

via email, [p he mminger@townofchapelhill.org](mailto:phe mminger@townofchapelhill.org)

Mayor Pam Hemminger
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514

via email, aharvey@townofchapelhill.org

Amy Harvey, Deputy Town Clerk
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514

Re: Revised Petition, originally dated April 14, 2021, for Permission to Proceed with Presentation of Proposal for a Columbarium at the Old Chapel Hill Cemetery (OCHC).

Dear Mayor Hemminger and Town Clerk Harvey:

As a long-time resident (since 1948) of Chapel Hill and owner of Plots T-07 & T14 in the Old Chapel Hill Cemetery, I recently assumed leadership/contact person duties for this columbarium project and respectfully request that our petition be revised in order to present all known aspects of the project, clarify any concerns, and respond to any questions within a presentation that includes the attached documents/images and hopefully the opportunity to personally address and present to the Town Council during their meeting on October 27, 2021.

My goal is to explain the exhaustive research accomplished in order to fashion a carefully designed facility to reflect the long historical significance and traditions of the OCHC, held dear by our unique and treasured community. Every detail has been sized and crafted to blend in with surrounding monuments and features of this hallowed ground where all peoples from all walks of life have been interred and memorialized eternally. This columbarium of 160 niches will provide enough niches to accommodate up to 352 urn interments of cremated remains.

Now, after two years of preparation, I come before you to present, in the tradition of communal open communication, a plan and supporting information reflecting my own and my family's demonstrated commitment and wish to provide a lasting service-based legacy for the benefit of the entire community. This contribution may be compared with your own personal commitment to shoulder the responsibilities associated with guiding and leading our "Southern Part of Heaven"* into the coming years and concomitant challenges.

The following documents are provided:

1) I met with Mr. Phil Fleischmann in September 2021 and provided a **Construction and Operations Plan** which is copied here for your perusal.

2) After receiving an opposing email posted in the Town portal on April 21, 2021 from Mr. Moore, I have decided to address his concerns in the order of his objections. I am aware and appreciate Mr. Moore's contribution to the OCHC and community while serving on the now defunct Cemetery Advisory Committee, the ongoing Friends of Old Chapel Hill Cemetery, and as a fellow owner of OCHC property. However, our views diverge and I wish to respectfully provide a **Reply and Rebuttal**.

3) While not an attorney, I have collected a number of **Legal Aspects** for your consideration. Relying on the language and intent of the Quitclaim Deed of February 1989 ceding the OCHC to the Town with certain conditions to be met, it is clear that fee simple rights of ownership have been historically held supporting the ability to use, sell, purchase, trade, or lie dormant without restrictions other than those found within the Town's Code of Ordinances, which specify below ground interment requirements only. OCHC currently has two above-ground columbaria and one mausoleum. The later has distinctive architecture and this columbarium is designed to compliment that structure.

4) **Summary Statement of Intent and Purpose.**

My **intent** is to clarify and respond to any and all questions and concerns without seeking consent, rather I seek a blessing of silence to proceed with ordering the structure, paying 50%(six figures) and asking for three action items from the Town:

a) Coordinate with UNC to obtain their approval for placing a footbridge over the East rock wall onto the adjacent Memorial Grove public pathway.

b) Request the TCH Cemetery Administrator, Ms. Debra Lane, to bring her metal detector and mark the exact four corner irons location for plot T-07 & T-14.

c) Request the TCH Arborist to examine and approve the removal of the tree within the Southern end of the adjacent Right of Way, thus allowing full access equipment to the plots and all other plots in this area. Up to now the equipment has been driven over and outside the bounds of the Right of Way in order to dig graves and provide funeral services.

Please be aware that my **purpose** is to focus on realizing the highest and best usage of the T-07 and T-14 plots within the overall goal of serving our community in the finest and most tasteful manner reflecting the historical precedence set long ago within the Old Chapel Hill Cemetery. Esse quam videri.

With great respect for your combined talents, efforts, and ideas, I am sincerely

Yours Truly,

s/s John Andrew Shearer

Son of Edna and Andy Shearer (RIP), owners of Plots T-07 & T-14 since 1954.

September 18, 2021

Mr. Phillip Fleischmann
Director
Parks & Recreation
Town of Chapel Hill
Chapel Hill, North Carolina

Dear Mr. Fleischmann,

This letter is intended to provide insight, goals, methods and processes with regard to the future of the OCHC columbarium project. I wish to present answers and insights to questions and concerns raised during the meeting of July 7, 2020 and of your letter on July 10, 2020. The OCHC has a long-established responsibility and functionality to act as a touchstone between the past and future generations of the Town of Chapel Hill, the University of North Carolina, and the world they and we live in and serve.

Aligning with the long-term unmet desire of many community members to be interred in the OCHC, I wanted to bring highest and best use of the two adjacent plots (T7 & T14 in Section IV) consisting of six contiguous subplots. Only six subplots (five were contiguous) have come to market within the past five years and it is likely that our six will be the last. A waiting list has existed since 1956.

Rather than selling these subplots off individually to accommodate a maximum of twelve casket type burials, if double stacked; we realized that the six contiguous subplots provided enough property to place a multi-niche columbarium, thereby increasing the solution to as many as one hundred-sixty niches, each with a capacity of two urns/niche: and thirty-two niches within the Ascension* feature with capacity for three urns/niche.. This facility can accommodate as many as three hundred and eighty-four interments.

*Ascension feature offers a larger space and slanted shutter for easy viewing. See attached photo.

Perhaps the most important feature of this project is the **public handicapped access** afforded with the juxtaposition of the columbarium to the UNC Memorial Grove scattering ground. The Memorial Grove provides public walkways from the Cobb parking deck and street parking to within five feet of the Eastern OCHC rock wall boundary. A simple low foot bridge can transverse the 6” high rock wall directly into the two parallel walkways adjacent to the columbarium. This feature assures that no visitor need step on any other gravesites in order to view and commune with those in eternal rest within the niches of the columbarium.

Globally, cremated remains inurnments represent the future in global cemetery management and are favored in over 70 % of all interments, leaving a greener cleaner environmental impact for future generations. Also, research shows that a growing majority of people now prefer to be interred above ground.

Basis for action- Since the establishment of the OCHC in 1798, the plots have been owned fee simple by individuals, families and certain organizations. In 1989 the State of North Carolina sold to the Town of Chapel Hill, via a quitclaim deed, the public right of ways, boundary walls, walk ways, and other structures associated with maintaining and defining and enhancing the property. The quitclaim deed contains specific language which directs the Town to “maintain the cemetery in a suitable condition” and to “grant some indicia of ownership (cemetery deed or other) of grave plots assigned to or belonging to individuals, families, and certain organizations. . .”.

Fee simple ownership is defined as:

Fee simple is a term that refers to real estate or land ownership. The owner of the property has full and irrevocable ownership of the land and any buildings on that land. He is free to do whatever he wishes on the land subject to local zoning ordinances. Fee simple and fee simple absolute are the same thing. Fee simple is the highest form of property ownership. <https://www.bankrate.com/glossary/f/fee-simple/>

Therefore, fee simple rights provide that I may build any structure related to cemeteries in general and within the OCHC specifically, without limitation and purpose, citing the complete absence of code ordinance to the contrary. I am building a 160 niche columbarium within the metes and bounds of my holdings Plot T-7 & T-14 in Section IV of the OCHC. The purpose of this undertaking is to provide satisfaction of my family's long-term desire for eternal rest and interment to any and all persons wishing to be memorialized on this hallowed ground.

Providers - Sunset Memorials & Stone, Ltd. of Calgary, Alberta, Canada is a leading designer and provider of monuments within North America. Their designs and levels of quality are unparalleled to include custom sourcing around the globe in order that the precise grade, color, and texture of granite finish is achieved. Their innovations include key locked aluminum niches, each protected by solid granite engraved shutters. Also, the Ascension feature on the lowest tier accommodates up to three standard size urns per niche while providing a larger niche shutter where the engraved interred names and dates are displayed. (See attached - Sunset's Ascension photo. **The onyx/black granite shutters are not specified for our columbarium**).

LEES & Associates, a leading cemetery landscape design firm from Vancouver, British Columbia, Canada was referred by Sunset to generate line drawings and renderings to be distributed as needed.

Muter Construction, LLC of Zebulon, NC has agreed to perform General Contracting services including construction plan and schedule, retaining a Professional Engineer for soil analysis and concrete specifications, public roadway right of way clearances and traffic management and any other related needs of the project. Muter is currently engaged in construction on the UNC-CH campus.

- Superior Cranes, Inc of Raleigh, NC. - Mr. Thurman Whitehead, Manager, visited the site and measured the distance from the center point of their proposed crane location on Raleigh Road to the site as 55 feet. He furnished a formal estimate to set-up, rig the loads, place the loads, and dismantle the 130-ton crane.

