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4700 HOMEWOOD COURT
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RALEIGH, NORTH CAROLINA 27609
(919) 878-8060
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July 1, 2019

VIA EMAIL, aharvey@townofchapelhill.org AND BY HAND-DELIVERY

Amy T. Harvey, Deputy Town Clerk
Town of Chapel Hill
Chapel Hill Town Hall
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27704

Re: Appeal to the Board of Adjustment of the Town of
Chapel Hill of the Denial of a Portion of an
Application for Certificate of Appropriateness for
306 North Boundary Street

Dear Ms. Harvey:

Our courier delivered to you today an original and a copy of appeal documents. The owners of 306 North Boundary Street, applicants for a Certificate of Appropriateness through their architect, Erik Van Mehlman, AIA, are appealing the Historic District Commission's denial of Item 2 of their Application for Certificate of Appropriateness (the addition of a two-bay detached garage with an accessory dwelling unit above). Our courier also delivered to you two checks, one in the amount of \$600.00 for the filing fee and one in the amount of \$138.40 for the mailing fee. It is our understanding that delivery of these documents to you today constitutes a filing of the appeal as of July 1, 2019.

Because the Town of Chapel Hill also desires electronic copies of these documents, please find attached the following:

- Variance or Appeal Application
- Mailing list of owners of property within 1,000 feet perimeter of 306 North Boundary Street with map (both mailing list and map included in PDF of Variance or Appeal Application and also attached separately to this email)
- Statement of Justification

Amy T. Harvey, Deputy Town Clerk
Town of Chapel Hill
July 1, 2019
Page 2

- Exhibits A, B, C, D, E, F, G, H and I to Statement of Justification

With my best personal regards, I remain

Sincerely,

BROWN & BUNCH, PLLC



LeAnn Nease Brown

LNB/mjl

13595\01\1\015Harvey

Attachments/Enclosures

cc: Jake Lowman (via email, jlowman@townofchapelhill.org)
Ralph Karpinos (via email, rkarpinos@townofchapelhill.org)
Brian Ferrell (via email, bferrell@kennoncraver.com)
Stephen Cumbie (via email)
Druscilla French (via email)
Erik Van Mehlman (via email)
Randall Lanou (via email)

VARIANCE OR APPEAL APPLICATION



TOWN OF CHAPEL HILL

Planning Department

405 Martin Luther King Jr. Blvd.

phone (919) 969-5040 fax (919) 969-2014

www.townofchapelhill.org

Parcel Identifier Number (PIN): 9788599778

Date: 07/01/2019

Section A: Project Information

Project Name: 306 N. Boundary Street Application for Certificate of Appropriateness

Property Address: 306 N. Boundary Street, Chapel Hill, NC Zip Code: 27514

Existing Zoning District: R-1 and R-2/Franklin-Rosemary Historic District

Description of Request: Appeal of denial of Item 2 of Application for Certificate of Appropriateness (the addition of a two-bay detached garage with an accessory dwelling unit above) and appeal of determination that the motion to deny was passed by the Historic District Commission.

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

Applicant Information (to whom correspondence will be mailed):

Name: Stephen Cumbie and Druscilla French, c/o LeAnn Nease Brown, their attorney

Address: Brown & Bunch, PLLC, 101 N. Columbia Street

City: Chapel Hill State: NC Zip Code: 27514

Phone: (919) 968-1111 Email: lnease@brownandbunch.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: [Signature] Date: 07/01/2019

Owner/Contract Purchaser Information:

☒ Owner

☐ Contract Purchaser

Name: See above

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: [Signature] Date: 07/01/2019

Stephen Cumbie and Druscilla French



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.

<input checked="" type="checkbox"/>	Application fee (refer to fee schedule)	Amount Paid \$	600.00
<input type="checkbox"/>	Digital Files – provide digital files of all plans and documents		
<input checked="" type="checkbox"/>	Mailing list of owners of property within 1,000 foot perimeter of subject property (see GIS notification tool)		
<input checked="" type="checkbox"/>	Mailing fee for above mailing list	Amount Paid \$	138.40
<input type="checkbox"/>	Written Narrative describing the proposal		
<input checked="" type="checkbox"/>	Statement of Justification – Respond to subsection 4.12.2(a)(1-4) of the Land Use Management Ordinance.		
<input type="checkbox"/>	Recorded Plat or Deed of Property		
<input type="checkbox"/>	Stream Determination – necessary for all submittals		
<input type="checkbox"/>	Jurisdictional Wetland Determination – if applicable		
<input type="checkbox"/>	Reduced Site Plan Set (reduced to 8.5" x 11")		

Type of Variance or Appeal (Choose one of the following):

- ☐ 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.

The Applicants are aggrieved parties pursuant to N.C.G.S. §160A-388 as they are the owners of the property.

Please see attached Statement of Justification.



**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

☒ X

Area Map

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

☐

Detailed Site Plan

PHARAOHS RENTALS LLC	9642 TRAVILLE GATEWAY DR	ROCKVILLE	MD	20850
THE ALTRIDGE GROUP LLC	PO BOX 1198	Carrboro	NC	27510
LEITNER FREDRICK CARL II	112 TIMBERLYNE CT	CHAPEL HILL	NC	27514
HOLT W A	1001 COWPER DR	RALEIGH	NC	276082228
FERTIC LEON H	16200 FOUR LAKE LN	MONTVERDE	FL	347563027
CORNELLA RICK JAY	171 BUFF RIDGE RD	BOONE	NC	28607
WATSON SUE FORBES	317 S JAMES ST	ASHLAND	VA	230051924
ENGINE 31 HOLDINGS LLC	506 E ROSEMARY ST	CHAPEL HILL	NC	27514
TRANI STEPHEN S	P O BOX 2346	CHAPEL HILL	NC	275152346
CASTILLO MAURICIO	416 HILLSBOROUGH ST	Chapel Hill	NC	27516
VINCENT JEFFREY	113 CAMPBELL LN	CHAPEL HILL	NC	27514
408 THE HILL LLC	721 MT CARMEL CHURCH RD	CHAPEL HILL	NC	27517
EVANS JANET WOOD BROWN	403 NORTH ST	CHAPEL HILL	NC	275143727
FINN DEBORAH RADOVSKY	214 HILLSBOROUGH ST	CHAPEL HILL	NC	275143521
BETA UPSILON ED FOUNDATION	PO BOX 3270	CHAPEL HILL	NC	27515
N C DELTA UPSILON FD	5105 REMBERT DRIVE	RALEIGH	NC	27612
MAY ROBERT E JR	408 NORTH ST	CHAPEL HILL	NC	27514
TALLMAN DORIAN J	500 NORTH ST	CHAPEL HILL	NC	27514
KOPP VINCENT JOSEPH	501 E ROSEMARY ST	CHAPEL HILL	NC	275143714
HEATH MILTON S JR TRUSTEE	504A NORTH ST	CHAPEL HILL	NC	275143725
MAY ROBERT E JR	408 NORTH ST	CHAPEL HILL	NC	27514
PARKER H STEWART TRUSTEE	500 E ROSEMARY ST	CHAPEL HILL	NC	27514
RUSSELL SALLIE SHUPING	507 E ROSEMARY ST	CHAPEL HILL	NC	27514

BROWN MARY F	223 FLEMINGTON RD	CHAPEL HILL	NC	27517
TANNA CHAYA TRUSTEE	506 E ROSEMARY ST	CHAPEL HILL	NC	27514
LEE PETER JAMES	511 E ROSEMARY ST	Chapel Hill	NC	27514
REED PATRICK W	513 E ROSEMARY ST	Chapel Hill	NC	27514
510 E. ROSEMARY LLC	2923 SYMPHONY WOODS DR	CHARLOTTE	NC	28269
LORENZINI DINO	512 E ROSEMARY ST	CHAPEL HILL	NC	275143719
SPANGLER C D JR	SPANGLER CONST P O BOX 36007	CHARLOTTE	NC	282366007
RAYNOR WILLIAM J	1 THE GLEN	CHAPEL HILL	NC	27514
DEFOSSET MICHELLE	304 HILLSBOROUGH ST	CHAPEL HILL	NC	275143100
BLASS JOSEF TRUSTEE	405 NORTH ST	CHAPEL HILL	NC	27514
ROSE DAVID E	402 HILLSBOROUGH ST	CHAPEL HILL	NC	27514
PRESTON R J SIMS	404 HILLSBOROUGH ST	CHAPEL HILL	NC	27514
REYNOLDS JOHN M	201 MINT SPRINGS LN	CHAPEL HILL	NC	27514
REN JUN	109 CAMPBELL LN	CHAPEL HILL	NC	27514
LOWRY PATRICIA H	407 NORTH ST	CHAPEL HILL	NC	275143727
GREEN LINDA E TRUSTEE	409 NORTH ST	Chapel Hill	NC	27514
PRESTON R J SIMS	404 HILLSBOROUGH ST	CHAPEL HILL	NC	27514
FERRIS WILLIAM R	1 MINT SPRINGS LN	CHAPEL HILL	NC	27514
HUNTLEY JOAN C	317 N BOUNDARY ST	CHAPEL HILL	NC	27514
KAIRYS AMY B	109 WINSTON RIDGE DR	CHAPEL HILL	NC	27516
EMMERSON FRED B JR	976 MARTIN L KING JR BLVD SUITE	CHAPEL HILL	NC	275142654
FERRIS WILLIAM R	1 MINT SPRINGS LANE	CHAPEL HILL	NC	27514
GROSSBLATT ARNOLD L	505 NORTH ST	CHAPEL HILL	NC	27514

WILLIAMS ROBIN	1305 KING BIRD CT	MOUNT PLEASA SC	29466
JOLLS ROBERT T	2 MINT SPRINGS LN	CHAPEL HILL NC	27514
HUNTLEY JOAN C	317 NORTH BOUNDARY ST	CHAPEL HILL NC	27514
DEBREE ELIZABETH H	40 FAIR HAVEN RD	FAIR HAVEN NJ	7704
DEBREE DWIGHT	513 NORTH ST	CHAPEL HILL NC	27514
DE BREE DWIGHT H	513 NORTH ST	CHAPEL HILL NC	27514
COTTAGES ON NORTH LLC	1101 HERON POND DR	CHAPEL HILL NC	27516
DEBREE DWIGHT H	513 NORTH ST	Chapel Hill NC	27514
BUCKNER JOSEPH MOODY	313 N BOUNDARY ST	CHAPEL HILL NC	27514
BULLARD MELISSA M	510 NORTH ST	CHAPEL HILL NC	275143725
DEBREE DWIGHT H	513 NORTH ST	Chapel Hill NC	27514
PRESTON EDWIN T	517 NORTH ST	CHAPEL HILL NC	275143729
BERIWAL MADHU	304 N BOUNDARY ST	CHAPEL HILL NC	27514
VISCOMI JOSEPH S	514 NORTH ST	CHAPEL HILL NC	27514
SIDEBOTTOM NANCY W	1412 RIDGE RD	LANCASTER PA	176034736
MOYER ILAN ELLISON	309 N BOUNDARY ST	CHAPEL HILL NC	27514
HUNT PAULA	310 N BOUNDARY ST	CHAPEL HILL NC	275147800
SHROPSHIRE JASON	518 NORTH ST	Chapel Hill NC	27514
KOPP VINCENT A	501 E ROSEMARY ST	Chapel Hill NC	27514
WEIDEN CONRAD S	525 NORTH ST	CHAPEL HILL NC	27514
HEMSEY DAVID F	504 N BOUNDARY ST	Chapel Hill NC	27514
KNAUFF JAMES W IV	515 E ROSEMARY ST	Chapel Hill NC	27514
BURKS ARVIL W JR	209 N BOUNDARY ST	CHAPEL HILL NC	27514
NUZUM C THOMAS	213 N BOUNDARY ST	CHAPEL HILL NC	27514

FRENCH DRUSCILLA	8230 LEESBURG PIKE	VIENNA	VA	22182
YARBROUGH CHESTER	517 E FRANKLIN ST	CHAPEL HILL	NC	27514
MOUNSEY JOHN PAUL	516 E ROSEMARY ST	CHAPEL HILL	NC	27514
NOBLE PATRICK TRACY	523 E ROSEMARY ST	CHAPEL HILL	NC	275143714
UNIVERSITY OF NORTH CAROLINA A	523 E FRANKLIN ST	CHAPEL HILL	NC	27514
RICH MARGARET WILLIAMS	602 E ROSEMARY ST	CHAPEL HILL	NC	27514
RICH SANDRA	603 E FRANKLIN ST	CHAPEL HILL	NC	27514
WINSTANLY DEREK M TRUSTEE	104 N BOUNDARY ST	CHAPEL HILL	NC	275143700
UNIVERSITY OF N C	UNKNOWN ADDRESS	CHAPEL HILL	NC	27514
MOULTON ROBERT J	619 E FRANKLIN ST	CHAPEL HILL	NC	275143826
ROUTH DAVID S	205 N BOUNDARY ST	CHAPEL HILL	NC	27514
BROWN LINDA B	214 N BOUNDARY ST	CHAPEL HILL	NC	27514
DOHLMAN HENRIK G	508 N BOUNDARY ST	CHAPEL HILL	NC	27514
SATHER LURLENE GOWEN	206 N BOUNDARY ST	CHAPEL HILL	NC	275143701
PLAYHOUSE TRIO ¹ LLC	P O BOX 4150	CHAPEL HILL	NC	275154150
BURNS W WOODROW JR	609 NORTH ST	CHAPEL HILL	NC	275143730
PERLMUTT LOUIS M	607 E ROSEMARY ST	CHAPEL HILL	NC	275143715
KING HARRIET	610 NORTH ST	CHAPEL HILL	NC	275143726
ERREDE BEVERLY J TR	512 N BOUNDARY ST	CHAPEL HILL	NC	275147838
HOREY LEO S III	6115 VERNON TERRACE	ALEXANDRA	VA	22307
BELL FAMILY PROPERTIES LLC	PO BOX 1113	CHAPEL HILL	NC	27514
BELL FAMILY PROPERTIES LLC	PO BOX 1113	CHAPEL HILL	NC	27514
WILKINS WILLIAM G	305 TENNEY CIR	CHAPEL HILL	NC	275147804

