

Epting: All right. Others who want to speak in favor of this application? Yes, sir. Please say your name for the record and that you have been sworn.

Lindsey: I'm Marty Lindsey. I've been sworn. It's a pleasure to be back in front of the committee again.

Epting: Thank you.

Lindsey: I've met some of you, and I appreciate your having me up. I have not very much, because Ricky asked me to confirm the provenance of his rocks. I did a renovation in 2013, Edward Kidder Graham House. We dug up the equivalent of probably two full rock walls, and Ricky needed walls. There's a pretty sizeable construction project at 119 Battle Lane where more walls have been dug out, so if he needs more wall, I'll be happy to accommodate. But I think there were some questions about Google Earth and the provenance. So Ricky's rocks came from the 1908 construction and a reconstruction in 2013.

Epting: Okay. Any questions of Mr. Lindsey? If not—thank you, sir [ph].

Lindsey: And my final comment for Ricky is I do believe, having known him for—ever since college, that what he says he will do he will do, and one of my concerns over the last couple years especially is, you know, there are things that get passed and there are things that get done, and I'm pretty sure what Ricky gets passed he will do, none less or none more, which I appreciate. Thank you.

Epting: Okay. Thank you, Mr.—

Locke: I have a question.

- Epting: All right, go ahead.
- Locke: Yeah, so when we're referring to this rock wall, you're referring to the interior wall? So when you're walking on North Street, you're going up the driveway, you're talking about the wall on the right, correct?
- Lindsey: The one that lined his driveway.
- Locke: Got you. On the right side—because there's one on the left as well.
- Lindsey: There was one rock wall with old rocks that I saw. And those rocks were put up in 2013, that year.
- Locke: Right. So the ones on—they line the right side of his driveway when you're driving up it, correct?
- Lindsey: The ones I recall are on the left, but Ricky, you might confirm.
- May: They're on the right.
- Locke: They're on the right. Yeah.
- Lindsey: On the right, okay. I know which rocks they were, I know when they went in, I don't know of two walls, but I do know the line of walls that I [OVERLAPPING] but I would say that I don't think there's really any chance that there was any way that those rocks—there was no changing of a photograph or anything like that. Those rocks came from me.
- Locke: Yeah, got you. Thank you.
- Lindsey: Thank you.
- Epting: Anyone else want to speak on this application? Welcome. Would you say your name and that you have been sworn.

Lowry: I want to be sure you hear me tonight. Good evening, Chairman Epting and HDC members. My name is Pat Lowry, and I live at 407 North Street, directly across from Ricky May's property.

I wish to open by addressing the stacked rock wall lining Ricky's driveway. When he first purchased the property, the few rocks that were there were completely covered with English ivy. There was little evidence of any rocks beneath the ivy. In fact, ivy and wild grapevines were growing out of control on the property and hanging from trees over the parked cars on North Street. When the ivy was removed along the driveway, the rocks were carefully moved to the back of the property during the demolition of the very rundown little cottage at 408 North Street for the construction of Ricky's new home, the plan of which was selected by the previous HDC. It wasn't Ricky's first choice, but it was his second, and this is the one he built. This is the one the HDC chose. It's a Southern Living house plan, as is the proposed plan that he wishes to build now.

Ricky then consulted with Jamie Singletary [ph], a landscape designer from Richmond, for plant selection and placement on this property, as she was featured in the *Southern Living Magazine* for work she had completed on a project in South Carolina. More rocks were brought in to create the proper stacked wall, which has no masonry and is less than three feet in height.

A dentist that practices and teaches at the UNC dental school hopes to live in this proposed single-family home with his wife and two daughters. This house plan and garage are certainly not overwhelming. Houses behind, beside, and across the street from this property have more square footage. These two

Southern Living cottage-style homes resemble in front of—this—in front elevation, the two existing ones that are on my street at 403 and 405 North Street. All have full-width front porches just like this, and with the gable above. The setback from the street for these homes, as well as my own and others on the street, are far less than Ricky's proposed plan would be.

405 has a front-facing two-car garage that is fully visible from the street. Ricky's plan is to place a side-facing garage at the back of the house and out of the street view. My neighbors and I are experiencing almost 50% rental occupancy on our street. The removal of these two old rental cottages and replacement with a new single-family home will put that percentage in a better favor for us. I'd like to see you approve this application. I feel that it fits well with the neighborhood and meets your guidelines. Thank you.