Timeline – The project includes:

1) Placing my order for the columbarium structure with Sunset Memorial & Stone. Since granite is sourced around the globe to achieve the most similar grade, color, and finish when compared with most memorials found in OCHC, there is a four-month lead-time before the two units arrive on site in Chapel Hill via semi-transport truck from the Sunset assembly plant in Calgary, Canada. These two units of the same size will be permanently joined and sealed together on site by an authorized Sunset technician.

2) Muter Construction to coordinate with LEES & Associates to generate design drawings and shop drawings specifying exact methods, skills and materials to prepare the site including grading, compaction, rebar rigging, concrete form installation, concrete pouring and finishing, installation of drainage pipe and creating walking paths on either side of the columbarium filled with Chapel Hill gravel. Time required: Ten working days, two calendar weeks cumulative. See attached informal Site Plan dated July 20, 2020.

3) Muter will engage a Professional Engineering firm. The PE will be responsible for obtaining and analyzing soil samples at the site and consulting with Muter and LEES & Associates to determine the correct thickness and grade of concrete to be installed. Muter Construction is responsible for providing and supervising necessary equipment and manpower to accomplish the construction plan. No calendar or cumulative time required.

4) Construction access to the site is gained in similar fashion to that of grave diggers and their backhoe equipment that is driven over the South rock wall running parallel to Raleigh Road on plywood sheets to protect the rock structure. The entry point is at the Right of Way running N and S between the sub sections "S" and "T".

See attached Plot Map.

Note: In the attached preceding photograph, the tree which stands directly within the Right of Way at the South end next to the rock wall. This tree is old and withering and has impeded access in this area of the OCHC for many years and I am requesting that the Town arborist be consulted as to the efficacy of its removal as a matter of sound maintenance and arboriculture.

P. 5

5) Muter will grade, and compact soil on site as specified in construction plan.

Two working days

Two weeks and two days cumulative.*

6) Muter to receive and rig rebar and concrete forms. More forms will be installed to create the parallel gravel walkways within the property boundaries adjacent to the columbarium.

One working day. Two weeks, three days cumulative.*

7) Receive and pour concrete, finish with screed and trowels. - One working day.

Ready mix concrete will be delivered to the access point and dispensed into buggies inside the rock wall and then delivered to the site. The ready mix truck will be instructed to remain on road pavement and not on the adjacent brick walkway. One lane closure of 30 minutes is estimated and Muter will post a flagman to direct traffic while this operation is accomplished. Muter is permitted access on the UNC campus. Two weeks, four days cumulative.*

8) Following initial set and cure of the concrete slab, Muter will receive and install drainage pipes and then cover over the pipes with Chapel Hill gravel. Rake to smooth gravel. One working day. Three weeks cumulative.*

8) Cover concrete and cure for specified time per plan. One week minimum.

One month cumulative.*

* Weather permitting

P. 6

Four months from inception –

9) Installation of two section columbarium using 130 ton all terrain crane positioned on roadway pavement of Raleigh (South) Road adjacent to the Access Point located at the N/S OCHC ROW. Requires blocking two West bound lanes for up to four hours. 55' reach from crane to site. Sunset technician/supervisor, in coordination with Muter, UNC and NCDOT supervision, will ensure section positioning is correct and then permanently attach the two sections together, followed by weather sealing of the two sections into one contiguous columbarium. One working day.

10) Final clean-up and landscaping completion. One working day.
Four months cumulative.

Pedestrian access - post installation - See attached LEES & Associates OCHC Map. This map shows yellow dotted lines as prepared walkways historically open to the public when walking from Country Club Road to Raleigh Road and continuing West towards the campus. With UNC approval these same walkways shall serve families and friends of the interred within the columbarium and adjacent grave sites by providing prepared Chapel Hill gravel walkways to and from street parking and the Cobb Parking Deck behind the Paul Green Playmakers Theatre.

The communities of Chapel Hill and UNC and all visitors to the OCHC would be well served if permission was granted to place a very low foot bridge, wide enough for wheelchair use, across the Eastern rock wall boundary of OCHC and UNC's Memorial Grove and adjacent to the columbarium. This rock wall is only 4-6 inches high, and a handrail shall be provided for safe ingress and egress to/ from the columbarium pathways. I intend to provide and underwrite this handicapped access footbridge and dedicate it to my parents.

Note: This pedestrian access point provides the only access that does not require pedestrians to trod upon the gravesites of neighboring plots. The juxtaposition of the columbarium in relation to the Memorial Grove is ideal for serving the joint purposes of the Town and Gown. OCHC visitors, young and old, may wish to honor and memorialize the legacies of the many within the columbarium and Memorial Grove who have gone before.

P.7

Associated fees -I observe that most columbaria niches are serviced (opened and closed) by a Cemetery Administrator or Funeral Director. Opening and closing of this columbarium is a two-step process:

a) The solid granite shutter is held in place by metal rosettes that respond to a special shaped wrench for removal and replacement of the shutter when opening or closing the niche.

b) Once the shutter is removed, a keyed lock in each niche is opened and closed with a common key held securely by the Cemetery Administrator or a licensed Funeral Director. Sunset Monument & Stone provides several common keys and rosette wrenches, and they will be provided to the chosen responsible party(ies).

Further, it is customary that the original opening and closing fee would be included in the purchase price when the deed/indicia* is granted to the initial purchaser.

I am in favor of establishing a two fee schedule to be collected by me and disbursed to the Town with each of the following events:

- 1) Purchase of a niche, either initial purchaser or successor/purchaser – will pay a transfer fee of \$500.00 to the Town in return for a Town Indicia* of Ownership acknowledging the parties to the purchase and transfer of ownership. See attached Sample.
- 2) A Perpetual Care Fund fee of \$500.00/niche to be held by a fiduciary firm responsible for disbursing funds to maintain and restore gravel walkways as needed and power wash the structure annually. The Town, as usual, will remove and dispose of detritus left behind by visitors wishing to leave mementos throughout the OCHC.

*Indicia – reference Quitclaim Deed of 1989.

- 3) Opening and closing (one event) of a niche – handled like a safety deposit lock box wherein owner is allowed privacy to place, replace or remove urns and memorialized items after niche is opened and until it is closed and locked by the responsible party. Initial event included in purchase price. Thereafter \$250.00/event. Provided by the Cemetery Administrator if employed by the Town, or designated Funeral Director(s).

-
Desecration - To the question of whether one party can inter remains over the remains of another previously interred, I offer:

NC General Statute

§ 14-149. Desecrating, plowing over or covering up graves; desecrating human remains.

- (a) It is a Class I felony, without authorization of law or the consent of the surviving spouse or next of kin of the deceased, to knowingly and willfully:
 - (1) Open, disturb, destroy, remove, vandalize or desecrate any casket or other repository of any human remains, by any means including plowing under, tearing up, covering over or otherwise obliterating or removing any grave or any portion thereof.
 - (2) Take away, disturb, vandalize, destroy, tamper with, or deface any tombstone, headstone, monument, grave marker, grave ornamentation, or grave artifacts erected or placed within any cemetery to designate the place where human remains are interred or to preserve and perpetuate the memory and the name of any person. This subdivision shall not apply to the ordinary maintenance and care of a cemetery.

P. 9

Mission Statement - It is my fervent commitment to honor my vow to provide this eternal asset to this Southern Part of Heaven* that I and my parents have so loved and enjoyed since 1948. They would have been pleased to know their foresight has indeed wrought a melding of all peoples within this sacred ground and is a beacon to the world looking for Good Orderly Direction.

Finally, I am not a commercial venturer and have no plans to pursue further enterprise beyond that of receiving fair compensation and ameliorating the inherent risk associated with a capital and real estate investment of this magnitude.

Please allow me to respond to any further questions and concerns and thank you for the opportunity to approach you and your colleagues for the purpose of serving the greater good.

Sincerely yours,

John Andrew Shearer

Son of Andrew Clyde and Edna Starrett Shearer (RIP)