FREEMAN SANDRA	316 TENNEY CIR	CHAPEL HILL	NC	27514
PADDLEDUCK LLC	107 ELLSWORTH PL	CHAPEL HILL	NC	27516
LYERLY HERBERT KIM	300 TENNEY CIRCLE	CHAPEL HILL	NC	275147803
CUMBIE STEPHEN M	8230 LEESBURG PIKE STE 620	VIENNA	VA	22182
GILDIN BENJAMIN J	214 GLENBURNIE ST	CHAPEL HILL	NC	27514
PRINGLE JOHN J	381 TENNEY CIR	CHAPEL HILL	NC	275147806
FOUNTAIN JAMES A JR	312 TENNEY CIR	CHAPEL HILL	NC	27514
NUNN CHARLES L	709 E ROSEMARY ST	Chapel Hill	NC	27514
SWEET JOHN W	208 GLENBURNIE ST	Chapel Hill	NC	27514
ROBBINS EDWARD TODD	203 LOMBARDY RD	MEMPHIS	TN	38111
MCVAUGH MICHAEL R	379 TENNEY CIR	CHAPEL HILL	NC	275147806
PERL DE PAL ANNE	710 E ROSEMARY ST	CHAPEL HILL	NC	27514
LASCELLES BENEDICT D	719 E ROSEMARY ST	CHAPEL HILL	NC	275143620
GRAVELY SUSAN E	377 TENNEY CIRCLE	CHAPEL HILL	NC	27514
TULLOCH JOAN F CAMILLA	360 TENNEY CIR	CHAPEL HILL	NC	27514
GRAVELY SUSAN E	377 TENNEY CIRCLE	CHAPEL HILL	NC	27514
BEADLE LEIGH P	376 TENNEY CIR	CHAPEL HILL	NC	275147806
JONES PATRICIA B ET AL	9985 NW KAISER D	PORTLAND	OR	97231
KURTZ COSTES BETH	375 TENNEY CR	CHAPEL HILL	NC	27514
POSS BARRY L TRUSTEE	3726 FOXWOOD PL	DURHAM	NC	27705
CHAPEL HILL TOWN OF	405 MARTIN LUTHER KING JR BLVD	CHAPEL HILL	NC	27514
DAVIS JOHN G	117 CAMPBELL LN	CHAPEL HILL	NC	27514
WINZELBERG GARY S	112 CAMPBELL LN	CHAPEL HILL	NC	27514
PAGE ROBERT J ETAL	112 MILL RUN DR	CHAPEL HILL	NC	27514

POPKIN BARRY M	104 MILL RUN DR	CHAPEL HILL	NC	27514
AGARWAL REKHA	108 CAMPBELL LN	CHAPEL HILL	NC	27514
YATES ANDREW J	104 CAMPBELL LN	CHAPEL HILL	NC	27514
SCHMIDT DAVID W	116 MILL RUN	CHAPEL HILL	NC	27514
SEARING ADAM	105 MILL RUN DR	CHAPEL HILL	NC	275143135
JONES MICHAEL B	109 MILL RUN	CHAPEL HILL	NC	27514
PARKER JAMES M JR	113 MILL RUN DR	CHAPEL HILL	NC	27514
DUFFY JOHN J	204 MILL RACE DR	Chapel Hill	NC	27514
LEVENSTEIN LISA	208 MILL RACE DR	CHAPEL HILL	NC	27514
FISCHER WILLIAM A TRUSTEE	AVENUE VERDEIL 13	CH1005 LAUSAN SWITZ		27541
DOLAN LOUISE ANN	405 N BOUNDARY ST	CHAPEL HILL	NC	275147818
KLEMMER PHILIP J	409 N BOUNDARY ST	CHAPEL HILL	NC	275147918
DOLAN LOUISE ANN	405 N BOUNDARY ST	CHAPEL HILL	NC	275147818
ABRAMS BRIGITTE K	101 ROSE LN	CHAPEL HILL	NC	275147820
AHEARNE JOHN F	105 ROSE LN	CHAPEL HILL	NC	27514
COBLE CHARLES R	109 ROSE LN	CHAPEL HILL	NC	275147820
HUANG HONG	212 MILL RACE DR	CHAPEL HILL	NC	27514
CAMP WILLIAM O	400 N BOUNDARY ST	CHAPEL HILL	NC	275147817
BIZIOS GEORGIA	104 ROSE LN	CHAPEL HILL	NC	275147820
STEGMAN MICHAEL A	112 ROSE LANE	CHAPEL HILL	NC	275147820
KRAUSE PAUL W	216 MILL RACE DR	CHAPEL HILL	NC	27514
CANDELARIA JON J	225 MILL RACE DR	CHAPEL HILL	NC	27514
BLASS JOSEF	500 N BOUNDARY ST	CHAPEL HILL	NC	27514

JADOT PAUL	100 ROSE LN	CHAPEL HILL	NC	275147820
SMITH ROY L	108 ROSE LANE	CHAPEL HILL	NC	275147820
MOTE TERRY W TRUSTEE ETAL	224 MILL RACE DR	Chapel Hill	NC	27514
BURKE EDMUND S JR	228 MILL RACE DR	CHAPEL HILL	NC	27514
REEVE CHARLES D TRUSTEE	309 LONE PINE RD	CHAPEL HILL	NC	27514
MCNAMARA DENNIS L	111 LONE PINE RD	CHAPEL HILL	NC	275143733
MOESER SUSAN D	505 N BOUNDARY ST	CHAPEL HILL	NC	27514
EVANS MARA	307 LONE PINE RD	CHAPEL HILL	NC	27514
KIRSCH SCOTT L	317 LONE PINE RD	CHAPEL HILL	NC	27514
MOFFATT SUSAN S	7 LONE PINE RD	CHAPEL HILL	NC	275143734
CAROLINA LONE PINE LLC	52 ROSS STEVENSON CIR	PRINCETON	NJ	8540
KOEPPPEL ERIKA ANETTE TRUSTEE	1733 PRINCETON PL	ST LOUIS	MO	63117
HOCK TANNER	724 GIMGHOUL RD	CHAPEL HILL	NC	27514
GOZ REBECCA G	308 LONE PINE RD	CHAPEL HILL	NC	275147807
HUNT EMORY S HRS JR	304 LONE PINE RD	CHAPEL HILL	NC	27514
EARP JO ANNE L	320 LONE PINE RD	CHAPEL HILL	NC	275147807
325 TENNEY LLC	3700 GLENWOOD AVE #250	RALEIGH	NC	27612
COBEY GRAY MUNROE	303 LONE PINE RD	CHAPEL HILL	NC	27514
MCCLURE FRANCES E	300 LONE PINE RD	CHAPEL HILL	NC	275147807
HUNTER CHRISTOPHER H	112 HANFT KNOLL	CHAPEL HILL	NC	27514
MCCUBBIN JOHN P TRUSTEE	329 TENNY CIR	CHAPEL HILL	NC	27514
HILL MILDRED CHERRY HRS	PO BOX 3200	CHAPEL HILL	NC	27514
HUNTER CHRISTOPHER H	112 HANFT KNOLL	CHAPEL HILL	NC	27514
GOOGE PAUL B	316 TENNEY CIR	CHAPEL HILL	NC	27514

BROWN SALLY L	330 TENNEY CIR	CHAPEL HILL	NC	27514
HALL JACQUELYN D	333 TENNEY CR	CHAPEL HILL	NC	27514
OSHEA LOU D	401 BOWLING CREEK RD	CHAPEL HILL	NC	27514
GRUMBLES WILLIAM H JR	350 TENNEY CR	CHAPEL HILL	NC	275147803
SLOMIANYJ KIMBERLY F	338 TENNEY CIR	CHAPEL HILL	NC	27514
PRENTIS RICHARD F JR	345 TENNEY CR	CHAPEL HILL	NC	27514
CLEMMONS DAVID R	349 TENNEY CIR	CHAPEL HILL	NC	27514
LUNSFORD LOWELL T II	357 TENNEY CIRCLE	CHAPEL HILL	NC	27514
FTB HOLDINGS LLC	360 VALLEY RD	FAYETTEVILLE	NC	28305



Permit Notification Tool

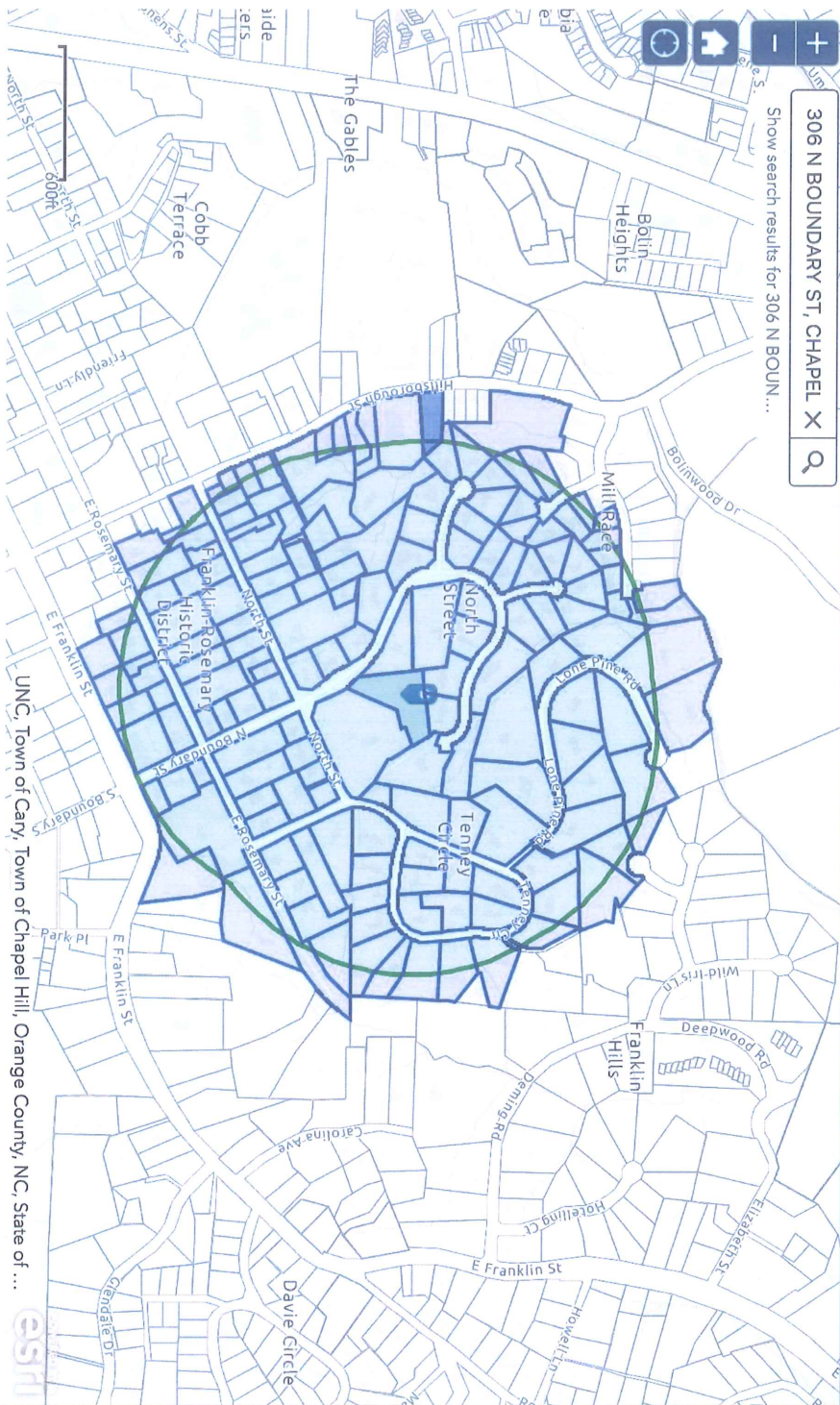
Town of Chapel Hill



306 N BOUNDARY ST, CHAPEL X



Show search results for 306 N BOUN...



Permit Notification



Select or search for a feature in the map

Enter PIN or use Select to choose parcel(s)



Select

Clear

Apply a search distance

1000

Feet

Addressee Layer

Parcel Owners

Format

Comma-separated values

174 addressees found; do you want to continue?

Download

STATEMENT OF JUSTIFICATION

Under N.C.G.S. §160A-388, §160A-393, §160A-400.9 and Land Use Management Ordinance of the Town of Chapel Hill ("LUMO"), including §§3.6.2, 4.10 and 4.12, property owners, Stephen Cumbie and Druscilla French ("Applicants"), appeal the Town of Chapel Hill Historic District Commission's ("HDC") May 30, 2019 denial of Item 2 of their Application for a Certificate of Appropriateness for 306 North Boundary Street to the Town of Chapel Hill Board of Adjustment. This appeal is made within the latter of 30 days of filing the decision being appealed or the delivery of the required written notice of the decision to the property owners. The written notice of the decision was provided to Applicants by email on May 30, 2019. A copy of the Town of Chapel Hill Historic District Commission's written decision is attached as Exhibit A.