Epting: Thank you. Any questions of this witness? Thank you. Any other witnesses who want to testify pertinent to this application, either in favor or opposed to it? If not—Susan? Former HDC member. Welcome back.

Smith: Good evening. It's funny to be on this side. Yes, we've heard this application since February—well, actually not February, because it had to be postponed that month because our agenda was so full. So, March was the first time that this application was heard, and at that meeting, the only thing that happened was to approve the demolition, and after 365 days. So I just want to clarify, because I think the applicant makes generalizations fairly broadly, and so I'm trying to be specific here. So in April, his application was heard for the first time for this construction. And during that hearing, there were requests for more details on the

application, and there were concerns about the size of the structures to be placed there in relationship to the lot size. And I personally asked at the last meeting to have a footprint on the lot as part of the supplemental materials to be presented tonight, and I still do not see that in the application.

Also, Mr. Murphy requested either in April or May to have a view of the house with the garage so we could see the overall massing of the two structures together, because as Mr. May testified, there's only five feet between the garage and the end of the house. And I do not see that in the application either. I know there were some improvements made on the garage, but when I reviewed the videos and notes—my notes and also the—what do you call it, minutes of the meeting and the conclusions, I still come up with an incomplete application in order for you all to be able to accurately know what is going to be going—what is going to be placed there.

And initially, my concern—and still is my concern—that this structure is way too big for that lot, that skinny lot size, and using the example of such an anomaly over on 119 Battle Lane that's in Mr. May's "19 Reasons to Say Yes" that he just mentioned, to me strikes of cherry-picking, when you pick a few things—you know what cherry-picking is, I won't explain it. But I found, when I was on the commission, that the examples that were given were not examples that were of the traditional nature of the historic fabric that's common on North Street or in that particular district. So I think my suggestion to you is to deny this application and to do that, well, on the basis of it still being incomplete, and also, I feel that it's incongruous with the character of the historic district. Thank you.

Epting: Any questions of the witness? Thank you, Susan. And Susan, you didn't say your name and that you were sworn, but just for the record so you're on the tape, if you don't mind.

Smith: Yes, Susan Smith, and yes, I was sworn.

Epting: Thank you. Are there—there's at least one more witness coming forward. Welcome, Ms. Kyser, also a former member of the commission.

Kyser: Yes. And I'm very familiar with this application. First of all, I'm Kimberly Kyser, and I am sworn in. I've been part of the commission over this whole period in which we've reviewed this particular application, and I will—I concur with everything that Susan Smith has just said, and I just want to reiterate that I think that Mr. May does not understand the term "congruity"; that it's not a matter of cherry-picking through the historic district that you're talking about here and there to prove a point. It's context.

And I must say in addition that he, along with others who apply, are not—do not understand what the concept the historic character means. And I think the placement and scale of these small houses that exist, and the combination—and the relationship between built and unbuilt space is one of the prominent characteristics of the Franklin-Rosemary District. It's not entirely consistent throughout, because we have fraternities and sororities and so forth, but in general, that would be one of the primary characteristics that the historic districts are charged with preserving and protecting.

He—another thing I see on this list of 19 things to say yes, he compares the backside of a sorority house as a three-story structure, therefore allowing him

to put a two-story garage on this property and so forth. So there's a lot of irrelevant information in this listing that has nothing to do with anything. And lastly, I would like to say just in a general way that because some things have been built in these districts does not mean that those mistakes need to be repeated. So, thank you very much.

Epting: Are there questions of Ms. Kyser? If—Kimberly, would you mind coming back to the podium, please?

[INAUDIBLE]

Schwartz: Can you give us a sense of what ratio of built to unbuilt on a lot is? What's the—

Kyser: That's a good question. He references zoning, and so we have always had in the historic districts what's called a historic district overlay, which it doesn't have measurements on it, but it has a sense of proportion that's been historically established, and it does change from street—from block to block, but not radically. So it would behoove the commission to ask the town to reproduce the one we were using when we were writing the guidelines in 2002. There was always a full-time staff member guiding these writings, and as well as a hired expert. But I remember distinctly that they would bring in a sheet that was literally the overlay, that sat down on top of the zoning map. So for the new people, I wish I could say it's something numerical, but it's just an educated evaluation that we're being asked to make.

Schwartz: Thank you.

Epting: Let me ask you—if there are no other questions—I recall in previous hearings on this application having heard a rebuttal to Mr. May's contention that a previous

commission had approved, and tonight he said that a previous commission had selected the design for his house, which is on the adjacent lot.