Owner of Plots T7 & T14

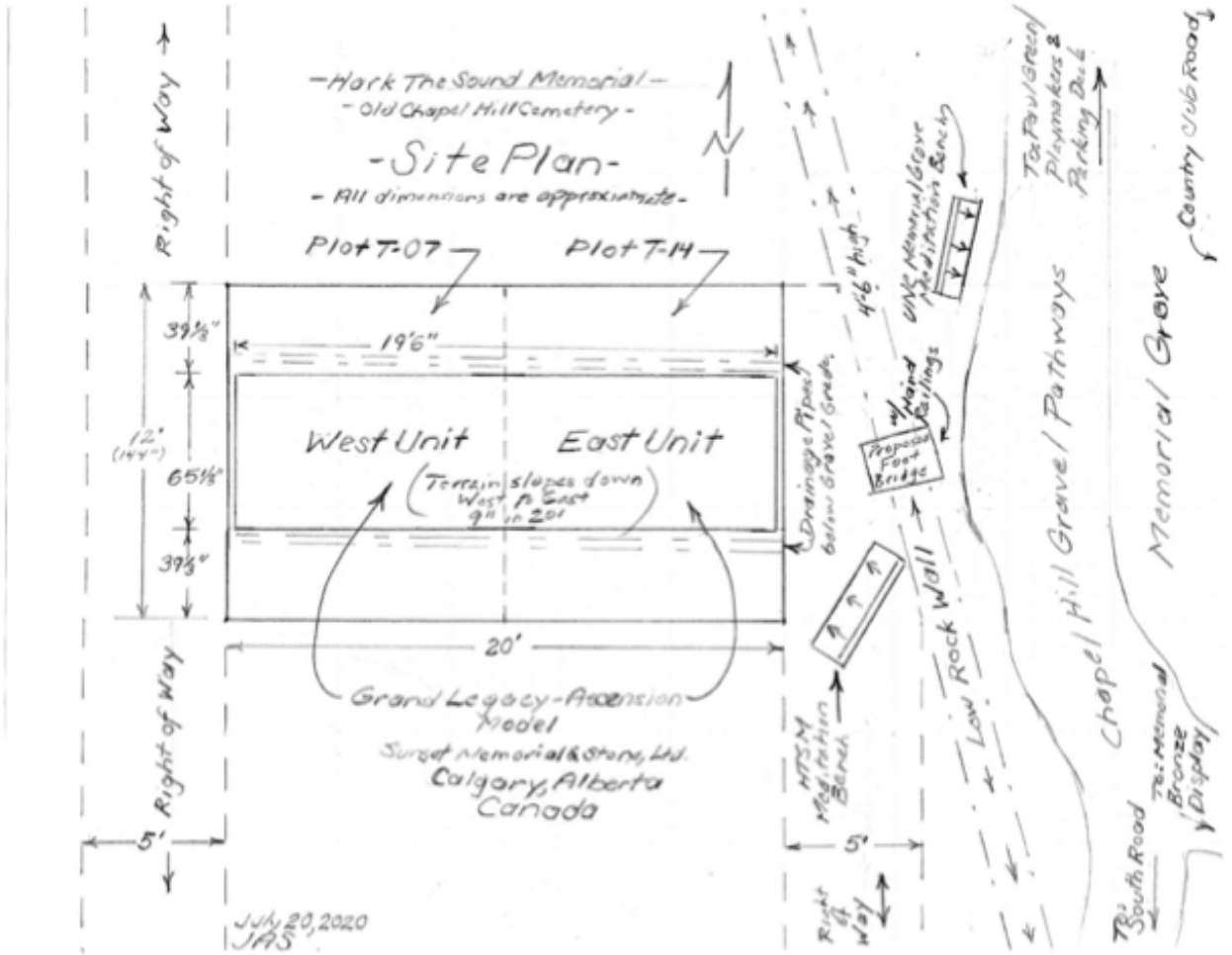
* Title of book written by William Meade Prince in 1950. Mr. Prince grew up in Chapel Hill and was a noted illustrator and author. He created the drawings of the UNC Circus Parade, then carved by Carl Boettcher, and now kept safely on exhibit in the Hill Alumni Center adjacent to the Carolina Club on the UNC campus.

Sample *Sunset Memorial & Stone, Ltd.* columbarium
featuring
Ascension base tier housing 2-3 standard urns/ niche

*Onyx shutters are not representative of
our choice of Imperial Grey on all granite surfaces.
See Slide Show Tour for exact finishes and colors.*



Informal Site Plan





View of Right of Way (ROW) from Raleigh Road looking North towards Columbarium site in red. Note large tree in ROW impeding access for grave digging, funeral arrangements, and landscaping efforts.





Note: Suggest Town Arborist be consulted for removal decision.

Section IV of OCHC with Slide Show Tour denoted.
See Slide Show Tour attached to this Presentation.

Old Chapel Hill Cemetery Map

LEES
ASSOCIATES

Legend

-  Views
-  Memorial Cross
-  Proposed columbarium site.
- 1** Tour starting point looking north.
- 2** Turn left to look west up the slope before turning 180° to the east to view the cross.
- 3** Closer view of proposed columbarium location.
- 4** Mausoleum.
-  Pedestrian route through UNC Memorial Grove leading to Cobb Parking Deck and street parking on South Road.





Plot Map

Note: Tree location at South end of Right of Way.

Request Town Arborist be consulted regarding removal in order to improve accessibility of grave digging equipment.

October 20, 2021

Reply and Rebuttal to opposition email, dated April 21, 2021 to:
Town Council<mayorandcouncil@townofchapelhill.org>
Re: Council Petition of April 14, 2021
Subject: Columbarium in Old Chapel Hill Cemetery (OCHC)

To the Mayor and Town of Chapel Hill Council Members and all interested parties:

It has come to my attention, at long last, that an opposition letter was circulated via email to the Town Mayor and Council regarding a petition to provide a columbarium on my plots T-07 & T-14 in Section IV of the OCHC. While it is my responsibility to keep informed regarding this matter, I remained uninformed of Mr. Moore's letter until I found it on September 22, 2021.

I respectfully wish to Reply and Rebut at this time while revising the petition as a way of answering any and all questions and concerns from this opposing response as well as others that may appear in the future. I shall end this letter with a Summary Statement of Intent and Purpose.

I would like to recognize Mr. Moore, submitter of opposition, and acknowledge his contributions to the OCHC through his service as a member of the now defunct Cemetery Advisory Committee, current member of the Friends of Old Chapel Hill Cemetery and fellow owner of property in the OCHC.

However, on each of his points, my opinion diverges and I offer the following rebuttal:

First, regarding the need for columbarium space, the Mr. Moore recognizes the existence of a 90 niche columbarium located in the Chapel Hill Memorial Cemetery (CHMC), and I acknowledge that future plans allow for additional niches to be built. There are no available burial plots available in the OCHC or the CHMC. In fact, with the exception of columbarium niches owned and leased by the TCH and available in CHMC, there are no burial or interment spaces available within the Town of Chapel Hill (TCH). If the average Town citizen were asked which cemetery he would prefer to be interred, I wager the OCHC would win handily. Both for its historical significance and its natural beauty and serene setting within earshot of the Bell Tower and the roar of crowds gathered in a number of nearby UNC sporting stadiums.

Second, the opposing statement supports the premise of fee simple rights of ownership as do I. However, the objection that my project is a commercial development flies in the face of practically all human endeavors wherein one party provides goods and/or services in return for compensation, thereby supporting an economic commercial engine which we are all willing parties to. Professionals including doctors, lawyers, dentists, truck drivers, nurses, professors, police, fire fighters, et al, offer themselves commercially in order to provide for themselves and their families. It is the way of the world. To say that my project must not be commercially compensated is absurd.

Page Two

In fact, I am not a developer of cemeteries or anything else, rather a private citizen/owner who remembers wishes expressed by his parents to provide a much desired and long-awaited solution for those community members who might wish to be interred eternally in the OCHC. For the record, cremated remains now make up more than 70% of all global interments and are recognized as the preferred green method of interment. Inurnments allow for a secure, discrete, yet informative method of memorializing those who choose to be sensitive to the future environment while resting in the company of others who have lived within this wonderful family and community.

Additionally, we do have a third institution distinct from commercial and government enterprise known as the “not for profit” sector. While this project aims to provide for the greater good of our integral community, it will also benefit those less economically fortunate with a sliding scale of pricing whereby the more economically fortunate will be asked to pay higher than market prices thereby equalizing the opportunity for all peoples to be interred and memorialized on this hallowed ground.

Thirdly, regarding the possible threat to the OCHC listing on the National Park Service’s National Registry of Historic Places (NRHP), this status is granted through satisfaction of a variety of contributing and non-contributing structures and objects already in place. As long as the TCH continues to honor its commitment of “The TCH shall maintain the OCHC in a suitable condition in perpetuity” as per Condition #1 found in the quitclaim deed from the State of NC to the TCH in February 1989, the NPS status will remain intact and the columbarium will serve to preserve and protect the legacies of future generations. Several other buildings and areas of Chapel Hill are in the NRHP including Chapel of the Cross, CH Historic District, Playmakers Theatre, Carolina Inn, and Meadowmont.

Looking forward, the columbarium will support a website and data base wherein each interred individual may choose to have a discrete folder containing personal history and remembrances posted prior to or posthumously and available for visitors wishing to be informed via personal smartphones or tablets on site or elsewhere. It may be said that the future is now and technology can play a positive role in bringing the past into the present and future for all.

Fourth, our original petition submittal unfortunately contained images of earlier larger versions of columbarium design. The Vancouver firm of LEES & Associates, a preeminent cemetery landscape design firm, was retained and we produced a series of renderings showing three sizes: a large seven-tiered model of 224 niches, a medium six-tiered model of 192 niches and to five-tiered model of 160 niches.

Page Three

With the revision of the petition, I am presenting the smaller five-tiered version with 160 niches affording a presence and profile that allows the complimentary coloring and size of the granite structure to blend in with the surrounding memorial stones. From a distance upslope towards the West at the paved pathway between Sections III & IV, the columbarium is hardly noticeable and does not break any sight lines from any direction. I have provided this rendered view from the cross monument to prove my point.