The Applicants are represented in this appeal by LeAnn Nease Brown, Brown & Bunch, PLLC, 101 N. Columbia Street, Chapel Hill, NC 27514, Telephone: (919) 968-1111, Email: lnease@brownandbunch.com.

Decision Being Appealed.

The decision being appealed is the May 30, 2019 denial by the Historic District Commission of Item 2 of Applicants' Application for a Certificate of Appropriateness to add a detached 1½ story two-bay garage with an accessory dwelling unit above and the execution of an order denying Item 2 when, under LUMO, a motion to deny Item 2 was not passed by the Historic District Commission.

Standing.

Applicants, Stephen Cumbie and Druscilla French, are the owners of 306 North Boundary Street and the applicants, through their architect, for the Certificate of Appropriateness. See, Deed recorded at Book 6526, Page 189, Orange County Registry attached as Exhibit B and Application for Certificate of Appropriateness attached as Exhibit C. Owners of property and applicants for certificates of appropriateness have standing to appeal decisions of the Historic District Commission on Applications for Certificates of Appropriateness regarding their property. See, N.C.G.S. §160A-388(b)(1)a and §393(d)(1)a.

Background.

306 North Boundary Street is an improved lot in the Franklin-Rosemary Historic District. The underlying zoning is residential (R-1 and R-2).

On December 12, 2018, Applicants applied to the Historic District of the Town of Chapel Hill for a Certificate of Appropriateness. The project included these items:

1. renovations and additions to the south and east sides of the existing single-family structure; and
2. construction of a new detached garage with an accessory dwelling unit.

On January 8, 2019, the Historic District Commission considered the Application for Certificate of Appropriateness. Item 2 as originally proposed was a three-car garage with an accessory dwelling unit above. At the beginning of the January 8, 2019 meeting, Commissioner Woodrow Burns recused himself because he is the next-door neighbor.

During the public hearing, Chair Robert Epting introduced an issue not properly before the HDC. He stated: "I am particularly interested in the complete absence of any mention of the applicability of the conservation easement that is--was placed on this property, was conveyed to the Preservation Society back when it was still in the Chapel Hill Preservation Society." Although not the jurisdiction of the Historic District Commission, Chair Epting asked to hear something about "how this proposal is compatible with those revisions." (1-8-19 Transcript, pp. 21-22). He disclosed that he was "for years" legal counsel for the Preservation Society, although not responsible for its role in the easement he referenced. (1-8-19 Transcript, p. 21-22). The portion of the easement agreement applicable to 306 North Boundary Street had been removed before the property was purchased by the Applicants. (Id.).

Catharine Burns, wife of recused Historic District Commission member, Woodrow Burns, objects to the hearing on the grounds of notice. She stated she was not opposed to the project but to the integrity of the process. (1-8-19 Transcript, p. 28-29). She identified herself as an "expert" in historic preservation (1-8-19 Transcript, p. 30). She then raised concerns about the extinguishment of the easement by quitclaim deed. (1-8-19 Transcript, p. 31). Chair Epting reiterated his concerns about the conservation easement. (1-8-19 Transcript, p. 32). He then "deemed" Catharine Burns "an expert in historic preservation" and asked her to supplement the record with her resumé at the next hearing. (1-8-19 Transcript, p. 36).

The bulk of the January 8 discussion by the Historic District Commission related to the conservation easement, not the merits of the Application. The matter was recessed to the February 12, 2019 meeting. (1-8-19 Transcript, p. 39). The Secretary of the Board was instructed to give Applicants a list of information to be included at the next meeting. (Id.). Chair Epting stated it was "particularly important to me to have some explanation from the Preservation Society ...about this matter of the attempt to extinguish the easement." (1-8-19 Transcript, p. 41).

Competent, material and substantial evidence was submitted by Applicants to demonstrate that the Application for Certificate of

Appropriateness as proposed met the standards of congruity for the grant of the Certificate of Appropriateness. The written and oral evidence presented demonstrated that the proposals were in harmony with the Franklin-Rosemary Historic District and that the standards for the grant of a Certificate of Appropriateness were met. The HDC has no jurisdiction over the enforcement of private easements and the Chair erred in raising it. A copy of the transcript of the portion of the January 8, 2019 HDC meeting addressing Applicants' Application is attached as Exhibit D.

On February 12, 2019, the HDC again considered the Application for Certificate of Appropriateness for 306 North Boundary Street. A copy of the transcript of the portion of the February 12, 2019 HDC meeting addressing Applicants' Application is attached as Exhibit E. At the February 12, 2019 meeting, Chair Epting recused himself from further participation. He had been involved as an attorney on behalf of the Burns regarding the easement on their property and after the January hearing had begun conversations with third parties regarding the easement. Brian Ferrell, attorney for the Historic District Commission, advised the Historic District Commission it does not have the authority to determine the applicability or enforceability of private covenants between private parties. (2-12-19 Transcript, p. 3). He stated that the HDC could look at information that might be contained within covenants (such as information about the location of a rock wall) but could not apply private covenants in the congruity determination. (Id.).

Applicants' representatives reviewed with the HDC landscaping plans showing walls, trees and other existing significant site features. (2-12-19 Transcript, pp. 6-9). In response to a concern raised in the January meeting, a representative of Applicants also provided the HDC a revised Application that reduced the three-car garage to a two-car garage to place it farther from the landscaping features. (2-12-19 Transcript, p. 9). They also redesigned the stairs to better preserve an exterior feature. (Id.). The evidence presented indicated that in 1990 when the house was built, the original Coker gardens were removed in the area upon which the HDC was focused. (2-12-19 Transcript, pp. 18-20). A new garden had been placed there. (Id.). Although not being removed, the evidence demonstrated that stone walls discussed in the first hearing had been added in the 1990s. (2-12-19 Transcript, p. 20). The testimony demonstrated that all original Coker material was to remain. (2-12-19 Transcript, p. 24).

Testimony was received regarding the gardens and neighbor concerns. Catharine Burns testified again and stated (incorrectly) that the standard required consideration of the character of the historic district is as defined by a significance report prepared in 1976. (2-12-19 Transcript, p. 57). Her statement was contrary to LUMO Section 3.6.2 which provides: "However, 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."

Consideration of the Application for Certificate of Appropriateness was recessed until March 12, 2019 even though the Historic District Commission had before it competent, material and substantial evidence that the Application as proposed entitled Applicants to issuance of a Certificate of Appropriateness.

The Application for Certificate of Appropriateness was again considered at the March 12 HDC meeting. The Applicants provided more detailed information regarding the landscaping as had been requested by the HDC. The competent, material and substantial evidence submitted demonstrated that the number of trees to be removed had been reduced from nine to six. (3-12-19 Transcript, pp. 6-7). The materials introduced into evidence demonstrated by color code all original Coker garden and landscape items and non-original items. ((3-12-19 Transcript, pp. 6-9, 13-14). All original Coker items remaining on the site were being preserved. (Id.). None of the trees being removed were original Coker trees. (Id.). Stephen Cumbie explained to the HDC that the two-car garage addition proposed and the apartment above added accessibility to the property and provides a place for a long-term caregiver to stay if needed. (3-12-19 Transcript, pp. 10-12). The garage as proposed is largely hidden from the view of all neighbors and cannot be seen from the street. (3-12-19 Transcript, p. 11). It had been subtly shifted to save two pines. (3-12-19 Transcript, pp. 16-17). Photographs were introduced to demonstrate the existence of similar garages in the Franklin-Rosemary Historic District. (3-12-19 Transcript, p. 12).

Following the Applicants' additional evidence, recused member Woodrow Burns again testified about the easement. (3-12-19 Transcript, pp. 17-25, 28-31). Even though the HDC had been advised by its counsel, Mr. Ferrell, that the private easement was not an issue before them, they continued to receive evidence about it and determined Woodrow Burns had standing to fully participate in the hearing based on the easement. (Id.) Woodrow Burns revealed that he was negotiating with the Applicants to consider a new easement. (Id.). Catharine Burns also testified again. (3-12-19 Transcript, pp. 31-53). She disagreed with the evidence David Swanson (landscape architect for the 1991 work and for the current project) provided as to what was original to the Coker property but provided no factual basis for her disagreement. (Id.). Even though the HDC had been told repeatedly it could not consider the easement question, Commissioner Kyser stated it was "a missing element of the original Application." (3-12-19 Transcript, p. 49). She suggested the Application was "flawed." (Id.). Friends of the Burns' also testified. (3-12-19 Transcript, pp. 53-67). None provided competent, material or substantial evidence that the Application as proposed was incongruous with the District. The HDC closed the public hearing but continued its review

of the Application to its April 9 meeting. A copy of the transcript of the portion of the March 12, 2019 HDC meeting addressing Applicants' Application is attached as Exhibit F.

The Application for Certificate of Appropriateness was considered again at the April 9, 2019 meeting. Commissioner White implored the HDC refocus its discussion on the actual project proposed. (4-9-19 Transcript, pp. 2-3). Commissioner Murphy pointed out that the review was in its fourth month and the Applicants had revised the plans numerous times at the HDC's request and had provided "every piece of additional information that we've requested." (4-9-19 Transcript, p.3). Commissioner Smith again expressed confusion about the easement. (Id.). HDC counsel, Brian Ferrell, reiterated that the HDC had no authority to consider the easement. (4-9-19 Transcript, p. 4). Mr. Ferrell also reminded the HDC that the LUMO did not delegate authority to the HDC over landscaping. (4-9-19 Transcript, p. 7). Commissioner White pointed out that the HDC had been subjected to "an argument by red herring" that never connected the expressed concerns about the Coker legacy with any issues about the Application (4-9-19 Transcript, pp. 10-13). He detailed the facts from the Application and pointed out that nothing in the Application affected any original Coker legacy features. (Id.). Commissioners Kyser and Locke gave special credence to Mrs. Burns testimony because she was deemed by recused Chair Epting to be an "expert" even though she offered no factual basis for any opinion she gave. (4-9-19 Transcript, pp. 13-17). Commissioner Murphy observed that the HDC kept "moving the goalposts." (Id.). Commissioner White moved to approve the Certificate of Appropriateness to construct the South and East additions to the home. (4-9-19 Transcript, pp. 27-37). Commissioner Kyser seconded. (4-9-19 Transcript, p. 37). The HDC discussed the vote required and the HDC and its counsel, Mr. Ferrell, agreed that 5 affirmative votes are required to pass a motion. (4-9-19 Transcript, p. 36). The vote was 4-2 for the motion and the chair ruled that the motion failed. (4-9-19 Transcript, p. 41). A motion was made and seconded to approve the portion of the Application referenced as the South Addition and it passed five to one. (4-9-19 Transcript, pp. 43-44). The south side is the side closest to the Burns' property. The HDC recessed the meeting to a special meeting to be held on April 22, 2019. (4-9-19 Transcript, pp. 53-54). A copy of the transcript of the portion of the April 9, 2019 HDC meeting addressing Applicants' Application is attached as Exhibit G.

The Application for Certificate of Appropriateness was considered at the April 22, 2019 special meeting. During the meeting, the public hearing was reopened at the Applicants' request. (4-22-19 Transcript, pp. 1-16). The Applicants' architect reviewed the details of the Application in which the LUMO factors to be considered for approval of a Certificate of Appropriateness were outlined. (4-22-19 Transcript, pp. 17-22). The HDC was reminded that the garage had been reduced in scale and height in response to neighbor concerns expressed in January and after those changes, those neighbors had no longer expressed concerns.

(4-22-19 Transcript, p. 22-23). Pictures of six garages with second floor habitable space in the Franklin-Rosemary Historic District were reviewed. (4-22-19 Transcript, p. 23). Once again, Commissioner Schwartz raised the easement and how important it is to the neighbors to the south (the Burns). (4-22-19 Transcript, pp. 28-19). Commissioner White asked whether it had been intimated to the Applicants that an unwillingness to sign a new easement affected the opposition to the Application but Mr. Ferrell, the HDC attorney would not allow the question. (4-22-19 Transcript, pp. 29-30). The Applicants reviewed evidence about the circular garden through David Swanson. (4-22-19 Transcript, pp. 31-52). A motion was made and seconded to approve the east wing addition with a two-foot reduction in the diameter of the garden circle. (4-22-19 Transcript, pp. 52-56). The HDC was reminded that 5 votes were needed to approve. (4-22-19 Transcript, p. 57). The motion passed 5 votes to 1. (4-22-19 Transcript, p. 65). The HDC then moved to a discussion of the proposed detached two-bay garage addition. (4-22-19 Transcript, p. 66). Mr. Ferrell, HDC attorney, clarified that LUMO did not require adherence to any point in history in determining congruity. (4-22-19 Transcript, pp. 66-67).

A motion was made and seconded to deny the proposed garage addition and after discussion, the HDC articulated that to the extent evidence was introduced of 6 similar garages, those were wrongfully approved, and 2 story garages should never be allowed. (4-22-19 Transcript, pp. 70-88). The vote on the motion was 4 in favor, 2 against. (4-22-19 Transcript, p. 88). The HDC determined that because 5 votes are required to approve a motion, the motion failed. (Id.) Ultimately a motion was made and seconded to approve a one-story structure. (4-22-19 Transcript, pp.99-100). It failed by a vote of 2 votes aye, four no. (4-22-19 Transcript, p. 100). The HDC confirmed that it had not made a decision and that 180 days would run on June 10. (Id.). A motion was then made and seconded to approve the proposed detached 1½-story garage. (4-22-19 Transcript, p. 101). The motion failed by a vote of three to three. (4-22-19 Transcript, p. 103). A motion duly made and seconded to recess the matter until the May 14 HDC meeting passed five aye, one no. (4-22-19 Transcript, p. 106). A copy of the transcript of the portion of the April 22, 2019 HDC meeting addressing Applicants' Application is attached as Exhibit H.