Kyser: You're talking about the one that's proposed right now? Oh, previously.

Epting: No, I'm talking about 408, the house to—if you're at the street facing this lot, the house to the right.

Kyser: I was not on the commission when that was approved or not approved, but I'm understanding from fellow commissioners that it was turned down and that it went to the Board of Adjustment, and they overturned the decision to approve that. So it was not approved in—from all credible sources.

Epting: Okay. I'm not sure the extent to which that decision was material to the decision that the commission will make tonight, but I wanted to at least reiterate that—

Kyser: Yes.

Epting: —there are contentions about whether or not the—

Kyser: That's true. I did hear—

Epting: —existing house was approved or even selected—

Kyser: Well, I did hear Mr. May's comments in these last months that it was approved and that the commission chose the plans, but I can't imagine that any chair or commission would be put in that position or would allow—from my—all I understand, it was a contentious decision, and it was taken to Board of Adjustment, and they're the ones that chose to overturn the—

Epting: Right. Okay, yeah.

Kyser: Okay.

Epting: Susan, did you—do you remember that—you were on the commission, I think, at the time. Did you want to respond to my inquiry?

[INAUDIBLE]

Kyser: Should I—may I be—

Epting: Yes, thank you, Kimberly.

Smith: I can speak briefly to that. I recall that there were a few versions of models that also came from Southern Living. I remember the commission worked very hard to see whether we could use the existing structure that was there, tried to convince him to alter that structure to meet his needs.

I also recall that when the—because there were at least two, I think, if memory serves correct, what you call those—when you come and ask—my mind is going here—when you come and ask for information before you present? Courtesy review, thank you. Okay, see, I'm getting a little—okay. Anyway, there were at least a couple courtesy reviews with that project, and then it also dragged on for the—after that, for the six months, and when the—my recollection of the Board of Adjustment was that when we made that decision to deny the application, we just listed basically A through J, and we did not—we weren't specific, and we weren't as trained as we have become now to being specific about what it was about each of those things, because partly, we had heard this over and over again, and it all made sense to us, but it didn't pass muster with the Board of Adjustment.

Epting: Okay, thank you.

Smith: So that's what I remember about that.

Epting: I don't want to bring too much more into that—our deliberations about this, because that really was a previous—

Smith: It's not really—I don't know how much it impacts that. Maybe not at all.

Ferrell: I would say none at all [ph].

Smith: Not at all. Yeah.

Ferrell: A different approval and a different application next door I would say isn't relevant to your determination tonight about whether or not the application before you is not incongruous with the special character of the district [ph].

Smith: Okay, I think the only reason this is being brought up is that Mr. May referenced it.

Ferrell: I understand, I understand.

Smith: Okay. And the last thing I would like to say is that I learned since being on the commission that when you deny an application, it doesn't mean the end of the world. There's a possibility to refine the application again, and I have seen that happen many times, and so I just want to say that. Thank you.

Epting: Thank you. Are there other members of the public? Here's Ms. Vogler [ph], come down.

[INAUDIBLE]

Epting: Come in here [ph].

A. Finn: I have not been sworn in.

Epting: Well, say your name and then we'll give you the oath.

A. Finn: My name is Arthur Finn and I'd love to be sworn in.

F: Is there anybody else who hasn't been sworn in? [INDISCERNIBLE]

Epting: And let's try to remember we are not having a new hearing here. We are responding to concerns that were expressed previously by the commission.

[OATHS ADMINISTERED]

Epting: Art Finn.

A. Finn: I was not planning to talk, and I'm not going to say anything specifically for or against Mr. May's application. I really want to express to the committee, commission, my—how terrible I feel about what's just happened, and I'm certain—well, first of all, I should—I'm happy that the last two speakers, even though they're no longer on the commission, choose to come to the meeting. I think it's wonderful they do that. But I'm very troubled by the fact that these two people—I'm actually appalled by the fact that these two people made it quite clear throughout the last several months, because I've been here at many of the meetings, were opposed to the presentation by Mr. May. And I'm sure it's legal what they're doing, it just feels really bad to a member of the public to see that these people who were on the commission and are no longer on it have a right to speak, but they speak as though they're members of the commission, and there is no possible way that they won't have a major effect on the way especially new members of the commission feel. And it doesn't feel right to me that they should stand here and sound like they're members of the commission and are very much and have all along been opposed to Mr. May's presentation. And as I say, I'm sure it's legal; it just feels to me that it's—I'm appalled by such a presentation.