In addition, we are providing a materials photo/rendering showing the style and architectural features of the sole, above ground, mausoleum in OCHC to be the guide for our design using similar features.

As far as impacting the value of other plots within OCHC, it would seem obvious that more utility and service to the community greater good only increases value throughout the cemetery. A rising tide lifts all boats.

Fifth, regarding ongoing maintenance of the columbarium, it is simple. The columbarium design includes Chapel Hill gravel walkways held secure by boundary inserts flush with the ground on either side of the granite structure. These walkways will allow close inspection of the engraved names and dates of the interred without stepping on adjacent gravesites. Since the Right of Ways are not clearly marked within OCHC it is quite difficult to avoid stepping upon gravesites in an attempt to move closer to most desired monuments' point of view.

Perforated drainage pipes will be installed beneath the walkways and all water runoff will occur naturally and not impinge upon the structure or surrounding gravesites and monuments. There has been no erosion on these plots for over fifty years despite the lack of grass from growing due to lack of sunlight. Water runoff finds its way further downslope to catch basins within the UNC Memorial Grove and flooding and standing water have not occurred.

The TCH has removed several large mature trees in the area to improve the growth of grass. However, our plots will not require any maintenance other than an occasional and optional pressure washing and the usual removal of expired flowers and occasional mementos left behind by friends, families and visitors to the cemetery. The TCH provides detritus removal on an ongoing basis.

I shall provide a three-person meditation bench to be placed adjacent to the Southeast corner of Plot T-14. Also, a foot bridge over the 4 inch high boundary rock wall capable of allowing handicapped visitors access to the columbarium from the pathways in the Memorial Grove (with UNC approval of course). These improvements will be dedicated to my parents who are the responsible visionaries of the project.

Finally, and sixth, the combined plots T-07 & T-14 comprise the only remaining contiguous double plots in Section IV. This is a critical feature which I have protected from many offers received over the years to sell off one or both plots or any number of the six subplots contained within. This would have been contrary to my parents' wishes that the plots benefit the community in the same spirit of when they gifted the land for Airport Gardens public housing on MLK, Jr Blvd just North of Bolin Creek.

My father served on the TCH Planning Board and was a founding Director of the YMCA while my mother was a Grey Lady at Memorial Hospital and an active member of the CH Garden Club for many years. They and I have always supported our lovely community. We wish to do so again.

This objection is also rooted in the fear that other columbaria might appear within the OCHC. Legally, no existing grave site may be tampered with, opened or desecrated on penalty of a Class I felony within the State of NC. If other plot owners wish to provide smaller columbaria, it would only serve an ongoing demand for low impact interments that even our project will not assuage over time.

Summary of Intent and Purpose: I am risking a substantial amount of money up front to create this facility with no guarantee of a return adequate to repay the capital investment. Also, I will forfeit the value of the land itself since it will not allow for burial use unless the structure is demolished and removed. To my knowledge no one else has the willingness, ability and capacity to see this project into fruition and serve the community at large. Substantial prices were paid within the past five years for five contiguous subplots which were sold separately and one separate subplot. No others have come to market since then and a waiting list has lingered since the 1950's.

In closing and as a matter of context, I quote a paragraph lifted from the US National Park Service Form 10-900 wherein the OCHC appears in the National Registry of Historic Places:

"Because of the University's preeminent position as the first public university opened in the United States and the major public institution of higher learning in North Carolina, the Old Chapel Hill Cemetery has one of the most distinguished groups of individuals of statewide and local significance of any cemetery in North Carolina.

Among those buried there are eminent educators, mathematicians, physicians, engineers, geologists, philosophers, literary figures, and dramatists. Burials of much-beloved Chapel Hill townspeople, men and women, white and black, who operated popular hotels, boarding houses, restaurants, served in town government, and were public policy crusaders, are present there also, and have local significance."

Page Five

This statement brings to light the legacy of notables from the past who have done great service and brought honor to our greater community. If a respectful, non-obtrusive, compatible solution could be brought forward, why would we, as a living breathing society of this Southern Part of Heaven*, not wish to continue the practice of memorializing all peoples who have contributed to the eminence of our domain?

We, in fact, have the opportunity to continue the legacy, but from this time forward to include everyone, rather than a select few as found in Sections I, II, III, & IV. The arc drawn from Sections A & B in the West, filled with unmarked graves of the very people who physically built this community to the proposed columbarium in Section IV in the East is remarkable. This arc will serve as a beacon for future generations to be guided by the long awaited inclusion of all notable contributors who wish to rest eternally upon the hallowed ground of OCHC.

With deep respect and sense of community pride for the greater good, I remain

Very sincerely,

John Andrew Shearer

Son of Andrew Clyde and Edna Starrett Shearer (RIP)
Owners of OCHC Plots T-7 & T14.

Southern Part of Heaven (1950), book title written by William Meade Prince.

Mr. Prince grew up in Chapel Hill and was a noted illustrator and author.

He created the drawings of the UNC Circus Parade, then carved by Carl Boettcher, and now kept safely on exhibit in the Hill Alumni Center adjacent to the Carolina Club on the UNC campus.

Addendum:

Q. What is **Title in Fee Simple**?

A. The unconditional and complete and total ownership of property.

<https://thelawdictionary.org/title-in-fee-simple/>

To illustrate the sanctity of fee simple ownership within the OCHC, it might be helpful to read the following OCHC historical description found in the National Park Service's National Registry of Historic Places application and designation:

“Five years later, on June 11, 1928, the aldermen submitted a written petition to the trustees describing crowded conditions in the cemetery and asking for additional land. In what seems to have been a mutually beneficial exchange at the time, the trustees granted three acres, two on the east side (apparently Sections III and IV), and one on the south side (apparently a southern expansion of Sections A & B).¹⁶ Receipts from the sale of lots [burial permits] were to be placed in a maintenance fund, and oversight of the entire project was assigned to a committee of five members, appointed by the aldermen and the faculty buildings and grounds committee.

This arrangement apparently worked satisfactorily and many burials of prominent educators and townspeople took place in the cemetery during the 1930s and 1940s. Then in the late 1940s, the town record reflected concerns about the appearance of the cemetery. Complaints about weeds, sunken graves, and overturned monuments prompted debate as to whether the responsibility for upkeep of grave sites lay with individuals whose family members were interred in the cemetery or with the town.

The town took the position that burial sites were private property and that the rights of owners would be infringed on if it assumed responsibility for the maintenance of individual graves.”

I construe that a grave plot and a columbarium niche are of the same cloth and are identified and quantified parcels of property. I shall contribute \$500.00/ niche to the TCH in return for their honoring the quitclaim deed condition #2 – “The TCH will grant some indicia of ownership (cemetery deed or other) of grave plots assigned to or belonging to individuals, families, or certain organizations . . .

In addition, I shall contribute \$500.00/niche to a Perpetual Care Fund administered by a fiduciary firm acceptable to the TCH. This fund will be drawn upon to fund any and all expenses associated with the columbarium on an ongoing perpetual basis. I urge the extension of this per niche PCF contribution to all future exchanges of ownership that shall occur. Interest on a nominal sum of \$80,000.00 should pay for pressure washing and detritus collection in perpetuity. JAS

October 20, 2021

VIA EMAIL

LEGAL ASPECTS -

RE: Old Chapel Hill Cemetery, Proposed Columbarium, Section IV, Plots 7 and 14.
("Property")

Town Authorization:

The Town of Chapel Hill ("TCH") owns the Old Chapel Hill Cemetery (OCHC) common ground property described in the 1989 Quitclaim Deed (see attachments). This holding is **exclusive** of all of the identified burial plots in OCHC. These plots are "owned by individuals, families and certain organizations" not including the TCH. The TCH is required to maintain and administer/regulate the cemetery common grounds in compliance with Conditions #1-5 of the said Quitclaim Deed.

Condition #1 – "The TCH shall maintain the cemetery in a suitable condition in perpetuity."

Comment: I observe the Town has honored this condition to include the removal of several trees in Section IV that will improve the growing of grass and improve the daily lighting of the area.

Condition #2 – "The TCH grant some indicia of ownership (**cemetery deed** or other) of grave plots assigned to, or **belonging to individuals, families and certain organizations** such as the Dialectic and Philanthropic Literary Society . . ."

Unlike many cemeteries in the state of North Carolina, OCHC is not recognized or governed by the NC Cemetery Commission. Please note the link showing the Scope Clause of the N.C. Cemetery Act:

https://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_65/Article_9.html

which states:

§ 65-47. *Scope.*

*"The provisions of this Article shall apply to all persons engaged in the business of operating a cemetery as defined herein, **except cemeteries owned and operated by governmental agencies** or churches."*

In the alternative, the Town is responsible for OCHC oversight through its own Parks and Recreation Department.

Comment: While OCHC is exempt from NC Cemetery Commission regulation, I intend to honor the spirit of the Act by establishing a Perpetual Care Fund as mentioned herein and to conduct all business affairs as if regulated by the NCCC.