The Application for Certificate of Appropriateness was again considered at the May 14, 2019 HDC meeting. The public hearing was reopened. (5-14-19 Transcript, pp. 1-4). Catharine Burns again spoke and opined that her due process rights had been violated. (5-14-19 Transcript, pp. 4-8). She said nothing about the garage which was the only remaining issue before the HDC. (Id.). The public hearing was then closed. (5-14-19 Transcript, p. 8).

A motion was made and seconded to deny the Certificate of Appropriateness for the detached 1½ story garage. (5-14-19 Transcript, p. 15). The reasons cited in support of the motion for denial as gleaned

from the transcripts were that the proposed garage does not comply with Design Guideline 7: Garages & Accessory Structures and LUMO Section 3.6.2(e)(4) G and J. Criterion G is "General form and proportions of buildings and structures." The plans and application show that the proposed garage form and proportions are compatible, stating: "[t]he proposed garage is designed as a simple structure which defers to the main home. As such it is a simple gabled carriage house with a front cross gable to break the flatness of the front/South elevation and to provide livable space and natural light to the guest space on the 2nd floor. The forms and proportions are congruous with the district, the neighborhood, and the existing home." In addition, the form and proportion are compatible with six other examples of garages with second level habitable space within the Franklin Rosemary Historic District in evidence. Criterion J is "Architectural Scale". The plans show the scale of the garage structure and its components are derived and compatible with the main house structure. The scale appears smaller but is compatible with the six other examples of garages with second level habitable space within the Franklin Rosemary Historic District in evidence before the HDC.

Design Guideline 7 reads:

"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 or accessory structures in traditional locations that are compatible with the character of the building and site. Design them to be compatible with the main house in material, form, scale, and detail. Maintain the traditional height, proportion, and orientation of garages and accessory structures in the district."

The proposed 1½-story two-bay garage is sited at the termination of the existing driveway and to the rear of the main home, a logical, practical and traditional location for a detached garage on this site and within the District. All exterior details, materials, forms, and scales match those of the main house. The garage is subordinate in both scale and complexity to the main house. Applicants introduced evidence of six examples of detached garages with second floor habitable spaces located in the Franklin-Rosemary Historic District. Applicants' proposed garage is smaller than most of those examples, but compatible in use, proportion, height, and orientation.

The vote was four aye and two no. (5-14-19 Transcript, p. 16). The chair ruled that the motion failed. (Id.). The HDC was told again that 180 days would run on June 10 (Id.). The HDC acknowledged it was taking no action and expected the 180 days to run. (5-14-19 Transcript, pp. 18-22). To act, the Historic District Commission must have five votes to support any motion. LUMO Section 8.4.9. Therefore, the Historic District Commission took no action on Item 2 at the May 14, 2019 meeting.

A copy of the transcript of the portion of the May 14, 2019 HDC meeting addressing Applicants' Application is attached as Exhibit I.

The HDC has separate counsel from the Town Attorney. However, after the May 14 HDC meeting at which Applicants' Application was considered, Ralph Karpinos, Town Attorney, opined to Jake Lowman of the Planning Department that N.C.G.S. Sec. 160A-388(e)(1) controls and overrides LUMO Section 8.4.9. LUMO Section 8.4.9 is part of the LUMO provisions applying to the HDC (only). It provides:

"[a] quorum of the commission, necessary to take any official action, shall consist of six (6) members. The concurring vote of five (5) members shall be necessary to take any official action to approve or deny an application or permit. The concurring majority vote of the quorum shall be necessary to conduct other business, including making a recommendation on an application to be considered by the council."

The Town Attorney's opinion that N.C.G.S. §160A-388(e)(1) applies to the HDC differs from the advice given to HDC by its attorney and is incorrect. N.C.G.S. §160A-400.7 authorizes the Town of Chapel Hill to establish or designate a Historic District Commission. Municipalities may designate a Planning Board or a Community Appearance Commission to serve in this role. Powers available for a municipality to grant to historic district commissions are established by N.C.G.S. §160A-400.8. One power available is to "review and act upon proposals for alterations, demolitions or new construction within Historic Districts pursuant to this 'Part'." The term "Part" in this reference is Part 3.C, entitled Historic Districts and Landmarks in Chapter 160A. N.C.G.S. §160A-400.9 sets forth requirements for certificates of appropriateness and contemplates appeals from Historic District Commissions be taken to Boards of Adjustment and from Boards of Adjustment to Superior Court. The statute does not set forth voting procedures to be followed by historic district commissions but does set forth the matters over which one can have jurisdiction.

N.C.G.S. §160A-384, entitled "Method of Procedure," states that City Councils shall provide the way zoning regulations and restrictions shall be determined, established and enforced.

N.C.G.S. §160A-388, entitled "Board of Adjustment" addresses the creation of Boards of Adjustment and provides "the ordinance may designate a planning board or governing board to perform any of the duties of a Board of Adjustment in addition to its other duties and may create and designate specialization boards to hear technical appeals." N.C.G.S. §160A-388(a). While this language contemplates alternatives for bodies to exercise the processes of a Board of Adjustment but does not contemplate its application to actions by

Historic District Commissions created under N.C.G.S. §160A-400.1, et seq.

N.C.G.S. §160A-388(e) addresses voting by Boards of Adjustment and other entities performing the duties of a Board of Adjustment. It states that the concurring vote of 4/5ths of the Board of Adjustment is necessary to grant a variance and a majority of members shall be required to decide any other quasi-judicial matter or to determine appeals made in the nature of certiorari. N.C.G.S. §160A-388(e)(1). It states: "for the purpose of this subsection, vacant positions on the Board and members who are disqualified from a quasi-judicial matter shall not be considered members of the Board for calculation of the requisite majority if there are no qualifying alternatives available to take the place of such members. By its express language, the provisions of N.C.G.S. §160A-388(e)(1) apply only to "this subsection" and only to quasi-judicial boards exercising the duties of a board of adjustment. The Town Attorney's opinion applies this language to the entire Article, not the subsection as is stated.

N.C.G.S. §160A-388(e)(2) applies to a member of any board exercising quasi-judicial functions under "this Article." The Article referenced is Article 19 of Chapter 160A entitled "Planning and Regulation of Development." Article 19 begins at N.C.G.S. §160A-360 and goes through N.C.G.S. §160A-459.1 and contains eight parts. By its express language, N.C.G.S. §160A-388(2), prohibits members of any board from participating in or voting on quasi-judicial matters in a manner that would violate and affect a person's constitutional rights to an impartial decision maker. So, this language (and only this language) applies to Historic District Commissions and other Boards operating in quasi-judicial settings. The prohibitions about conflict apply to decisions by the Historic District Commission in quasi-judicial hearings on Applications for Certificates of Appropriateness. However, the voting provisions in N.C.G.S. §160A-388(e)(1) do not apply to the entire Article and do not apply to a Historic District Commission.

LUMO Section 8.4 addresses the procedure outlined by the Town Council for operating the Historic District Commission. It provides that "a quorum of the Commission necessary to take any official action, shall consist of six (6) members. The concurring vote of five (5) members shall be necessary to take any official action to approve or deny an application or permit." The Town Council knew and distinguished voting procedures of the HDC from those of the Board of Adjustment. Compare LUMO Section 8.3 which addresses the Board of Adjustment. Section 8.3.7 of LUMO follows N.C.G.S. §160A-388 and requires a concurring vote of 4/5th of the membership to grant a variance and the concurring vote of the majority of members to decide other quasi-judicial matters.

No provision of Chapter 160A prohibits the Chapel Hill Town Council from adopting the voting requirements in LUMO Section 8.4.

N.C.G.S. §160A-388(e) (1) does not apply to alter the express provisions of LUMO as to voting requirements for HDC.

HDC considered Applicants' Application for Certificate of Appropriateness at six separate meetings: January 8, 2019, February 12, 2019, March 12, 2019, April 9, 2019, April 22, 2019 and May 14, 2019. In the April 9, 2019 meeting, a motion was made to approve the proposed additions to the south and east elevations. The vote was 4 to 2 for the motion. The Board ruled that the motion failed. A second motion was made to approve the proposed addition on the south elevation, which the Board determined carried by a vote of 5 to 1. Because Applicants had been told that the motion to approve the east addition had not passed, they expended monies to amend the proposal as it related to the circular garden and presented the revised proposal to HDC on April 22. The motion to approve the addition to the east elevation as revised carried by a 5 to 1 vote on April 22.

The April 22 minutes of the HDC show that a motion was made to deny the garage addition, which the Board determined failed by a vote of 4 to 2. A motion to approve the detached 1½-story garage failed by a vote of 3 to 3. The discussion of the 1½-story garage was continued to the May 14 meeting. Prepared minutes for the May 14 meeting reflect that the only outstanding matter at that meeting was the detached 1½-story garage. A motion was made to deny the Certificate of Appropriateness for the detached 1½-story garage addition which the draft minutes report failed with a vote of 4 to 2 with two members recusing themselves. The Historic District Commission determined in its May 14 meeting it had taken "no action" regarding the detached 1½-story garage, based on LUMO and HDC's counsel's determination as to the meaning of the vote. Its determination was based on its understanding that a 4 to 2 vote could not pass a motion under the express provisions of LUMO.

Apparently, without a meeting of the HDC or consultation with its members or attorney, the HDC chair reviewed the opinion of the Town Attorney and in contravention of the pronouncements in the HDC meeting as reflected in the transcripts and the minutes, signed an order denying the detached 1½-story garage addition based on the 4-2 vote at the May 14 meeting. The decision of the HDC Chair to sign the Order directly conflicts with LUMO Section 8.4 and with the determinations made by the HDC in numerous meetings as to the effect of its votes. The Chair was not authorized to sign the Order denying the garage addition without review by the Historic District Commission of the conflicting legal opinions as to its voting requirements. While it is the HDC's prerogative to consider the Town Attorney's opinion, it was not the chair's prerogative to reverse, unilaterally, the Historic District Commission's earlier determinations of the meaning of the May 14 vote, particularly when the HDC had ruled on the meaning of a 4-2 vote in connection with several other votes on Applicants' Application.

Written notice of the decision to deny dated May 30, 2019 was given to Applicants on May 30, 2019. Applicants have timely filed this appeal of the denial of Item 2 of the Application for a Certificate of Appropriateness by the Historic District Commission to the Board of Adjustment under the provisions for appeal in LUMO and the North Carolina General Statutes.

Errors.

1. The HDC erred by failing to base their decision on competent, material and substantial evidence in the whole record. The competent, material and substantial evidence in the whole record demonstrates that Item 2 in the Application as proposed is congruous with the Franklin-Rosemary Historic District and that Applicants' Application met all requirements for the grant of a Certificate of Appropriateness. There is no competent, material or substantial evidence in the record to support denial of Item 2 of the Application for Certificate of Appropriateness. There is no competent, material and substantial evidence in the record to support a finding that Item 2 is inconsistent with the Design Guidelines. There is no competent, material and substantial evidence in the record to support a finding that Item 2 is incongruous with the special character of the Historic District or that the Application for a Certificate of Appropriateness should not be allowed.
2. The HDC Chair erred by signing the May 30, 2019 Order in contravention of the rulings of the HDC and in contravention of LUMO Section 8.4.
3. The HDC erred by basing its decision on errors of law, including its flawed interpretation of North Carolina statutes, its flawed interpretation of caselaw interpreting those statutes, its flawed interpretation of LUMO (especially LUMO §3.6.2), and its flawed interpretation of its Rules of Procedure and Design Guidelines in contravention of LUMO and N.C.G.S. §400.9.
4. The decision of the HDC was arbitrary and capricious.
5. The conduct of the six HDC meetings on Applicant' Application for A Certificate of Appropriateness violated Applicants' due process rights.

Reservation of Rights to Raise Additional Issues.

Under N.C.G.S. §160A-388(b)(8), Applicants are not limited at the hearing of this appeal to matters stated in this notice. Applicants reserve all rights to raise additional issues at the hearing.

Prayer for Relief.

Applicants respectfully request the Board of Adjustment review the Order of the Historic District Commission of the Town of Chapel Hill, reverse and vacate the Order, and grant the Certificate of Appropriateness for the detached 1½ story two-bay garage addition or in the alternative, remand this matter to the Historic District Commission with instructions it grant Applicants' Application for a Certificate of Appropriateness.

13595\01\m\005Statement of Justification

LeAnn Nease Brown

From: Jake Lowman <jlowman@townofchapelhill.org>
Sent: Thursday, May 30, 2019 11:19 AM
To: Randall Lanou
Cc: Becky McDonnell; Erik Mehlman; LeAnn Nease Brown
Subject: RE: 306 North Boundary
Attachments: Cover Letter - Written Determination 5.30.18.pdf; Scan of Signed Written Order and Placard - 306 NBS.PDF

Randy,

Please find the attached written decision for the 306 N Boundary application. I have attached the determination of the Town Attorney as well. This will constitute the start of the time window for appeal.

I do apologize for any delay in the written orders being delivered and if coordination on finalizing the orders has taken more time than normal.

Please reach out with any questions. The original copies of these papers are ready for pick up on the first floor of Town Hall at the Development Services desk.