Thank you.

Epting: Ms. Vogler?

[INAUDIBLE]

Epting: Welcome.

Vogler: Thank you. Mary Frances Vogler, and I have been sworn. And yes, I'm the third person who was a member of the commission; however, I did not participate in any of the meetings in which this particular proposal was discussed. And I'm very sorry about the misperception of my colleagues. I agree with much of what they said. As I recalled, they were asked what had happened previously; they did not volunteer that information themselves. And I agree with most everything they said, so I will be very brief.

I'm not really prepared, because tonight was the first time I saw these 19 reasons, and it seems to me that most of them are irrelevant. They do not really address issues that are germane to the decision you will be faced with, such as on-street parking or the use of a building. That is not the purview of the HDC. You're judging on how well this proposed structure conforms and how complete the application is. Thus, I would say that since this is new to me, I believe the application to be incomplete, and I also am convinced that most of the 19 reasons, many of the 19 reasons, are irrelevant to your decision-making process. Thank you.

Epting: Any questions of Ms. Vogler?

Schwartz: Can you specify the ways, or some of the ways, in which you feel the application is incomplete?

Vogler: I did not see it on—that is, plotted on the land itself. I saw a rectangle. Now, if you have seen the drawing with the lot and the placement, and if you have seen

elevations as well—as I recall, elevations are required, even for fences to be approved, if that helps.

Schwartz: Thank you.

Epting: Now, are there any other members of the public who want to be heard before we close the hearing? If not, is there a motion to close the public hearing?

Locke: I make a motion to close the public—oh, we got one more.

[INAUDIBLE]

Epting: All right. Welcome. Will you say your name and that you have just been sworn?

D. Finn: Yes, and I will speak into the microphone so that everybody can hear me. And I am really irritated that nobody speaks into the microphone. We are the public and we should be able to hear, and I think it's your responsibility—I'm sorry, members of the commission—to urge people to do what I am now doing. I can hear myself, I'm sure everybody can hear me.

Now, I have one question for you all. What would it take for you to approve Mr. May's application, given what the former member Susan—sorry, I don't know her last name—mentioned, that it isn't the end? You don't say what it would take. All you do is deny and ask questions about what is being presented. Please help. Thank you.

Epting: Just a minute, if you would, are there any questions for this witness? Okay, thank you very much. Any other person want to be heard?

F: Can I respond?

Epting: No, we're not going—we're going to finish the public hearing, I think, right now. Is there a motion to end the public hearing?

- Locke: I make a motion to move the public hearing.
- Epting: Is there a second?
- M: Second.
- Epting: All in favor say aye.
- M/F: Aye.
- Epting: Any opposed, say no. The public hearing is closed. Discussion by members of the commission.
- Locke: I would like to thank Mr. May for bringing in his witness for the interior wall, but I still had questions about the exterior wall, and I made that very clear last time.
- Epting: Other—?
- McCormick: I'm a new member, and what I was looking to see was—one of the previous witnesses mentioned this—a drawing of how the house and the garage would look on the site, how the difference in the height of the house and the garage would look from the street, that—you know, that is what I was looking for to see how the two masses fit into the neighborhood. So, I mean, that's just something I was looking to see, and I didn't.
- Epting: Thank you. Sean.
- Murphy: Yeah, I think—you know, I had asked for that on two different occasions in these meetings. But I think, you know, if we step back a little, there's obviously some strong opinions regarding this application. You know, I think we're here six months later, unfortunately, because the application was not complete when it started. I don't necessarily fault Mr. May for that, I don't think it was done maliciously, and, you know, I think most of the members of this commission have

tried to give constructive criticism over the last six months so that the application could be improved, and, you know, we are trying to help. We are not in the business of denying applications, as I think someone alluded to earlier.

But the fact remains that we do need a complete application, or mostly complete, in order to approve, and Mr. May—from what I can tell, except for that drawing that you just mentioned, has provided all of the information that we have asked for, starting back in March or April, whenever we started this, including—I was just looking through some of the old records regarding, you know, lot size and the ratio of coverage—you know, that was provided by Mr. May in the May 14th application, page eight, with the comparison properties in the neighborhood. I know there were some questions by some commissioners at that time.