No listing of OCHC within the TCH Code of Ordinances:

Since the OCHC and Barbee – Hargraves Cemetery are not listed or mentioned within the Town Code of Ordinances, they are exempt from all provisions that apply to the other two listed cemeteries owned by the Town of Chapel Hill, except in:

Chapter 6.

Article I. - In General. (All TCH cemeteries*)

Article II. - Chapel Hill Memorial Cemetery

Article III. - West Chapel Hill (Jay Street) Cemetery

These three Articles comprise the entire Chapter 6 entitled CEMETERIES.

Article I. – “In General” pertains to below ground graves, grave liners and vaults, peace and good order, traffic, animals, hours of operation, disturbing/defacing of graves, and artificial flowers.

No mention is made regarding above ground interments.

Regarding above ground interments, Article II of the Code exclusively recognizes and covers Chapel Hill Memorial Cemetery (CHMC) where the Town owns fee simple and maintains an above ground 96-niche columbarium.

Further in Article II, Section 6-22 entitled “*No conveyance of title of grave space. – Fee simple title to the property included in the CHMC governed by this article shall remain vested in the Town of Chapel Hill.*” This Section specifically distinguishes between the holders of Rights of Interment without fee simple rights within the CHMC and the owners of OCHC plots that have the right to buy, sell, trade or exchange their fee simple deeded plots or subplots on the open market for cash or other instruments of value.

OCHC precedent was established in 1798 and codified in 1922 when UNC and the TCH agreed that TCH would maintain OCHC and administer sale of plots. Further precedence was set through the language found in the Quitclaim Deed of 1989 when Title was officially ceded to the TCH.

*TCH owned cemeteries:

- OCHC – Old Chapel Hill Cemetery (listed in website but not in Code)
- CHMC – Chapel Hill Memorial Cemetery
- West Chapel Hill (Jay Street) Cemetery
- Barbee – Hargraves Cemetery (listed in website but not in Code)

A Cemetery Advisory Board was declared **inactive** in 2008 while a Parks, Greenways & Recreation Commission, with no authority to govern, consults with and “advises the Council on matters affecting the overall recreational policies of the Town, the acquisition and use of lands and properties related to the total community recreation program, and its long-range projected programs for recreation, parks, and playgrounds.” **No mention is made of cemeteries.**

The Property in question: The owner possesses Plots T-7 & T-14 in Section IV of OCHC. As in all plots in Section IV, each plot is divided into three subplots. Each plot measures 12’X10’ and each subplot measures 4’ X 10’. The two plots are to be the home of the columbarium and they measure 12’ X 20’combined. They are adjacent to the Eastern boundary rock wall between OCHC and the UNC Memorial Grove cremated remains scattering ground, walkways and memorial register.

Owner’s rights regarding the Property:

The owner’s interest in the Property is further defined and affirmed through a variety of references including the Town’s website: *“Chapel Hill Parks and Recreation manages cemetery plot and columbarium sales for Chapel Hill Memorial Cemetery, only. Cemetery plots in the West Chapel Hill Cemetery and **the Old Chapel Hill Cemetery are no longer sold by the Town but may be available from private owners.**”*

Finally, the owner has provided records affirming the purchase date, amount and plot locations and other corroborating information. These are shown in Exhibit A of this Analysis and include:

- a. Last Wills and Death Certificates of the Owner’s mother and father, Edna Starrett Shearer and Andrew Clyde Shearer, transferring the Property to the owner. (Previously inserted in Town of Chapel Hill Attorney’s file.)
- b. Ledger entry from the “Town of Chapel Hill, N.C. Old C.H. Cemetery Record” indicating Section IV, plots T7 and T14 as owned by A. C. Shearer, owner’s father.
- c. Map of the Old Chapel Hill Cemetery highlighting Section 4 (Rows Q, R, S, T) indicating ownership of plots T7 and T14 by A. C. Shearer, owner’s father.
- d. Pages 15 and 16 of spreadsheet with header “Old Chapel Hill Cemetery Section 4 – By Plot”, dated December 6, 1990, indicating ownership of plots T7 and T14 by A. C. Shearer, owner’s father.

- e. Sample Release on Town of Chapel Hill, Parks and Recreation letterhead, signed by Ms. Debra Lane, Cemetery Administrator – August 9, 2009.
- f. Copy of Bill of Sale between playwright Paul Green and Professor Dr. Hugh T. Lefler, Sr. for Plot T15 – October 3, 1977.
- g. Handwritten diagram by A. C. Shearer, owner’s father, on father’s company letterhead dated August 8, 1968.
- h. Grave Search from Find-A-Grave database, a commercial grave location company.

Items b., c., d., e., & f. above were provided by the Cemetery Administrator, Ms. Debra Lane and she has provided consistent and helpful service including the magnetic marking of the plots over the years since the owner has been pursuing a plan for the betterment and greater good of the Town and UNC communities. Her contact information is:

Ms. Debra Lane
6850 Millhouse Road
Chapel Hill, NC 27516-8173
Phone: (919) 968-2738
Email: dlane@townofchapelhill.org

-
-

Owner’s responsibility / documentation:

The owner is aware that the provision of this columbarium must be supported and managed in the spirit of the Quitclaim Deed of 1989. Therefore, the owner shall:

- a. Establish a Perpetual Care Fund (PCF) in the amount of a transfer fee of \$500.00 per niche at the time of initial transfer of each niche. \$500.00 per transfer shall be placed in a fiduciary escrow account used solely for the care and management of the columbarium/niches to include an ongoing wind and hail insurance policy. The owner agrees to pay an “Indicia Fee” of \$500.00 to the TCH upon receipt of each \$500.00 transfer fee. In return, the Town will grant a Cemetery Deed of Transfer acknowledging the parties to the purchase and transfer of niche properties as per the Quitclaim Deed.
- b. Suggest that all future transfers of niche property, after current owner initially transfers all available niches to purchasers, shall be subject to the same \$500.00 transfer fee payable to the PCF and \$500.00 Indicia fee payable to the TCH in return for the granting of a Cemetery Deed of Transfer from seller to buyer of each niche.

b. provide to the new purchaser, during the initial transfer phase, two niche opening and closing events. After the initial transfer phase, the owner shall appoint several local funeral homes to offer the opening and closing of niches and provide them with special wrenches and master keys for this purpose. These cooperating funeral homes will be listed on the HTSM website. A \$250.00 fee per each opening/closing event may be charged and payable to that funeral home for that service.

c. maintain all records relating to 1) sale/transfer of niches during the initial transfer phase, 2) the Perpetual Care Fund, and 3) accounting at the owner's expense, to be held at the owner's principal place of business in North Carolina (or suitable fiduciary) and will hand over those records, after all niches have been initially transferred, to a fiduciary firm hired to provide perpetual management of the PCF.

d. retain the right to give, by deeded transfer, niche properties to any entity he so chooses and close the initial transfer phase at that time. Such gifts will not be subject to the PCF or transfer fees.

e. cause all granite shutter engravings to be of same size and font until initial transfer of niches is complete, and such engravings will be limited to: Full name, dates of birth and death (example - September 25, 1944 = October 20, 2021) of the interred. The fiduciary agrees to maintain this standardization of size, font, and content of engravings onto all granite shutters on the columbarium by way of having each transferee sign an agreement to abide by this specification and all rules and regulations in Chapter 6, Article I of the TCH Code of Ordinances.

f. promulgate a document to be received and agreed to by transferees regarding rules pertaining specifically to the columbarium to protect the interests of all stakeholders involved. The rules will be created by the owner and approved by the Town. A complete set of engraving specifications, general rules and columbarium rules will be provided to each niche purchaser at time of closing.

Summation: The owner holds the right of use or to sell the property, meaning he has the right to be buried in or interred in/on the Property or to transfer/sell his fee simple deeded property on the open market. By indicating that plots and columbarium niches in OCHC may be available for transfer/sale “from private owners” the Town acknowledges the owner’s right to sell the Property in whole or any portion thereof.

Therefore, while the owner agrees to inform and advise the Town in all matters associated with this facility, the owner is free to cause the construction and installation of a columbarium on his property without consent from the TCH since precedent is established that has allowed property owners to erect columbaria, monuments, obelisks, wrought iron fences, stone boundary markers, meditation benches and gardens, and multi-crypt mausoleums without limitation within the OCHC.

Finally, the community served by OCHC is comprised of Chapel Hill, UNC, Orange County, the State of North Carolina and beyond. Those people who associate themselves with the highly valued and rich cultural heritage of these revered communities and institutions have not enjoyed access to after-life memorialization within the OCHC since the last remaining plots were sold in 1956. As an alternative, the Chapel Hill Memorial Cemetery has sold out in recent years with only a few columbarium niches remaining available for interment. There are no announced plans or initiatives currently being contemplated by the TCH for additional cemeteries to be provided to the community.

This columbarium facility shall provide the community with the opportunity for some 352 urns to be interred within some 160 niches and to be contained and protected in a grey granite structure with granite shutters sealing off key - locked niche doors. These niches will be housed in a tasteful appropriately sized traditional columbarium designed by cemetery architects LEES Associates of Vancouver, British Columbia, Canada and manufactured by world leaders, Sunset Memorial & Stone, Ltd. of Calgary, Alberta, Canada.