Thank you,



Jake Lowman, Senior Planner
Planning Department
405 Martin Luther King Jr Blvd. | Chapel Hill NC 27514
Town of Chapel Hill | www.townofchapelhill.org
t: 919-969-5082 | jlowman@townofchapelhill.org

From: Randall Lanou [mailto:rlanou@buildsense.com]
Sent: Wednesday, May 29, 2019 4:27 PM
To: Jake Lowman
Cc: Becky McDonnell; Erik Mehlman
Subject: Re: 306 North Boundary

Jake

Thanks for your response. Will you send a scan when it is signed? One of us will pick up the hard copy later tomorrow or Friday.

Any insight as to why the document took 5 1/2 weeks from approval to deliver?

Best,

Randy

Randall Lanou

BuildSense | Design + Construction
502 Rigsbee Avenue, Suite 201
Durham, NC 27701
919.667.0404 o
919.247.5430 m
919.667.9984 f

Listen. Plan. Design. Build.

On May 29, 2019, at 4:23 PM, Jake Lowman <jlowman@townofchapelhill.org> wrote:

Good afternoon Randy,
The COA written order and the placard will be signed in the morning by the acting chair, Sean Murphy. I will reach out to you as soon as he signs it to let you know it is ready for pick up. Thank you for checking in.
Best,
Jake

<image002.jpg> **Jake Lowman, Senior Planner**
Planning Department
405 Martin Luther King Jr Blvd. | Chapel Hill NC 27514
Town of Chapel Hill | www.townofchapelhill.org
t: 919-969-5082 | jlowman@townofchapelhill.org

From: Randall Lanou [<mailto:rlanou@buildsense.com>]
Sent: Tuesday, May 28, 2019 1:01 PM
To: Jake Lowman; Becky McDonnell
Cc: Erik Mehlman
Subject: 306 North Boundary

Jake and Becky

I just left a voicemail on both of your machines. Erik sent a note on 4-24-2019 asking, among other things, about obtaining a copy of the CoA for the additions after they were approved at the April 22 meeting. As best as we can tell, we do not yet have a copy of that CoA. Will you send that to me today?

Thanks!

Randy

Randall Lanou
Partner | Company Lead

BuildSense | Design + Construction
502 Rigsbee Avenue, Suite 201
Durham, North Carolina, 27701
919 667 0404 o
919 667 9984 f

919 247 5430 m

Listen. Plan. Design. Build.



TOWN OF CHAPEL HILL

Planning Department
405 Martin Luther King Jr. Blvd.
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phone (919) 968-5066
www.townofchapelhill.org

May 30th, 2019

Erik Van Mehlman, AIA
BuildSense
502 Rigsbee Avenue, Suite 201
Durham, NC 27701

Dear Erik,

This letter is in regards to the approvals granted for the proposed additions to the single-family residence and the original determination of "no action" taken for the proposed detached garage for 306 N. Boundary Street. It has been determined by the Town Attorney that the voting procedures for the Historic District Commission, as laid out in our ordinance, are inconsistent with State Law, and that State Statute will override this inconsistency in the Land Use Management Ordinance. The Town Attorney's determination is below. With this determination, the 4 yes - 2 no vote that was obtained during the hearings would constitute a denial of the garage portion of the application. This decision may be appealed to the Board of Adjustment.

I have attached a written order containing the approval of the additions and the denial of the garage.

Town Attorney Determination:

The provisions of State Law (N.C.G.S. Sec. 160A-388(e)(1)) controls and overrides a local ordinance (LUMO 8.4.9) that would, on its face, appear to be inconsistent with State Law. In this case, I believe the ordinance provision is based on an assumption that the Board is fully populated and that no member has been excused from voting. If the Board had full membership (9), 5 votes would be required to make a decision in this quasi-judicial matter (whether to issue a certificate of appropriateness).

However, with one vacant seat and two board members excused from voting due to a conflict of interest and, thus, effectively "disqualified from voting" based on G.S. 160A-388(e)(2), the Board membership for purposes of making a decision is, by State Law, 6. A majority of 6 is 4.

With a 6 member Board, the 4-2 vote on a motion to deny a portion of the application is sufficient for the Board to make a decision. My opinion is that the HDC's vote denied the portion of the application which was the subject of the motion.

You may contact me with any questions,

Jake Lowman
Senior Planner, Town of Chapel Hill Planning Department
Phone: 919-969-5082 - E-Mail: jlowman@townofchapelhill.org

Town of Chapel Hill, North Carolina

HISTORIC DISTRICT

CERTIFICATE OF APPROPRIATENESS

HAS BEEN ISSUED FOR

306 North Boundary Street

Project # 18-130

Date: April 9 and 22, 2019

☒ X **Alteration-Repair of Existing Structure(s)** Construction of additions on the east and south elevations of the house and reducing the width of the circular garden path in the middle tripartite garden by 2 feet.

☐ **Construction of New Structure(s)**

☐ **Other**



Erik Van Mehlman

Sean Murphy, Commission Vice- Chair

Applicant

Stephen Cumbie & Druscilla French

Property Owner

This card must be kept posted in a conspicuous location until all phases of the described project are completed. The work must conform with the Code of Ordinances of the Town of Chapel Hill and laws of the State of North Carolina. This Certificate of Appropriateness has been issued consistent with the proposal found in the attached application materials.

TOWN OF CHAPEL HILL HISTORIC DISTRICT COMMISSION
APPLICATION FOR CERTIFICATE OF APPROPRIATENESS WRITTEN DECISION

Application Number: 18-130
Subject Property Location: 306 N Boundary Street
Applicant: Erik Van Mehlman, AIA
Filing Date: 12/5/2018
Meeting Dates: 1/8/2019, 2/12/2019, 3/12/2019, 4/9/2019, 4/22/2019, 5/14/2019

I. INTRODUCTION TO THE APPLICATION

Historic District: FRANKLIN-ROSEMARY
Zoning District: Residential – 1 (R-1)
Nature of Project: Consideration of an application for the following items:
1. Renovation and additions to existing single-family residence
2. Construction of a new garage with accessory dwelling unit

II. EVIDENCE & TESTIMONY PRESENTED

- A. Application Materials
- B. Public Testimony

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW ITEM 1

Based upon the Application submitted on this matter, considered under the Historic District Commission Review Criteria set out in LUMO section 3.6.2(e), and the Design Guidelines for the Chapel Hill Historic Districts, the HDC moved in multiple motions to approve item 1 of the above stated application based on the following findings of fact and conclusions of law:

- A. This portion of the application is for additions to the south and east sides of the existing structure.
- B. Factual findings related to the application are as follows: (i) the proposal is to remove existing porches in order to construct new additions on the east and south elevations, totaling 1,031 square feet in size; (ii) the design calls for extruding the gable forms on the south and east elevations in order to create additional interior space; (iii) the exterior materials consist of brick, stucco, and copper roofing to match existing materials on the house; (iv) the southern addition builds on the Neoclassical inspiration of the existing house with pairs of gables flanking a curved portico roof; (v) exterior materials of the new additions on the east and south elevations would match the house's existing materials as they have incorporate brick masonry, hard-surfaced stucco, pre-case concrete lintels, aluminum clad wood windows and doors, standing seam copper roofing, copper gutters and downspouts, painted composite trim, fiberglass columns, stone and pre-case concrete exterior walking surfaces, and powder coated aluminum railings; (vi) new stairs with masonry steps and existing outdoor walking surfaces with natural stone and precast concrete will replace the existing stairs accessing the south and east sides of the house; and (vii) the additions heights are 38'3".
- C. Item 1 of the application complies with the following Design Guidelines: *Additions* guidelines 3, 4, 5, 6, and 7 on page 55; *Windows & Doors* guidelines 5 and 9 on page 41; *Masonry* guidelines 7

- and 9 on page 29; *Exterior Walls* guideline 5 on page 39; *Roofs* guidelines 3, 5, and 9; *Walls* *Fences* guidelines 1 to 9 on page 17; and *Architectural Metals* guidelines 6 and 8 on page 33;
- D. LUMO Section 3.6.2(e)(4) Review Criterion E, F, G, H, and J are applicable to the application, as informed by the Design Guidelines and demonstrated by the Findings of Fact.
 - E. On April 9, 2019, Commissioner Locke moved to approve the addition to the south elevation; it was seconded by Commissioner Smith. The motion carried with a vote of 5-1 with Commissioner Murphy opposing.
 - F. On April 22, 2019, Commissioner Kyser moved to approve the addition on the east elevation as presented in Option 3 with the circular garden pathway's width reduced by 2 feet; it was seconded by Commissioner White. The motion carried with a vote of 5-1 with Commissioner Locke opposing.
 - G. Based upon the foregoing Findings, the Commission concludes that the proposal for additions to the east and south elevations of the existing single family residence is not incongruous with the special character of the Historic District, that it will be constructed in accordance with the LUMO and Design Guidelines, and that the Application for a Certificate of Appropriateness should be allowed for this item.

III. FINDINGS OF FACTS AND CONCLUSIONS OF LAW ITEM 2

Furthermore, based upon the Application submitted on this matter, considered under the Historic District Commission Review Criteria set out in LUMO section 3.6.2(e), and the Design Guidelines for the Chapel Hill Historic Districts, the HDC moved to deny item 2 of the above stated application based on the following findings of fact and conclusions of law:

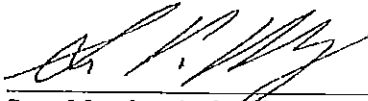
- H. This portion of the application is for a two bay detached garage with an accessory dwelling unit above.
- I. Factual findings related to the application are as follows: (i) the proposal is a 1.5-story, two-car garage with an 620 square feet accessory apartment on the second level; (ii) the new garage is proposed to be located on the northwest corner of the site; (iii) the garage is characterized by two carriage doors and a projecting gable dormer on the south elevation; (iv) the exterior of the garage will be finished in stucco with a brick base to match those found on the house; and (v) the proposed garage measures 32 ft. by 26 ft. and is faced with a brick veneer along the base.
- J. Item 2 of the application does not comply with the following Design Guidelines: *Garages & Accessory Structures* guideline 7 on page 21.
- K. LUMO Section 3.6.2(e)(4) Review Criterion G and J are applicable to the application, as informed by the Design Guidelines and demonstrated by the Findings of Fact.
- L. On May 14, 2019, Commissioner Schwartz moved to deny the garage; it was seconded by Commissioner Locke. The motion carried with a vote of 4-2 with Commissioner Murphy and Commissioner White opposing.
- M. Based upon the foregoing Findings, the Commission concludes that the proposal for the garage is incongruous with the special character of the Historic District and that the Application for a Certificate of Appropriateness should be denied for this item.

V. DECISION ON THE APPLICATION

Based on the foregoing findings of fact and conclusions of law, the Historic District Commission **approves item 1** of the Application for a Certificate of Appropriateness as referenced in Section I of this document on the basis that they **would not be incongruous** with the special character of the district, and the Historic District Commission **denies item 2** of the Application for a Certificate of

Appropriateness as referenced in Section I of this document on the basis that it **would be incongruous** with the special character of the district.

Signed this the 30 day of May, 2019.



Sean Murphy, Acting Commission Chair

Date Filed with Town of Chapel Hill Planning Department: May 30th, 2019.

NOTE: Any changes or additions to the proposed improvements/activity that deviate from this approved Certificate of Appropriateness may be considered a zoning violation of Section 3.6.2 of the Land Use Management Ordinance. Should a change to this approval be desired, please contact the Town to discuss ways of seeking additional approval(s).

Before work begins, please obtain all necessary zoning and/or inspections permits from the Town and present this document when applying for your permits. Attached is the Certificate of Appropriateness placard, which must be displayed at the site during construction, along with a copy of your approved plans and elevations.

Any decision of the Historic District Commission in granting or denying a Certificate of Appropriateness may be appealed to the Board of Adjustment and shall be reviewed on the record. An application for appeal shall be filed with the Town Clerk within thirty (30) days of the filing of the decision being appealed or the delivery of any required written notice of the decision, whichever is later. If any application for appeal to the above referenced Certificate of Appropriateness is filed with the Town Clerk, the Town will be sure to contact you.



20180928000185910 DEED
Bk:RB6526 Pg:189
09/28/2018 10:10:24 AM 1/3

FILED Mark Chilton
Register of Deeds, Orange Co, NC
Recording Fee: \$26.00
NC Real Estate TX: \$3676.00

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 3676.00

Parcel Identifier No. 9788-59-9778 Verified by RLB County on the ____ day of ____, 20__

This Instrument was prepared by: BAGWELL HOLT SMITH P.A.

Grantee's address (return to): 306 North Boundary Street, Chapel Hill, NC 27514

THIS DEED is made this 13th day of September, 2018, by and between

GRANTOR

FLORENCE FOWLER PEACOCK and spouse,
JAMES L. PEACOCK, III

GRANTEE

DRUSCILLA FRENCH and spouse,
STEPHEN M. CUMBIE
as Tenants by the Entirety

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the Orange County, North Carolina and more particularly described as follows:

SEE ATTACHED EXHIBIT A.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims, excepting ad valorem taxes for the current year, restrictive covenants of record affecting the property, utility easements and rights of way of record, of all persons whomsoever.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

Florence Fowler Peacock (SEAL)
FLORENCE FOWLER PEACOCK

Address: 412 Cedar Club Circle
Chapel Hill, N.C. 27517

James L. Peacock III (SEAL)
JAMES L. PEACOCK, III

Address: 412 Cedar Club Circle
Chapel Hill, N.C. 27517

Pursuant to N.C.G.S. §105-317.2, the Seller/Grantor states as follows:

The property conveyed herein, _____ includes X does not include (Initial one) the primary residence of one or more of the Grantors. Each Grantor's address is provided above.