So, you know, what I would urge is that there's been a tremendous amount of actual factual information presented in the application, in the supplemental material, over the last six months, and we have a set of guidelines that we are supposed to apply to the information as submitted and as testified to, so I think we should refocus our efforts there. That would be my opinion.

Epting: And as you make your comments, I completely agree with the vice chair that we should be talking about the way in which the information that has been provided either matches up with or doesn't match up with the requirements of the guidelines. That is the way in which we keep from being arbitrary and capricious in our decisions, and so let's proceed. Would you?

- Kunz: Yeah, I have a technical question of our lawyer. Ms. Smith said that the actual presentation was March, not January, so when does the six-month period start, 180 days?
- Ferrell: Right, so your secretary has calculated the 180-day period, and we could look at the rule, but I believe it's when the application is deemed complete, is that—
- F: It is, it's correct. When it's deemed complete.
- Ferrell: That's right, so it's not actually when it's first heard, if you will; it's when it's deemed complete.
- Kunz: And what date would we say it was deemed complete? Indeed, according to what some of us have said, it's not deemed complete yet.
- Epting: Well, and so let's go back and ask, whose decision is it to make as to whether it's complete? And that is a staff decision.
- Ferrell: That's exactly right. So the staff—
- Epting: So the staff decides whether or not an application that has come in and a payment been made with respect to the application fee, whether or not that application is complete, and when the staff makes that determination, it may be—in fact, I remember several occasions since I've been on the commission, when the commission disagreed later that something was complete. In other words, there was a discovery during the hearing process that something that wasn't provided, we'd have been better off if it had been provided. And so—but once again, the determination of whether the application is initially deemed to be complete, for the purpose of starting the running of the 180 days, is the staff's decision, and that has always been the rule since I have been on the commission [ph].

Kunz: And that's January?

F: Yeah, I think it's—let's see here. I believe it was January 24th.

Epting: The application actually came in as what I'm going to call a bifurcated application. It came in as an application for permission to demolish the existing cottages that are on that lot—there are two cottages—and Mr. May asked that we hear at that same meeting his application for new construction, and we declined to do that. We said no, we will hear that at the next meeting. Because the law says that an application for demolition may not be denied by the commission, it may only be delayed for a 365-day period, the commission did not approve the demolition, it delayed the demolition. But that demolition period did begin to run at that time.

And so, you're talking—we're now talking about the 180-day period within which the commission has to take action on the application for the new structure, and that 180-day period would run out before our next meeting. So we should either make a decision tonight or understand that if we don't make a decision tonight the law will require that the application as originally applied—deemed complete be granted. And in that case, then the—it has been the past practice that the town manager actually signs that certificate of appropriateness. So either you approve—you pass a motion tonight approving or a motion denying the application, or you take no action, and if you take no action, then the application as originally deemed complete is going to be allowed.

Kunz: Does that mean if you take no action that Mr. May can do—can build the original, the January plan as opposed to this plan?

Epting: Yes.

Kunz: He can choose?

Epting: Well, let me look at the lawyer. I promised when they asked me to be the chair that I would not try to be the lawyer as well, so I'm going to back up and say let's ask our lawyer.

Ferrell: My view is that the application before you tonight is the application as amended, supplemented, and revised by the applicant. That is what you're voting on, right? So—if you decide to take action. If you don't, the application as revised, supplemented, amended by the applicant, is still the application that would then by default be approved. So the manager, essentially, would have the same opportunity or requirement to approve the latest iteration of the amended, restated—

Kunz: The latest, okay.

Epting: Good question and good answer.

Kunz: Thank you.

Ferrell: I believe that's—because that is what's before you now. The original submittal is not what's before you.

Kunz: Okay, thank you.

Epting: Thank you. David. David is here not feeling well tonight because I badgered him to come so that we could get a vote on Mr. May's application.

Schwartz: So—well, let's look at the draft motions that the staff prepared for us. What it shows us, and this was, I guess, taken from the comments that we made at the end of last meeting, these were some of the findings of fact and arguments for or

against congruity, and I appreciate you organizing it in the way that you have.

And there are ways in which this application is congruent, and there are ways in which it continues to not be congruent, and we're going to need to decide whether the ways in which it's—fails to achieve congruity are sufficient to deny the application. I think that what one of the members of the public said, I take to heart that if we are—if we determine, if four or more of us determine that it's, you know, that it doesn't—it's not sufficiently congruent, then I'd like us to provide some kind of guidance or feedback that would enable the applicant to come back with another application that would address those concerns, right?