Particular care has been used to create a structure of similar classic appearance, shape, and size to those monuments found within the OCHC. Of particular emphasis is in providing unprecedented access to the facility including foot traffic without stepping on any adjacent grave sites. Assuming UNC approval, nearby parking decks and street parking are accessed by the lovely gravel pathways within the UNC Memorial Grove. In addition, a foot bridge will afford handicapped access over the old stone wall on the East boundary of OCHC. A meditation bench is contemplated to be placed next to the bridge.

The facility will be served by a discrete website accessed by an on-site DR coded URL for the edification of the friends and families of the deceased with curriculum vitae and other pertinent remembrances provided through visitor smart phones and tablets.

Mission Statement – The interment of cremated remains is now the global green/gold standard for minimal environmental impact and now is practiced in over 70% of all interments worldwide. The owner is not a commercial cemetery operator and only wishes to exercise his right to provide a long sought, eternal rest facility to the community and to fulfill the wishes of his departed parents. He has no plans to pursue further business beyond that of receiving fair compensation for his labors and ameliorating the inherent risk associated with a capital and real estate investment of this magnitude.

I hope this answers your questions and responds to concerns regarding the owner and proposed columbarium to be located in the OCHC. Please advise if you need further information or documentation, and feel free to contact me with any questions.

Looking forward,

John A. Shearer

(919)612-8646

johnashearer@me.com

Exhibit A
Old Chapel Hill Cemetery
Chapel Hill, NC
Property Records

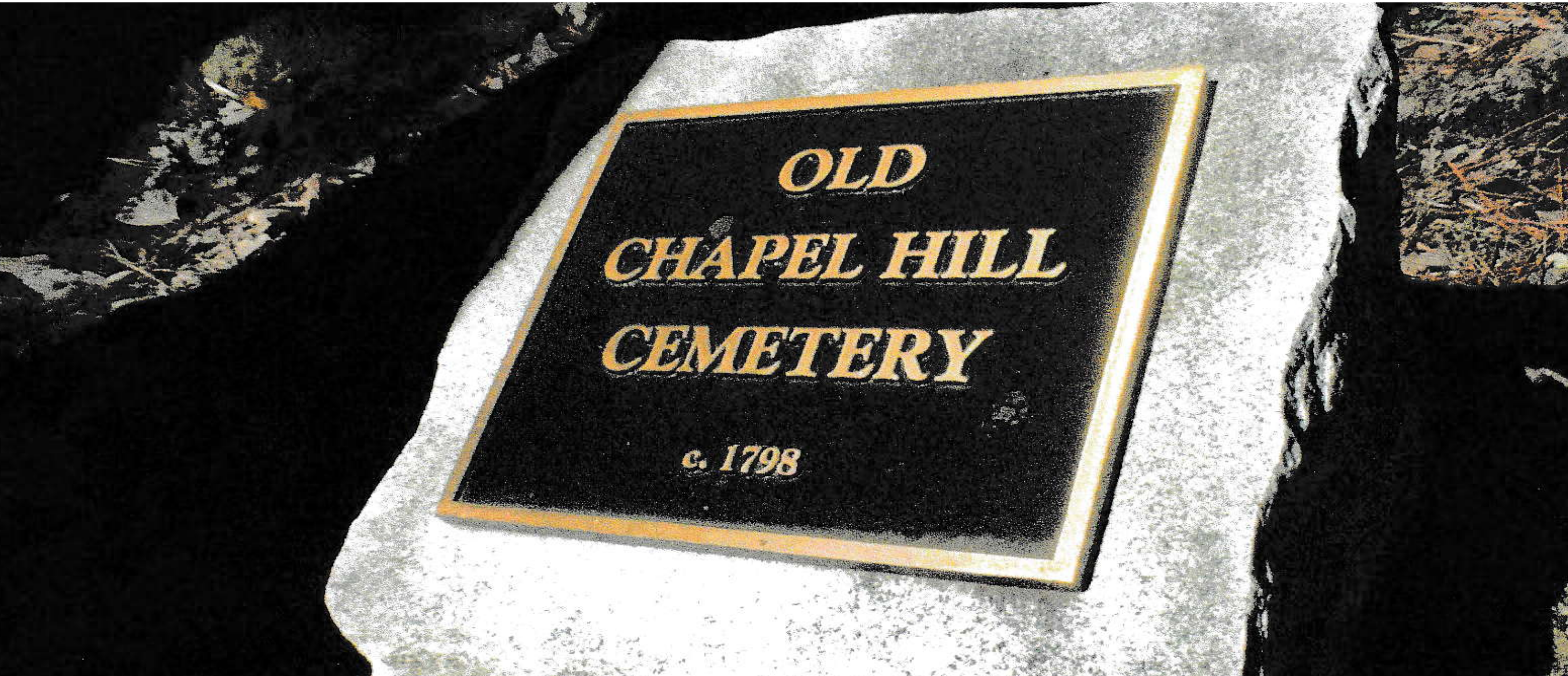
- a. Last Wills and Death Certificates of the Owner's mother and father, Edna Starrett Shearer and Andrew Clyde Shearer, transferring the Property to the Owner. (Previously inserted in Town of Chapel Hill Attorney's file.)
- b. Ledger entry from the "Town of Chapel Hill, N.C. Old C.H. Cemetery Record" indicating Section IV, plots T7 and T14 as owned by A. C. Shearer, Owner's father.
- c. Map of the Old Chapel Hill Cemetery highlighting Section 4 (Rows Q, R, S, T) indicating ownership of plots T7 and T14 by A. C. Shearer, Owner's father.
- d. Pages 15 and 16 of spreadsheet with header "Old Chapel Hill Cemetery Section 4 – By Plot", dated December 6, 1990, indicating ownership of plots T7 and T14 by A. C. Shearer, Owner's father.
- e. Sample Release on Town of Chapel Hill, Parks and Recreation letterhead, signed by Ms. Debra Lane, Cemetery Administrator – August 9, 2009.
- f. Copy of Bill of Sale between playwright Paul Green and Professor Dr. Hugh T. Lefler, Sr. for Plot T15 – October 3, 1977.
- g. Handwritten diagram by A. C. Shearer, Owner's father, on father's company letterhead dated August 8, 1968.
- h. Grave Search from Find-A-Grave database, a commercial grave location company. Page 2 indicates Plot T07 to be occupied by Edna Starrett Shearer and Andrew Clyde Shearer and T14 owned by Shearer and labeled "(Empty)".
- i. Quit Claim Deed dated February 22, 1989 by the State of North Carolina to the Town of Chapel Hill, North Carolina regarding the Old Chapel Hill Cemetery. Page Two shows conditions to be met by the Town.

CONTEXTUAL INFORMATION

- OCHC established 1798.
- 1922 – UNC & TCH agree that TCH shall maintain OCHC and administer sale of plots.
- 1989 - State of North Carolina grants quit claim deed of OCHC to TCH for purpose of landscape improvements, stone wall repairs, grave marker repairs, walkway improvements and signage. The land is conveyed subject to certain conditions which are expressly assented to by the second party (TCH) in accepting their deed, said conditions being as follows:
 - 1) TCH will maintain the OCHC in suitable condition in perpetuity.
 - 2) TCH will grant some indicia of **ownership (cemetery deed** or other) of grave plots assigned to or **belonging to individuals, families,** and certain organizations. . . .
 - 3) UNC shall be presented with, and shall concur in, the master plan of improvements and restoration prepared by the TCH prior to commencement of any work in the cemetery.
 - 4) The TCH shall now and forever more be sensitive to preservation issues in its restoration, improvement, and maintenance of the cemetery.
 - 5) Should the TCH fail to perform any of these conditions, the land shall revert to the State of North Carolina.
- The quitclaim deed provides **modern precedence supporting original precedence of fee simple ownership** of all grave plots within OCHC.
- OCHC is regulated by TCH, a governmental agency, and **is exempt** from NC Cemetery Act.
Ref: Section 65-47. A. Scope.
- **OCHC is not mentioned or named in the TCH Code of Ordinances.**
- OCHC may be included in TCH within Chapter 6, Article I. – In General. This section refers to **below ground** graves, grave liners and vaults, peace and good order, traffic, animals, hours of operation, disturbing/defacing of graves, and artificial flowers.
- **Above ground** interments are dealt with **only** in Article II. – regarding Chapel Hill Memorial Cemetery (CHMC). Further, the code states “No conveyance of title of grave space. Fee simple title for property in CHMC shall remain vested in the TCH.
- This statement clearly is intended to delineate free flowing Fee Simple rights of private ownership in OCHC from restricted ownership rights in favor of the TCH in the CHMC.
- Article III pertains to West Chapel Hill Cemetery and concludes the extent of Chapter 6. – Cemeteries of the Town Code of Ordinances.
- **Research reveals the presence of two above ground level columbaria and one mausoleum in the OCHC.**