Orange County, North Carolina

I hereby certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **FLORENCE FOWLER PEACOCK**

Date: 9/13/18

(Official Seal)

Megha K. Dubal
Megha K. Dubal, Notary Public
Printed Name of Notary Public
My commission expires: 3/21/22

Megha K. Dubal
NOTARY PUBLIC
Wake County, NC
My Commission Expires March 21, 2022

Orange County, North Carolina

I hereby certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: **JAMES L. PEACOCK, III**

Date: 9/13/18

(Official Seal)

Megha K. Dubal
Megha K. Dubal, Notary Public
Printed Name of Notary Public
My commission expires: 3/21/22

Megha K. Dubal
NOTARY PUBLIC
Wake County, NC
My Commission Expires March 21, 2022

EXHIBIT A

I. BEING approximately 1.345 acres, formerly described as Lots 1 and 2 of the plat of the recombination of the Mrs. W. C. Coker Homeplace, dated December 12, 1986 by Freehold Land Surveys, Inc., and recorded in Plat Book 46, Page 173, Orange County Registry, and being recombined by this deed into a single lot.

II. BEGINNING at an Iron located South 66 deg. 55 min. 57 sec. West 84.16 feet from an Iron in the Northeast corner of Lot 3 (Revised) of Mrs. W. C. Coker Homeplace as per Plat Book 46, Page 173, Orange County Registry; running thence South 66 deg. 55 min. 57 sec. West 59.08 feet to an Iron; running thence North 79 deg. 08 min 15 sec. East 58.13 feet to an Iron; running thence 12 deg. 33 min. 27 sec. West 12.47 feet to the point and place of BEGINNING; and being a small rectangular sliver depicted as parcel to be combined with Lot 2 (Rev) in Plat Book 73, Page 57, Orange County Registry, to which plat reference is hereby made for a more particular description of the same.

It is the Intent of this conveyance to merge this tract II with Lots 1 and 2 (revised) (I above) of Mrs. W.C. Coker Homeplace, as per plat Book 46, Page 173, Orange County Registry.

SAVE & EXCEPT the following parcel:

BEGINNING at an Iron located in the Northeast corner of Lot 3 (revised) of Mrs. W.C. Coker Homeplace as per Plat Book 46, Page 173, Orange County Registry, running thence South 66 deg. 55 min. 57 sec. West 84.16 feet to an iron; running thence North 12 deg. 33 min. 27 sec. West 8.70 feet to an iron; running thence North 72 deg. 52 min. 21 sec. East 83.01 feet to the point and place of BEGINNING; and being a small rectangular sliver depicted as parcel to be combined with Lot 3 (Rev) 361 square feet in Plat Book 73, Page 57, Orange County Registry, to which plat reference is hereby made for a more particular description of the same.

PIN: 9788-59-9778





QUESTIONS?
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Town of Chapel Hill
Office of Planning and Sustainability
Development Services 919-969-5066
planning@townofchapelhill.org

Chapel Hill Historic District Certificate of Appropriateness Application	Project:	18-130
Project Description: The Owners seeks to renovate and expand the home at 306 N. Boundary St. for the purposes of their own residence. It is proposed to remove two porch areas from the existing 1991 residence and replace them with new additions to create additional living space, provide more clearly expressive and walkable entries, and to maintain and enhance the connections to the exterior gardens. Also proposed is new garage with guest quarters above.	Permit:	Applicant will be applying for ZCP at a later date
	STAFF REVIEW	
	<input checked="" type="checkbox"/> Application complete and accepted	
	<input type="checkbox"/> Application not complete and returned with a notation of deficiencies	
	BY:	Becky McDonnell
	DATE:	12/12/18
<p>Instructions: Submit one paper copy and a digital copy of all application materials collated in one file (pdf preferred)</p> <p>Deadlines: Applications are due by the close of business 30 calendar days prior to the scheduled meeting date.</p> <p>Note: Only complete applications may be accepted for Certificate of Appropriateness review. Applications that are not complete will be returned with a notation of deficiencies.</p>		

A: Property Information					
Property Address:	306 N Boundary Street	Parcel ID Number:	9788599778		
Property Owner(s):	Stephen Cumbie + Druscilla French	Email:	scumbie@nvcommercial.com		
Property Owner Address: 204 Glenburnie St					
City:	Chapel Hill	State:	NC	Zip:	27514
Phone:	(703) 448-4304				
Historic District:	<input type="checkbox"/> Cameron-McCauley <input checked="" type="checkbox"/> Franklin-Rosemary <input type="checkbox"/> Gimghoul			Zoning District:	R-1 and R-2

B: Applicant Information			
Applicant: Erik Van Mehman, AIA	Role (owner, architect, other):	Builder / Out of State Architect's Representative	
Address (if different from above): 502 Rigsbee Avenue, Suite 201			
City:	Durham	State:	NC
Zip:	27701		



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Email: emehlman@builddsense.com

Phone: 919-667-
0404

C. Application Type (check all boxes that apply)

☐ **Minor Work** Exterior works that do not involve any substantial alterations, and do not involve additions or removals that could impair the integrity of the property and/or the district as a whole. See [Design Guidelines](#) (p. 69) for a list of minor works.

☒ **Historic District Commission Review** Includes all exterior changes to structures and features other than minor works

☐ **Site-work only** (walkways, fencing, walls, etc.)

☐ **After-the-fact application** (for unauthorized work already performed).

☐ **Restoration or alteration**

☐ **Demolition or moving of a site feature.**

☒ **New construction or additions**

☐ **Request for review of new application after previous denial**

☐ **Sign**

D. Basic information about size, scale, and lot placement.

Provide measurements in feet and square feet where applicable. Where possible, please provide accurate measurements from a licensed surveyor, architect, engineer, etc. If exact measurements are not available, please provide estimated information. Current estimated information about lots and buildings can be found on the [Orange County Real Estate Data](#) website. Information about lot placement can be found on the [Chapel Hill](#) and [Orange County Interactive GIS](#) portals.

Zoning District:	Minimum setbacks			Maximum heights		Lot size	
	Street	Interior	Solar	Primary	Secondary		
Required by zoning	28'	14'	17'	Setback 29'	Core 40'		
Proposed	167.1'	15.1' garage	18.8' garage	25' new garage	38'-9" existing home - no change		
	Existing	Change +/-	Total	Total Floor Area Ratio			
Floor Area (main structure)	4078sf	+1697sf	5775sf	Existing	Proposed	ISA/NLA ratio	
Floor Area (all other)	1066sf	+2689sf	3755sf	0.087	0.162	Existing	Proposed
Impervious Surface Area (ISA)	13759	+3344sf	17103sf	-	-	0.23	0.29
New Land Disturbance			5155sf				



E: Applicable Design Guidelines

The Town's Design Guidelines for the Chapel Hill Historic Districts are integral to the application and review process. These guidelines supplement the required review criteria for Certificate of Appropriateness applications (provided in Section 3.6.2(e)(4) of the Land Use Management Ordinance) by providing detailed, practical considerations for how to make changes to properties while preserving the special character of their Historic District context. Please review the Design Guidelines and consider their applicability to your proposed project. (Attach additional sheets, as necessary.)

Section/Page	Topic	Brief description of the applicable aspect of your proposal
Additions / page 55	Guideline #1	Due to the large lot, siting of the original building, and abundance of evergreen planting, the completed project including the existing house, new additions, and detached garage are all screened from street view.
Additions / page 55 + Garages / page 21	Additions Guidelines #4 + #5 + Garages Guideline #7	Additions: The scale, massing, and details of the additions are derived from the form of the existing home. The materials have been selected to be compatible or identical to those of the existing home. See architect's statement and additional information in Section F. --- Garages: The new garage is set to the Northwest (rear of the home) naturally terminating the existing driveway. The design, form, material, and detail are derived from those of the existing home and new additions, while remaining subordinate, as a garage should do, in both scale and complexity.
Additions / page 55	Guideline #7	The owners were drawn to this home for the tremendous gardens dating back to development by William C. Coker in 1908 and updated during the construction of the home in 1991. They are engaging the Landscape Architect who executed the 1991 planning to take great care in preserving the grounds.



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Development Services 919-969-5066
planning@townofchapelhill.org

F. Checklist of Application Materials

Attach the required elements in the order indicated.	ATTACHED? TO BE COMPLETED BY APPLICANT		TO BE COMPLETED BY TOWN STAFF		
	YES	N/A	YES	N/A	NO
1. Written description of physical changes proposed. Describe clearly and in detail the physical changes you are proposing to make. Identify the materials to be used (siding, windows, trim, roofing, pavements, decking, fencing, light fixtures, etc.), specify their dimensions, and provide names of manufacturers, model numbers, and specifications where applicable.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. History, context, and character information. Please include a summary of what information you have relied on to understand the relevant character and history of the district and subject property—and briefly summarize that information. At a minimum, include: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Current property information for the lot and all structures, including Building Sketches and Building Details, from <u>Orange County Real Estate Data</u>. <input type="checkbox"/> The entry of your property on the most recent inventory of historic resources in the relevant National Register for Historic Places filing, available via the NC State Historic Preservation Office website: for McCauley-Cameron see <u>West Chapel Hill</u>, for Franklin-Rosemary see <u>Chapel Hill Historic District</u>, for Gimghoul see <u>Gimghoul</u>. (If yours is one of the few properties in McCauley-Cameron or Franklin-Rosemary that has not yet been inventoried, please indicate that.) 	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Justification of appropriateness. Attach an annotated statement explaining how the proposed change(s) meets the following standards of appropriateness that the Commission considers in making findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the historic district. If a standard is not applicable, type "not applicable". <ul style="list-style-type: none"> A. The height of the building in relation to the average height of the nearest adjacent and opposite buildings. B. The setback and placement on lot of the building in relation to the average setback and placement of the nearest adjacent and opposite buildings. C. Exterior construction materials, including texture and pattern. D. Architectural detailing, such as lintels, cornices, brick bond, and foundation materials. E. Roof shapes, forms, and materials. F. Proportion, shape, positioning and location, pattern, and size of any elements of fenestration. G. General form and proportions of buildings and structures. H. Appurtenant fixtures and other features such as lighting. I. Structural conditions and soundness. 	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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J. Architectural scale.					
4. Photographs of existing conditions are required. Minimum image size 4" x 6" as printed or the digital equivalent. Maximum 2 images per page.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Site Plan Set showing existing and proposed conditions. (Min. scale: 1 in. = 20 ft.)	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Site plans must show the relationships between, and dimensions of, existing and proposed buildings, additions, sidewalks, walls, fences, driveways, and/or other structures on the property, as well as property lines and applicable zoning setbacks. <input checked="" type="checkbox"/> Include both written and drawn scales and show accurate measurements. You may also use a copy of a survey with surveyor's seal deleted. Revise the copy as needed to show existing conditions and your proposed work. <input type="checkbox"/> Indicate the area of all structural footprints (existing and proposed) in square feet; also, indicate lot size in square feet.					
6. Elevation Drawings showing existing structural facades and proposed changes. Drawings should be submitted as 11" x 17" or 8-1/2" x 11" reductions of full-size drawings. All details should be reasonably legible. Photographs are okay for facades with no changes.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Elevation drawings showing all proposed changes above current grade from front, back, and both sides. <input checked="" type="checkbox"/> Include scale bar, written scale, and label major dimensions (including width of structures and heights from finished grade to fascia/eaves and heights to top of roofs). <input checked="" type="checkbox"/> Label materials to be used (roofing, siding, windows, trim, light fixtures, etc.)					
7. Information about context (required for all construction of new structures, proposed impervious surfaces greater than 1500 SF, additions greater than 150 SF, and/or proposed land disturbance greater than 5000 SF.) Detailed information about lots and structures can be found on the Orange County Real Estate Data website; information about lot placement can be found on the Chapel Hill and Orange County GIS portals. For each of the nearest adjacent and opposite properties, provide:	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> The height of each building (if an estimate, indicate that). <input checked="" type="checkbox"/> The setbacks and lots placement of each building (an image from the Town GIS database, including scale, is sufficient). <input checked="" type="checkbox"/> The size of each lot (net land area in square feet). <input checked="" type="checkbox"/> The size of all buildings on the nearest adjacent and opposite properties, including building footprint areas, Floor Areas (in square feet), and Floor Area Ratios. Provide current figures from Orange County Real Estate Data ; indicate any corrections for accuracy you believe necessary and your basis for doing so.					
8. Demolition/Relocation Information (required only if demolition or relocation of a feature is proposed).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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<input checked="" type="checkbox"/> Provide a written description of architectural features, additions, remodeling, and any alterations to the structure(s). Make note of any outbuildings on the site plan of the property.					
<input checked="" type="checkbox"/> Provide a history of the structure, giving the construction date and architect or carpenter, briefly noting any significant events, persons and/or families associated with the property. Provide current exterior photographs of the property (4" x 6" as printed or the digital equivalent). If information is unknown, please provide a summary of sources consulted.					
<input type="checkbox"/> If an argument about structural soundness is being made, attach a signed and sealed report from a professional engineer.					
<input type="checkbox"/> As necessary, attach a statement explaining how a delay in demolition would cause the property owner to suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the delay.					
<input type="checkbox"/> Provide any records about the structure to be demolished.					
9. Mailing notification fee per <u>Planning & Sustainability Fee Schedule</u> . For a list of addresses, please refer to the Town's <u>Development Notification Tool</u> .	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Certificate of Appropriateness fee per <u>Planning & Sustainability Fee Schedule</u>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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Town of Chapel Hill
Office of Planning and Sustainability
Development Services 919-969-5066
planning@townofchapelhill.org

G: Applicant signature

I hereby certify that I am authorized to submit this application; that all information is correct to the best of my knowledge, and all work will comply with the State Building Code and all other applicable State and local laws, ordinances, and regulations.