So, if we look at the findings of fact under “motion to deny,” they are the ones that have been brought up already, that the built structure occupies too much of the lot as compared to the—most of the other properties on the street and in the district as a whole, although you can point to a couple of houses right there on the corner where they are—have a very short setback and so on. But if you look at the street as a whole, it does appear that the footprint of this house is pretty—occupies a disproportionate amount of the lot relative to the character of the district.

And then something that I feel like I've been harping on ad nauseam is this issue of two-story garages, that it's something that a lot of people in the district want to build, but as the guidelines are currently written, I don't think that we can find a two-story garage congruent with the character of the district, because at the time the district was established in 1976, I am fairly certain, or I've not heard any evidence to suggest that there were any two-story accessory

structures. So the day may come when we decide to rewrite the guidelines and allow those, but for the time being, if we are trying to ensure congruence, I think that's—we've got to go with what the guidelines currently say.

So, I'm still inclined to deny the application, but I do want to deny it in a way that provides—that's constructive and provides some information to the applicant that would enable them to come back with something that would have a better chance of receiving a COA.

Epting: Okay. My concern about the application is one that I have applied sort of in a practical way to a number of applications, and that is, are we in a position to approve a plan that has been presented that will guide the building inspections department to be able to make a decision down the road about what is built, about whether what is built actually conforms to the application. And part of what is missing, in my view, from the application is a figure of what, again, what this would look like. I think one of you said from the street, there—you know, we have a drawing taken from a magazine under what looks like maybe an oak tree somewhere else in America. We do not have a drawing showing what this structure would look like on this very narrow lot in this particular historic neighborhood. And so I think that is a deficiency. I'm not satisfied in my own mind yet whether it's a deficiency that would cause me to vote against the application.

That's what I've been looking for, that's what I've been asking for, and the suggestion that has been made tonight that we don't ever tell folks what we want, what it would take to have something approved, I think is a suggestion that

arises out of a failure to understand what we've been saying back and forth to each other. Maybe we should say it in a different way, but it is not true that we have not been saying to this applicant and to other applicants what we would prefer to see and why, and we have done that on many occasions. And so I would take up for our efforts in that regard, but I would also say that we're certainly willing to heed the advice that we should try to do better about that.

We need to have a motion to take action. Is anyone in a position to make a motion so we can see how the votes lie?

M: Is there any other comment?

Murphy: I'll just respond—

Epting: Did I get to you? I didn't mean to leave you out.

Murphy: I think I spoke maybe second, yep. You know, just regarding the garage issue, you know, we probably approved a half-dozen—I'll call it a one-and-a-half-story garage. You know, Mr. May started with what I would call more of a traditional two-story garage, he modified his design based upon our comments. There's numerous one-and-a-half-story garages in the historic district that—several that we've approved already this year, probably several more we'll see the remainder of this year. So, you know, I think as a commission we need to decide what we're going to do and how we're going to interpret the guidelines here, because I don't think it's fair to any applicant to have something denied that's been approved by us several times already this year.

Epting: And I would say in response to that, as we've said over and over again, that each one of these applications arises on its own—from its own lot, is to be considered

under its own circumstances. We ought not be applying broad generalizations from things that have been approved in other circumstances in other locations, unless there is a presentation as part of the applicant's presentation about how these other iterations are similar to the circumstances of this application. It is not enough to say there are other garages in this historic district. It would be much better to say, from my perspective, there are other garages that are on lots that are configured just like this one, or that sit behind the house and the massing of which is consistent with the massing of these two structures as proposed. It's just not enough, and it's certainly not enough to go and find something that is a bizarre example in a deep ravine when this lot is not a deep ravine. This lot is a lot that actually slopes uphill from the street. So I hear that, I respect it, I know why Mr.—why the applicant has made those assertions, and I have heard you say that about garages before.

I would say as a historic footnote, so that the public will know, that we are trying to revise our guidelines. We are right now in the process—in fact, I believe we will hear in the next two weeks about our grant application to the state historic preservation office for a grant that will allow us to hire a consultant and complete a revision of the guidelines, which will involve substantial opportunity for public input as to what the guidelines we will use going forward should look like. And so it's not that we insist on applying a moldy bunch of guidelines that haven't been redone for something like the last 12 or 15 years; it is that the process of revision is a structured process, it is a formal, legal process, it requires public hearings, and it requires final adoption by the Town Council. So we have not

been able to get any progress on that, because last year, our grant application was denied, because Chapel Hill was seen as being a wealthy community not in need of the grant.