END

Old Chapel Hill Cemetery - Columbarium Proposal







LEES
+
ASSOCIATES

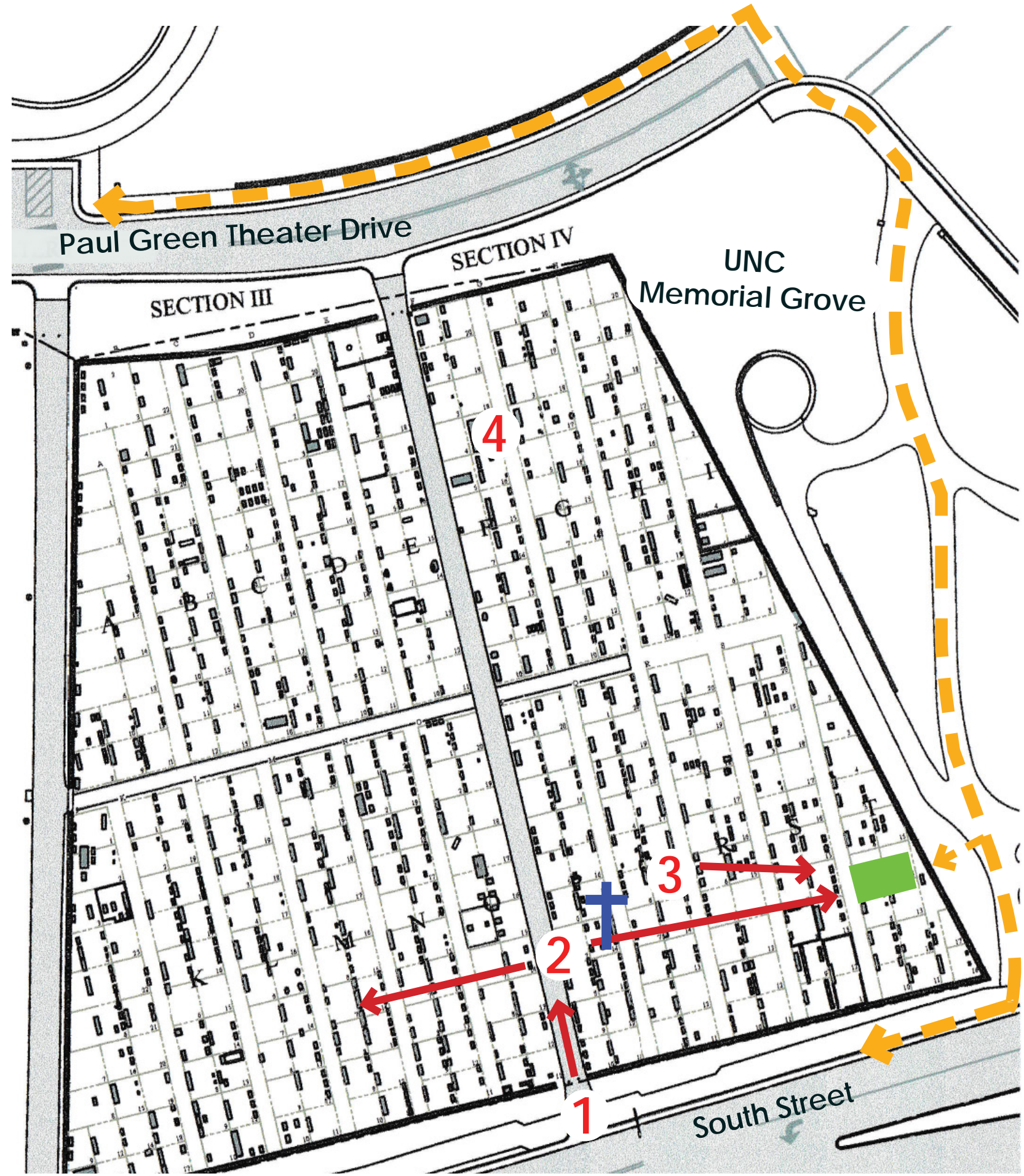
509 - 318 Homer Street
Vancouver, BC, Canada
V6B 2V2

October 2021

Contact:
Richard Cook, Principal
phone: 604-899-3806
email: rcook@elac.ca
website: www.elac.ca

Old Chapel Hill Cemetery Map

- Legend**
-  Views
 -  Memorial Cross
 -  Proposed columbarium site.
 - 1** Tour starting point looking north.
 - 2** Turn left to look west up the slope before turning 180° to the east to view the cross.
 - 3** Closer view of proposed columbarium location.
 - 4** Mausoleum.
 -  Pedestrian route though UNC Memorial Grove leading to Cobb Parking Deck and street parking on South Road.



Old Chapel Hill Cemetery - Location 1 and 2



Location 1, View 1
Starting point: View looking North along pathway



Location 2, View 1
View upslope to the West

Old Chapel Hill Cemetery - Location 2, View 2



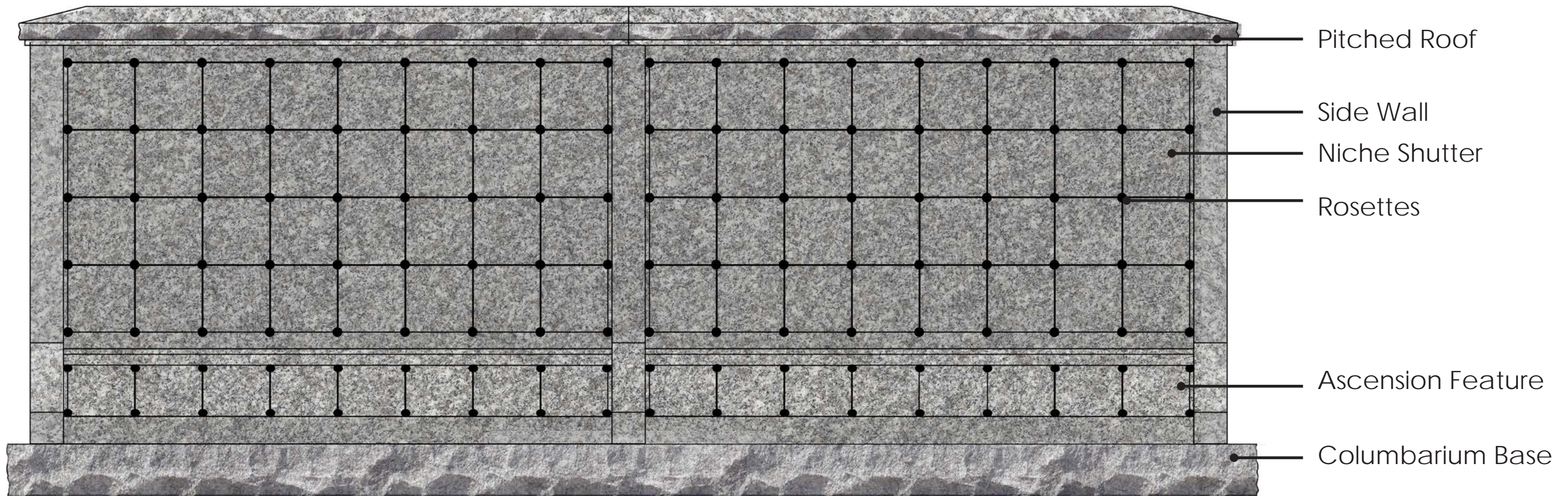
View downslope to the East from the memorial cross towards the proposed columbarium location.