I acknowledge and agree that the Historic District Commission members, Town employees, and Town agents may enter, solely in performance of their official duties and only at reasonable times, upon the applicant's property for examination or survey thereof pursuant to North Carolina General Statute 160A-400.8. However, no member, employee, or agent of the Historic District Commission may enter any private building or structure without the express consent of the owner or occupant thereof.

I understand and agree that an approved Certificate of Appropriateness is valid only for the particular application, plans, specifications and related project details presented to, and approved by, the Historic District Commission. If any of the data contained in this application, any plans or any specifications presented to the Commission are changed or altered for any reason, including, but not limited to, changes or alternations deemed practically necessary during construction, required due to subsequent Town reviews, or otherwise, a new hearing before the Historic District may be required. By signing below, the applicant agrees to notify the Development Services Center of any changes or alternations in the data contained in this application, the approved plans or the approved specifications related to the project that is the subject of this application.

Hearings on Certificate of Appropriateness applications before the Commission are quasi-judicial proceedings. Therefore, Historic District Commission members are not permitted to discuss a pending application with the applicant or other party. By signing below, the applicant agrees to refrain from speaking with or contacting any member of the Historic District Commission about an application outside of the formal evidentiary hearing on the application.

Erik Van Mehlman, AIA	12/07/18
--------------------------	----------

Applicant (printed name)	Signature	Date
--------------------------	-----------	------

Stephen Cumble		12/07/18
----------------	--	----------

Property Owner	Signature	Date
----------------	-----------	------

(if different from above)

EXHIBIT D

**Brown & Bunch
Chapel Hill Historic District Commission
306 North Boundary Street
January 8, 2019**

Epting: Robert Epting, Chair
Murphy: Sean Murphy, Vice Chair
W. Burns: Woodrow Burns, Commissioner
Kyser: Kimberly Kyser, Commissioner
Smith: Susan Smith, Commissioner
Schwartz: David Schwartz, Commissioner
White: James White, Commissioner
Lowman: Jake Lowman, Staff
Ferrell: Brian Ferrell, Counsel to Commission
Mehlman: Erik Mehlman, Architect for Applicant
C. Burns: Catharine Burns, Witness
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 00:30:18]

W. Burns: Mr. Chairman, the next item of business, which will be 306 North Boundary Street. I would request [ph] from the commission that I be recused in participating in the discussion of this. The property is adjacent to my property at 609 North Street. My property currently is on the market for sale, and I don't want any impression from my standpoint about what is being presented tonight for approval, and therefore, I request recusal.

Epting: It would appear appropriate. Is there a motion that Dr. Burns be recused?

Kyser: I make a motion that Dr. Burns be recused.

Epting: And a second?

Murphy: I'll second.

Epting: All in favor, say "aye."

M/F: Aye.

Epting: You are recused, sir. Thank you. So a very brief description of the application from the staff.

Lowman: Thank you, sir. So for 306 North Boundary Street, it is a renovation to an existing home built in the early '90s. Its renovation and an approximately 1,100 square foot addition to the existing home. And also, with that, the construction of a new garage structure with an accessory—a proposed accessory dwelling unit above. And the applicant is here to make a presentation and speak to any questions you may have.

Epting: Okay, so let the applicant come forward and we'll be glad to hear from you. Just at the—as you prepare, I know a number of commission members have visited the site. I did so late this afternoon. The others who have visited the site, want to identify yourselves? Mr. Schwartz, Ms. Smith?

Smith: I've been to the site many times when the Peacocks lived there, but I did not specifically go back.

Epting: Okay, others?

White: Yeah, I visited just for a look-see this afternoon.

Epting: Okay.

Murphy: I have not visited the site recently, but I've been by there a number of times.

Epting: Okay, good. Thank you. That's just for the record. Yes, sir?

Mehlman: Well, thank you very much, members of the commission, for serving and for hearing these applications. My name is Erik Mehlman. I'm a staff architect and design lead with BuildSense in Durham, North Carolina. The—I'm here to represent Stephen Cumbie and Druscilla French, who are of 204 Glenburnie

Street in Chapel Hill. They have purchased the subject property at 306 North Boundary. I apologize for a second because it's the first time I've used your equipment and I didn't prepare a—I prepared PDFs, so I may have a little bit of trouble reading, but I'll still try to keep this brief.

The—this is the subject property. The—Dr. French and Mr. Cumbie are avid supporters of historic preservation. You may be familiar with them from their work at 204 Glenburnie and the Holmes-Koch House, which earned a 2008 Preservation Chapel Hill award. They recently purchased the subject property at 306 North Boundary and are working with Dr. French's brother, Thomas French of Thomas French Architecture [ph] in McLean, Virginia. He regrets that he's not able to be here tonight, but he asked me to present this work for them.

Epting: You may or may not know that we're looking at a screen just in front of you—

Mehlman: Okay.

Epting: That shows us the same thing that's on that screen. So don't be offended that we're not looking at—

[OVERLAPPING—INDISCERNIBLE]

Mehlman: Nope, not at all.

[OVERLAPPING—INDISCERNIBLE]

Epting: And the public has likewise, screens out there.

Mehlman: [LAUGHS] How dare you not look at the screen? So they—Mr. French has vast experience with historic preservation. It should be noted, he works out of McLean, Virginia. He has worked on both local and National Register district

projects in Old Town, Alexandria, and in Georgetown, District of Columbia, and is no stranger to the process.

The property at 306 North Boundary was subdivided from the well-known William C. Coker property at 609 North Street in 1985. James and Florence Peacock commissioned local architect Dail Dixon to design the existing home, which was completed in '91. It's reported the design was inspired by a Palladian villa. The Coker House and grounds date back to 1908. The grounds were researched heavily in 1991, and the local landscape architect David Swanson designed the work. One of Steven and Druscie's [ph]—Mr. Cumbie and Dr. French's primary concerns is to restore and maintain the grounds and the gardens, and they've reached out to the landscape architect David Swanson in order to be involved in this project.

We're looking at walking the grounds with him sometime soon. We will look at the proposed working consideration of the LUMO, Section 3, A through J in the Historic District Guidelines. The—in brief, you've read the application. Guideline 1, due to the large lot and citing the original building and abundance of evergreen plating, the completed project, including the existing house, new additions, and detached garage are all screened from street view.

F: I think so.

Mehlman: The additions, the scale, massing details, and additions are derived from the form of the existing home, and materials have been selected to be completed or identical to the house and existing home. The garage is set to the northwest rear of the home, naturally terminating the existing driveway. The design, form,

material, and detail are derived from those of the existing home. The owners were drawn to this home for the tremendous gardens, and we just discussed the fact that they intend to commission David Swanson to do the landscape work.

In your review of the application, you've read a statement of justification from architect Thomas French. I am going to just read a brief portion of that because I think it's—it tells us the nature of the project.

Epting: It would be useful if you would describe the actual proposed work.

Mehlman: I will. Thank you. "Given its recent origin from a preservation viewpoint, the existing house is a non-contributing building in the historic district. In response to the seven criteria listed in the guidelines, for additions contained in the design guidelines for Chapel Hill historic districts, it would seem the criteria directly referencing additions to a historic building would not strictly apply to this project. That said, this project is deferential to the historic district in that the completed project, including the house with its additions, as well as the detached garage, will remain screened from street view. Materials have been carefully selected to be compatible with the existing house.

"The scale of the additions, massing, and details are intended to be entirely compatible with the existing house. The additions will be subtly but visibly discernible from the existing house, and great care will be taken to preserve the existing garden." This statement is a good overview of the project and the design intent.

His final statement says, "Our intention is that expanding the house with a vision and appropriate craft, the story of the house becomes more interesting. In

giving the house a new lease on life, it begins to build a story of its own.

Although it will remain largely unseen from street view, guests and neighbors will grow to appreciate the house and garden setting such that, at some point in the future, the home may become recognized as a contributing property in the Franklin-Rosemary Historic District.”

It’s worth noting that the National Register states that a historic property is generally 50 years old to be considered contributing. The existing home is 27 years old, so is a non-historic and non-contributing structure within the district. Additionally, the North Boundary neighborhood is home to a tremendous variety of non-historic and non-contributing homes. With all that said, Mr. French’s proposed additions are sensitively and thoughtfully articulated to be compatible with the size, scale, mass, and style of the existing home, and to be harmonious and congruous with the district.

If we take a look at the property—which I’m glad that you visited today and I know it’s well-known—as we approach from the drive, the 306 driveway is to the right. As you do move up the drive, the house starts to reveal itself. We see here, this is a southeastern elevation of—we move to the—excuse me, that was southwest—we move to the southeast, and we continue around the home. This is just intended to show that even from within the backgrounds of the property, the landscape is very heavy and provides screening for the home.

This is a direction from the east axis [ph] through the two—articulated lawns and the nice landscape. If you move back along the east, you can see even from on the property grounds, it’s very difficult to see the home in the distance.

Moving around to the northeast—the north elevation, northwest—back to the northwest corner of the property, the west garage, out to the street from the west. The southwest and back to the south elevation.

The existing elevation to the south is—the existing south elevation to the right, the west elevation. One of the more intriguing points of the existing home is there is a—essentially, it could be a cross gable home if you look at this, but the roof is rather interesting as it's been attached from peak to peak. The line I'm moving along here is actually horizontal. There's a flat roof on top of this building, very hard to discern from the grade, and we thought that was a rather unique aspect of the home.

The house is clad in brick, but it transfers to precast material at the base and you'll notice here that the west elevation—the west and the north elevations access grade from the basement or lower level, while the south and the east elevations—and this is the east—access grade up steep wooden stairs to the main floor.

Existing materials. We mentioned the brick, the precast. There's hard stucco, rowlock sills, painted railings, wooden stairs, copper downspouts and gutters, a standing seam copper roof, precast concrete lintels. The existing windows are wood-clad painted windows.

The neighborhood is at the northern edge of the historic district. 609 North Street is the only listed as contributing structure within the adjacent and the opposite homes. The home at 525 North Street is listed as a non-contributing property. It's worth noting that the North Boundary neighborhood is rather young

in the historic district. No home with a North Boundary Street frontage north of North Street is greater than 34 years old. Most built in the '90s. None are historic or contributing properties. Here is the subject property on the left and the well-known Coker House to the right.

Other adjacent properties on North Boundary Street. More—probably the most notable house in the area is the modern glass, concrete, and wood box by the well-decorated, modernist architect—local architect Kenneth Hobgood. Other homes.

The diversity of the neighborhood seems that it would provide a high degree of latitude in what could be considered harmonious and congruous, but we are pleased that Mr. French's sensitive designs don't rely on that latitude, and are styled and detailed to be clearly compatible with the existing home and district. The existing home sits at the center of a large site. It's inset. We've talked [ph] that provides good screening from the street. There's very strong axial connections to these eastern turf courtyards, and a very strong southern axial connection to the entry court.

The proposed additions seek to enhance the connections to the southern entry court and the east landscape court. To the east, in addition, houses a sunporch for viewing of the eastern landscape. To the northwest is a cooking and dining deck. And finally, to the northwest rear of the house and at the end of the existing driveway is the proposed garage and accessory dwelling unit.

Side-by-side plans of the existing lower floor and the proposed lower floor. We see that the lower floor is getting some additional conditioned storage

to support foundation work for the floor above. On the main level, the screened porch is clearly inset from the existing form. It's another extruded form. New stairs are proposed with intermediate landings and a better tread to rise to run ratio, tread to run ratio for better stability and ease of access. The existing wood steps are fairly steep and slippery.

The—to the south, the addition houses a foyer and a library, and once again, stairs with intermediate landings. The screened porch on the east will be the best seat in the house for viewing of the eastern gardens. On the upper floor, the master bedroom earns the same rank for viewing of the eastern gardens and a laundry room is tucked into the southern roof.

Here we see the original elevations and the proposed elevations. The existing eastern elevation, the existing southern elevation, and the proposals. I think these serve [ph] graphically, as a good graphic element to address scale, massing, and form. You can see that the new components work very well with the existing components.

The east elevation is an extruded gable form. It's clearly inset from the original form. On the south, the extruded gable form is subtly yet visibly discernable from the existing form. It's set back a brick wythe on each side. On both elevations, the base brick is going to brick to match the existing structure rather than split-faced concrete block. It's also a subtle way of discerning the new addition from the original form. The proposed west and north elevations. You can see the cooking and dining deck that's set in the northwest corner, here in the northwest corner.

The garage is a three-car garage with an accessible—excuse me, an accessory dwelling unit above. It's intended to be subordinate to the existing home, while clearly of the same language. The center bay punches out to provide living space above and an opportunity for symmetry and hierarchy similar to the home and the additions. All the materials will match those of the main home. The roof is to be architectural shingles, and the garage door to be carriage doors by Clopay.

Going back to the LUMO, we sought to double check. We turned these in with our application, and I won't go through them all, but the height, and the setback, and the exterior construction materials, the architectural detailing, the roof shapes, the proportions, the general form, the appurtenant fixtures, and the architectural scale are all harmonious and congruous with the existing home, with the neighborhood, with the site, and with the historic district. I sneaks in there [ph], there's no structural—evident structural concerns with the existing home.

In regard to the design guidelines, the location of the home at the lot interior provides a dense—and dense landscape prohibits the viewing from the street. The new additions maintain and reinforce the strongest of the non-historic building's character-defining features. The axial and visual connection from the interior space to the exterior gardens, the unique upper roof form, the abstracted Palladian plan with extruded asymmetrical [ph] masses on each face. The symmetry of each individual elevation, the barrel roof forms. The new additions are clearly differentiated from the existing non-historic building. The new

additions provide safe and more easily traversable stairs and landings from grade to the interior.