So, we hope we do better this year. We hope there will be opportunity for discussion. So that very question about what we should do about the public—repeated public request in applications for garage structures that were not there in 1976 and were not permitted under the present iteration of the guidelines. Sorry to make such a long statement of that, but it is important that you know that we're interested in what our guidelines ought to look like, and that they certainly ought to reflect and protect the present historic character of our districts.

So, if someone would like to make a motion, we'll see how the votes lie and whether or not we'll be able to fashion a resolution that can get four votes. We do need four votes tonight to take action.

Murphy: Is there any discussion about a motion that approves the house without the garage?

Schwartz: Can you say some more about that? Can you elaborate?

Murphy: What I'm hearing is that there's a concern with the garage, not necessarily the house, but I—you know, am I interpreting that wrong?

Locke: No, I think you're right. [INDISCERNIBLE]

Murphy: And I know in the past, we have approved parts of applications without denying the entire application. So I'll throw that out there for discussion.

Epting: Reaction to that?

McCormick: My concern is really with the garage, and in my case, it's—you know, not having been through the entire process and not being able to see what it would look like, so I think that's an interesting idea that might allow the applicant to move forward with the house.

Epting: Why don't you try a motion, try to construct a motion that would give us that result?

Schwartz: Well, hang on. So one concern I have is, if we were to approve the application but not the garage component, then are we approving the house on that part of the lot as the site plan as exists, but just deleting the garage part? Because one of the concerns that has been raised is also the setback, and so I mean, if the garage is not approved, then that creates an opportunity to actually move the main structure back to increase the setback, to make that more congruent. I mean, it's not our job to redesign the site plan, but I think just deleting the garage from that is not enough information. I think we'd need to do something more. Make sense?

Murphy: Well, it doesn't make sense to me, because I don't see where the setbacks aren't congruent with the other properties, because I'm looking at the site plan right here, and 401, 403, 405, 407, and the zoning setbacks and the house is within—the proposed house is within all of those. So I think—

Schwartz: Yeah, so maybe not so much the setback as the—

Murphy: —I'm trying to understand what specifically—

Schwartz: Yeah, not the setback, maybe, but the ratio of built to open space on the lot. That it's one thing to deny the garage as it exists in the application but leave open the opportunity to build something that has exactly the same footprint but is just, you

know, one story, but then that doesn't address the concern that some may have about the built structures occupying too much of the lot. So, yes, what you're proposing could, would address the incongruity of the garage being too tall, multistory, but that in and of itself doesn't address the concern that at least some people have—some of us have raised about the portion of the lot that's taken up by the structures.

Epting: Do you have a motion?

Murphy: Are there other—besides Commissioner Schwartz, are there other concerns, other commissioners concerned with the lot coverage?

Epting: Well, my concern again, as I tried to express a minute ago, is we don't—there's no drawing that shows the footprint of the house on the lot. You showed us a rectangle, which is the skinny lot, the narrow lot, and you said the house will be built within the lot lines. Well, great, but that's not what we're about. What we're about is, show us where the house is going to be so that, ultimately, when it is built and the inspector goes out to see whether you complied with your certificate, there's something to compare the footprint of the house with. We don't have that. I think we can fix that. I think we could say, for example, there might be a motion that would say, approve the application with respect to the house that's shown to be located as though the garage that was originally proposed was built but is not built. I think that's what I'm hearing, although if you don't approve the garage, it really does give you the opportunity to move the house front to back to some extent. It's not up to us to move the house for you.

It's up to you to say where you want the footprint of the house to show on the lot, and you haven't done that, in part because—

May: Are you speaking to me as if—

Epting: No, I'm speaking—I'm looking at you because you're right there, and you know, if there was some way that I could make everybody happy, I would do it, but I can't.

May: But are you speaking to me as where I might could give you some clarity about—

Epting: I don't want to reopen the public hearing. Okay.

May: No problem.

Epting: But what I'm suggesting is that I can—it seems to me that the house can be approved and we can say where we believe it should be located, and if that is not satisfactory, then you could come back for a modification. But we would at least be able to dispose of this application tonight, which I am bound to do. I mean, I think we are bound to do our very best for you to do that, because you ought to have the right, if you don't get what you want, to take it on and ask the next level for what you want. I'm hoping we can come up with something that will give you something you can work with. So I ask again for a motion.