Old Chapel Hill Cemetery- Location 3, View 1

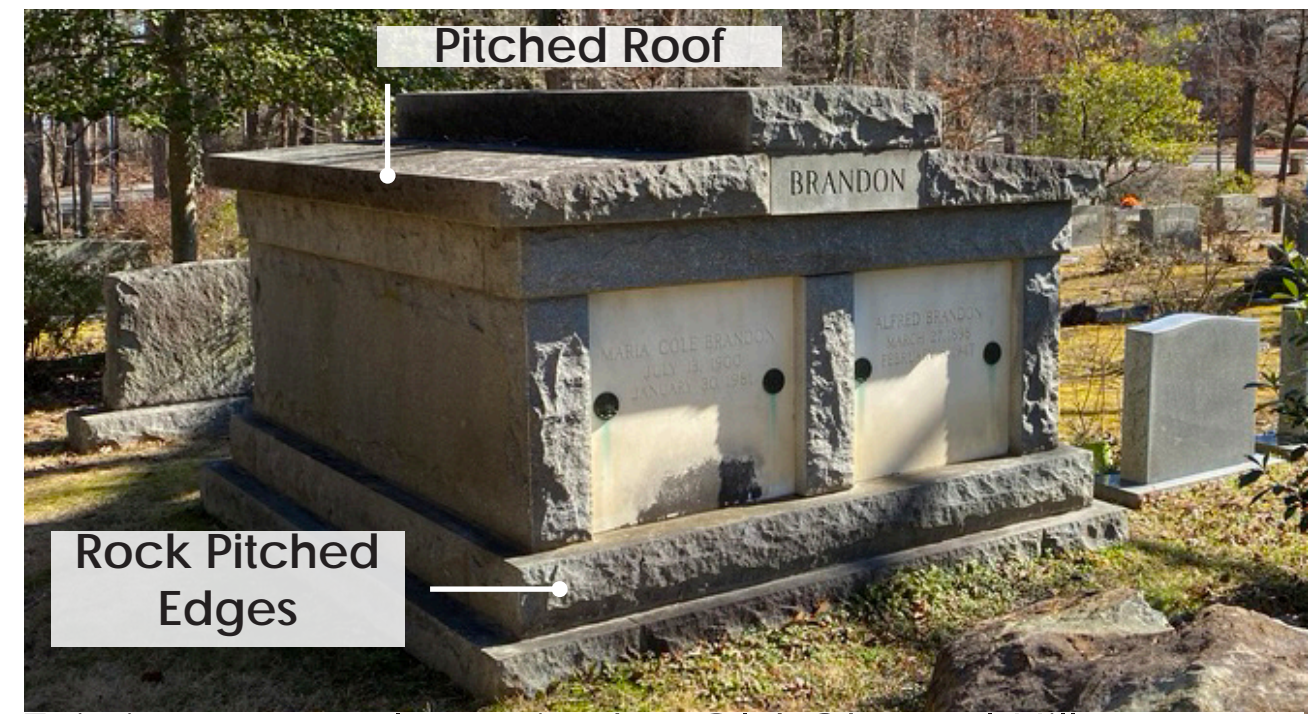


Closer view of the proposed columbarium location

Proposed Columbarium - Colors, Materials and Finishes



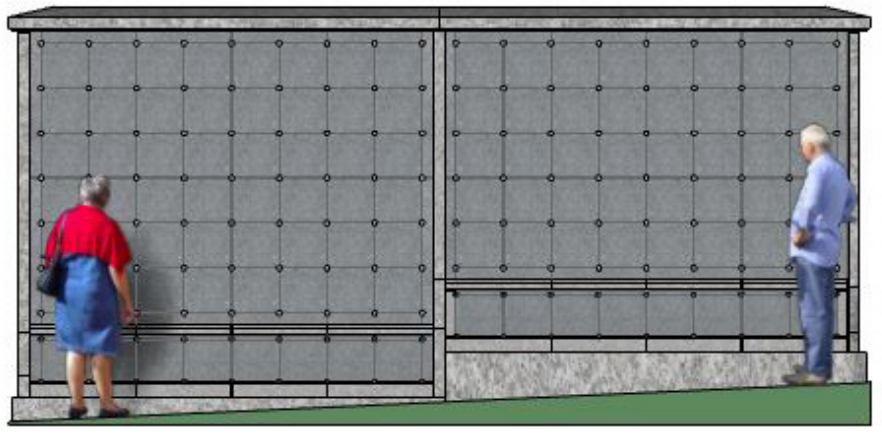
Item	Material	Color	Finish
Pitched Roof	Granite	Gray	Rock pitch sides
Side Wall	Granite	Gray	Honed
Base	Granite	Gray	Rock pitch sides
Shutters	Granite	Gray	Honed



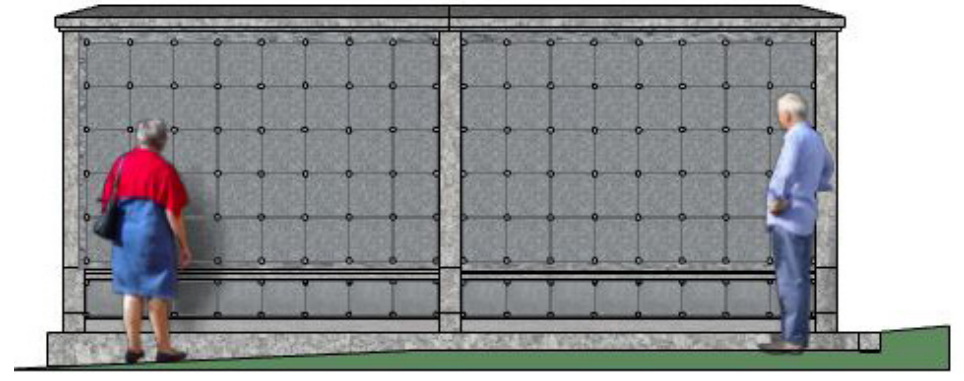
Existing mausoleum in the Old Chapel Hill Cemetery. (Refer to cemetery map location 4)

Original Design v's Revised Design

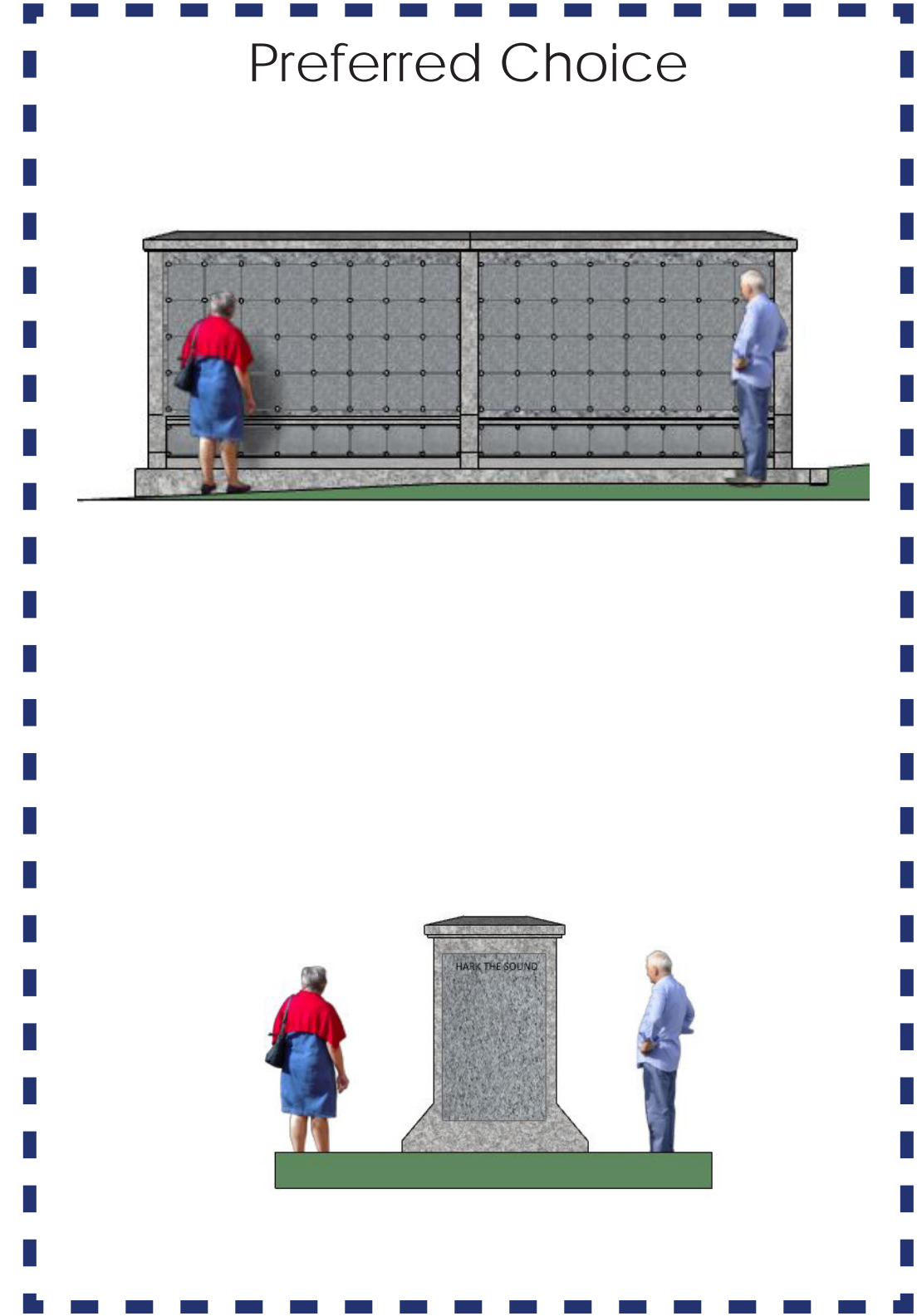
Original Design



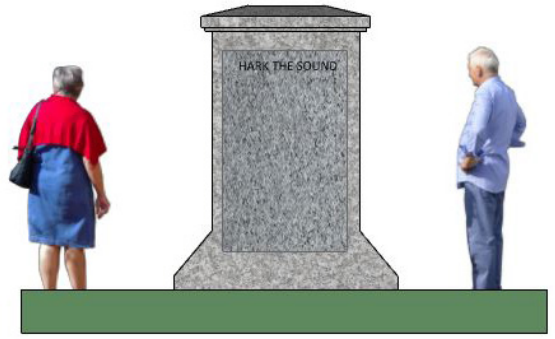
Revised Design #1



Revised Design #2



Preferred Choice



Thank you
Questions?