Schwartz: I invite you to articulate the motion and we'll vote on it.

Epting: The chair doesn't make motions. I would if I could, but.

Murphy: All right, I'm ready.

Epting: The vice chair is well qualified.

Murphy: Thank you for that. Okay. Let's make a motion that we approve the house as submitted and as located on the site plan included in the original application

materials. I'd like to cite LUMO Criteria C and E, as supported by Design Guideline 6 on page 53 regarding new construction. Additionally, LUMO Criterion F as supported by Design Guideline 7 on page 53—has to do with new windows and doors. And that's the end of the motion.

Epting: And that motion would include a specific reference that the garage is not approved.

Murphy: That's correct. So the garage is not included in that motion.

Ferrell: And for that piece—you can take it in two steps if you like, or if you want to bundle it together, if you will cite the design guide—the LUMO criteria and the design guidelines that lead to the conclusion of incongruity on the garage, as well as the facts of the application that you're relying on in making that determination.

Murphy: I'd prefer if we could leave that to a separate application for—or separate motion for discussion. Is that okay, Chair?

Ferrell: You can take it either way in my—

Epting: Yeah. We hear you, and we understand why we need to recite a reference to some sections, A through J, some of those sections of the LUMO. So, is there a second to the motion?

Schwartz: So, if we pass this motion, and we're all struck by lightning before we can get to the next one, are we approving the entire application? No? So this motion is just approving the main structure, it is not giving a COA to the entire application?

M: Correct [ph].

Epting: That was the inquiry I just made, and I think I heard the answer in the affirmative to that. Is that right, Sean? Okay.

- Schwartz: I second.
- Kunz: No, I have a point of clarification. Did you say that we are now going back and approving the application as originally submitted?
- M: No.
- Kunz: No.
- Murphy: Just the site plan was in the original application.
- Kunz: Just the site plan part of it, okay. Just clarifying, thank you.
- Epting: So that reference to what was in the original application would fill the gap I was just talking about, about locating the house, because it is located in the original site plan.
- Kunz: Okay.
- Epting: So thank you for that. Further discussion of the motion? It's been—motion has been made and seconded. It was Mr. Murphy's motion, it was Mr. Schwartz's second, for the record. Any further discussion? If not, all in favor say "aye."
- M/F: Aye.
- Epting: Any opposed, say "no."
- Locke: No.
- Epting: Passes five to one. Is there a further motion?
- M: Yes.
- Epting: Well, we certainly want to make a motion that includes reference to some of A through J. So if you will look at—
- Schwartz: So we're now talking about a motion to not extend the COA to the garage component, correct?

Epting: There has not been a motion to deny the application with respect to the garage. In my view, that motion would be appropriate.

Schwartz: So moved.

F: I second.

Epting: Motion has been made and seconded. Now—

Schwartz: And I'll give you the text that would go with it. I move that—can you give me the language that you just gave a second ago?

Epting: The—that language is found in the proposed draft motions, under the section identified as the motion to deny.

Schwartz: So I move that the COA not be extended to the garage component of the application, on the basis of LUMO Criteria B, as supported by Design Guideline 1 on page 52, because the design and siting of the new—no, not that part, actually. It's the, yes, the first paragraph. Deny based on LUMO Criteria G and J as supported by Design Guideline 7 on page 21, regarding garages and accessory structures, because proposal is for a greater-than-one-story garage, and garages in the district are traditionally one story or one-and-a-half stories.

Epting: Okay, there's the motion and the second. Further discussion? All in favor—

Ferrell: Can I just have just some clarification? There was some mixing between the one and the one-and-a-half story; I want to make sure the motion is clear on that point, because the proposal is for a one-and-a-half, that the option was for a one-and-a-half-story garage, I believe, the latest iteration. So are you saying that the traditional size of garages in the district are one story, and this is one-and-a-half, and so it's denied on that basis?

Schwartz: Yes.

Ferrell: Okay. Just wanted to clarify that. I mixed it in my mind, I'm sorry.

Epting: Further discussion? If not, all in favor of the motion to deny with respect to the garage, say "aye."

M/F: Aye.

Epting: Any opposed, say "no."

Murphy: No.

Epting: So that motion carries, five to one. Mr. Murphy votes no. I think we are now done with this application.

[END TRANSCRIPT 01:28:50]