The new addition overall massing proportions and gable barrel roof forms are fully compatible with the existing non-historic structure. Obviously, more in the application about that. The new additions and exterior materials we've discussed—brick masonry, hard surface stucco, precast concrete lintels, aluminum-clad windows are used—and doors [ph]—will be used to match the original wood windows and doors [ph]. A standing seam copper roof, copper gutters and downspouts, painted metal rails, and precast concrete exterior stair treads.

The new additions are sited to limit intrusion upon and provide greater integration with the features of the existing landscape. Proper use of protective fencing and erosion control measures will be critical to maintaining the existing landscape features. Land disturbance shall be kept to a minimum to support just—to support the new construction, and the owners have sought to engage in the landscape architect from 1991. The new compatible garage does not compromise the character of the site, the neighborhood, or the district.

And these last points of conclusion: the existing home is a non-historic and non-contributing structure in the Franklin-Rosemary Historic District. The home, the proposed additions, and the accessory structures are not visible from the street. The existing immediate context of the North Boundary neighborhood contains an array of non-historic and non-contributing architectural styles. The proposed additions and accessory structure are thoughtfully designed to be

sensitive to the—and appropriate with the original structure in scale, mass, proportion, detail, and material. And the proposed additions in the accessory structures are harmonious and congruous with the existing home, the site, the neighborhood, and the historic district. Thank you.

Epting: Questions of the applicant's representative? David?

Schwartz: Just for—to clarify, on the east side, will the addition be pushing out into the existing formal garden there, or?

Mehlman: The new—if I can—the new addition just skirts the circular edge of the turf—the articulated turf area. So the stairs come down and would place you into that circle instead of where you now come down those stairs and tread about 20 feet to get into this [ph].

M: Yeah.

Mehlman: They're probably about 10 feet to get into the circle.

Schwartz: So it won't encroach on the existing garden—[OVERLAPPING]

Mehlman: It's not taking any of the garden features away. It is removing some of that articulated circle as it engages it.

Schwartz: Thank you.

Mehlman: And that is a gravel path.

Epting: Sean?

Murphy: Yeah, first, thank you for the thoroughness of your application and the clarity of the drawings. That's very helpful.

Mehlman: Thank you.

Murphy: I have one question pertaining to the south addition and it has to do with the use of brick, full height, on that section of addition. You know, the existing house is basically a box and it—you know, it has a precast base, and then it's solid brick up to the roofline. But all of the accessory pieces and parts that are attached to the existing house are all done in stucco with that precast base. And so I was wondering, what's the reason behind having brick full height on this sort of pushout of the existing addition rather than stucco?

Mehlman: I'm not the design architect, but I will discuss that in the—within the—working within the Secretary of Interior Standards, I think the goal was to articulate the new extrusions slightly different than they had been in the past. For instance, if you put a new extrusion on there that's all-in stucco, one might mistake it that it was the original extrusion in the original form. But this—in this case, using brick that matches the original, works with the original materials, but taking it all the way to the ground is a subtle indication that something is going on different here.

M: Yeah [ph].

Smith: I have a couple of questions and a comment. Well, I noticed you spent a couple of times at least noticing that the—or remarking that the house is non-contributory because it was—built in '91. However, it is in a historic district, so it is important to, you know, be congruent with the other structures around it. So I was just a little concerned about that point. I wondered, in the diagram there, the plat—are you moving the existing shed? There's an open rectangle in that drawing. I can't tell you what—page 25, I think it was in the packet?

Mehlman: I am going to go to the site plan. Is this where you'd like me to be?

Smith: Yeah. What is that rectangle—

Mehlman: The—north of—

Smith: —that’s below the existing shed?

Mehlman: Here?

Smith: No, I see where it says “existing shed.” What is the rectangle in front of that?

Mehlman: I think it—

Smith: Is that some terraced area?

Mehlman: I think it’s just—

Smith: Yeah, I didn’t notice it [ph].

Mehlman: It’s ground cover and if I can—and I didn’t—I failed to mention, you know, in Mr. French’s submittal to us, he has articulated some of the ground areas.

Smith: Okay.

Mehlman: And as I toggle back and forth here, I want it to be noted that, you know, things like all of these retaining—all of these site walls, this square, as well as the circle, which we just talked about, slightly encroaching on—all of this ground cover is intended to be kept. Only if an item encroaches upon it, like the stairs of this addition, would something to happen to change the original ground pattern.

Smith: Okay. Well, that sort of leads to—my next question is, what are the significant trees that are going to be cut to create this project? I noticed there are some very large trees near the house, a couple of different kinds of pines, and so on. Magnolia, I think. I don’t see anything on this plat here, so it’s hard for me to tell what is going to be cut. And part of our guidelines for additions say, “It’s not appropriate to introduce an addition if it requires the loss of a character-defining

building or site feature such as a porch or mature tree.” That’s on page 55, number one. That also was in the staff report. So I’m wondering if you have that plan. I know you said you were going to ask David Swanson for his help with the lawn, and the gardens, and so on.

But it would be helpful for us to know what you’re planning to cut down there.

Mehlman: I don’t want to speak out of turn. The surveyor is producing our entire tree record right now. I know—I believe these items in close proximity to the house will not be disturbing trees that are mature in nature due to how tight they are to the house. And where there may be trees, and I think at this point, back in the site, the trees are extremely limited in this area of the site. There are some here. And then I would beg to ask the question of, with a mature tree, what mature tree is qualified as a character-defining site feature, and what kind of mature tree might not be defined as a character-defining site tree? I don’t know where it stands, but I’d assume that at some point, someone needs to be able to—if you have a lot that is filled with trees, and it’s in the historic district, and someone wishes to build a home on it, they’d probably need to cut down a tree.

So, basically, what trees would be qualified as character-defining? Mr. Burns recused himself. There’s a tree in front of his house. That’s a character-defining tree. It’s quite a beautiful and awesome tree, and there’s plenty of them in the district, so I guess we’d have to catalogue which ones would be character-defining.

Smith: I would guess that it's somewhat open to interpretation, but I think the size, and also the type would contribute to that definition. Perhaps there's none that are going to be cut down related to this. I was at the site, but I couldn't exactly picture how far out your addition was going to come, and the steps, and so on. So it was hard for me to tell what would be—and so it would be helpful to have that surveying information—for me, before I could approve the project.

Epting: Do you have other questions? Because I have something to say about that.

Smith: Okay.

Epting: But I don't want to cut you off.

Smith: Yeah.

M: So.

Smith: I think that was the main thing. I just was going to talk about the garage, but I can wait on that. There's no—[OVERLAPPING]

Mehlman: It is worth noting as regard—in regard to the home that the—you know, the additions to the south and the east are not greatly—that much greatly larger than the existing areas there.

Smith: Okay.

Mehlman: And so, you know, most—you know, the—although the house was built in '90, '91, no one planted a—you know, an oak within 10 feet of the existing house to grow to maturity at this time. So I feel about safe in talking about those in that area.

Smith: Those are the two main areas. I just didn't know about that new deck on the north side.

Mehlman: There are—there's no trees in that location. Matter of fact, it's where all of the utilities come in.

Smith: Okay.

Mehlman: We've taken a look at that corner a lot because all the utility—[OVERLAPPING]

Smith: Is that just going to be on the second floor, or that's a—

Mehlman: It's just—it's a raised deck so that—

Smith: A raised deck? Yeah.

Mehlman: So on that side, on that northwest side, all the basement access is at grade. That's simply there outside the kitchen as a grilling and dining deck.

Smith: Okay, yeah.

Epting: Others?

Murphy: I just have a follow-up question to my initial comment. Would you consider changing that brick on your south extension to a stucco? I know the architect is not here so that's a difficult question to ask you, maybe. But, in my opinion, it's—with that quantity of brick, it's just not consistent with the existing architecture of the home. I mean, if you pull up—can you pull up the east elevation maybe?

Mehlman: Elevation or photograph [ph]?

Smith: The east or the south?

Kyser: East.

Murphy: It's the east elevation. There's—

Smith: Okay.

Murphy: There's an existing and a proposed _____.

Mehlman: Here's the—there's the east and the—

Murphy: Yeah, your drawing.

Mehlman: Okay.

Murphy: The drawing [ph].

Mehlman: Sorry.

F: [INDISCERNIBLE]

M: There it is [ph].

Murphy: Yeah. Or this one, for example. So you can see the east elevation if you look at the existing—

Mehlman: You know, actually, it's interesting that you say that, and I blanked a little bit. I was thinking about the south. Oh, so the east elevation, he does have clad and stucco at the top, on the second floor, over columns coming to a brick base.

Murphy: Yeah, I was just comparing this entire facade here [INDISCERNIBLE]. It's solid brick whereas the existing [ph] really is stucco everywhere except in the main house. And the same thing, if you go to the west elevation, you can see the same.

Mehlman: Yeah, once again, I can't speak for Mr. French. I think that when I was taking that stab at things is [ph]—and I can't remember what number in the Secretary of Interior Standards. It often, in my experience with historic preservation, a change in material from a new addition to an—to the previous additions—especially with the way this house is formed, in a square plan with extrusions on each side, is something that's recognized as a positive in telling the story of the house, and how it evolved over time. But it can certainly be requested and noted and—to the design architect if that's something that's felt to be important.

M: Okay [ph].

Mehlman: But I feel like the Secretary of Interior Standards actually support what he's done.

Kyser: I like very much Sean's recommendation, and in agreement. And in my experience in historic preservation, when you, for example—in the guidelines for Charleston, South Carolina, they encourage because those are really historic houses from centuries old. They encourage an addition that shows that it's new. But in this case, since it is not contributing, the congruity is almost self-defined with the neighborhood as a whole. So I'm not sure—I'm not an expert in this, but I'm not sure that the same standards in—that you're referring to apply.

Mehlman: I think—I was looking at Mr. French's—that paragraph where he talks about it—the house potentially being recognized in the future, and I thought he might have been thinking, "Should I—I should do these additions with the same sensitivity that you would do on a 19—you know—'20s home," so to speak, and that he was—but neither here nor there, I agree with your sense of congruity.

Epting: Other questions?

White: Yeah, can you just give us a little bit of description of what this all-view system [ph] is going to look like? With the porch—[OVERLAPPING]

F: Yeah.

Mehlman: That's labeled as the screen system [ph]? I think it's a close—it's a closing screen system that basically so they can use—the screened porch has glass that closes on it. So it's screened and then you can slide glass panels down. I don't know more about it than that.

White: So the glass panels are removable?

Mehlman: I believe they're integrated into the system.

White: So when you look at it, are you going to think you're looking at a screen or straight through a glass?

Mehlman: I'm sorry that I can't answer that with great clarity. I'm not familiar with that system. But their intention is that they can use this porch all seasons, but it's—
[OVERLAPPING]

White: All year?

Mehlman: But it's not going to be a conditioned porch, so the desire is to use it as a screen porch, but probably to be able to shut it down when the pollen is kicking in,
[LAUGHS] and other things like that.

Epting: This, of course, is a neighborhood that was built more recently, and it's not yet old enough to have its structures be considered as contributing historic structures. And I've heard mentioned several times tonight about your plan is not incongruous with its immediate neighborhood. Our task is to determine whether it is incongruous with the historic district, the special character of the district of which this neighborhood is apart. And you did show some photographs of other older houses in the district itself, not just in this neighborhood.

But I think it's important that folks who buy and own property in this particular neighborhood understand that our task really is to decide whether proposals are compatible, congruous, or as the statute says, not incongruous with the special character of the historic district as a whole, as it existed when the district was created, and has it has developed over the period since.

That—just so there’s no confusion, that we’re not here to vote on whether this makes this house compatible with the houses that are located adjacent to it along North Boundary Street.

Mehlman: I hope I wasn’t misunderstood. I tried every time I repeated that statement, and I know I was quite repetitive with it—

M: Yeah.

Mehlman: —to make sure that I mentioned the home, the site, the neighborhood, and the historic district—[OVERLAPPING]

Epting: Yes, I noticed that you did that. You also said a number of times that it’s not historic and it’s not contributing, and those things are true. But that is not to diminish the importance of its original form, or of its contribution to the historic district, even though it’s a newer structure and not yet old enough to be considered historic or contributing. That’s not an argument that we need to have. It is merely to make sure that we’re all on the same track in that regard.

I’m particularly interested in the complete absence of any mention of the applicability of the conservation easement that is—was placed on this property, was conveyed to the preservation society back when it was still the Chapel Hill Preservation Society.

Mehlman: May I speak to that?

Epting: With the purpose of protecting not just the structure but the gardens on the property. And I’m anxious to hear something from the applicant, from you, or from somebody about how this proposal is compatible with those revisions. And I would—I ought to disclose that for many years, I was the counsel for the

Preservation Society. I was not responsible for those restrictions. And so I'm asking a question about something I didn't do myself, just to be clear about that.

But in particular, you know, you mentioned on several occasions that the addition on the east side would slightly encroach on that circular area. It appeared to me, from one of the most recent images, that it actually takes a substantial fraction of that circle. Is—that drawing right there makes it look like—that you're really substantially out into that circle, which is, I think, a very substantial feature of the original garden use that Mister—Dr. Coker made of that property. I don't know about that, but I want to be made comfortable about that.

Mehlman: If I may address that?

Epting: Sure.

Mehlman: I'm actually familiar with the preservation easement that you mentioned. We uncovered that and went through it in great detail. And I was pleased to note that the protections in there, as the property had been divided into three lots at that time, and Lot 3 is the 609 North property. And the provisions were very clearly held to the 609 North property only and what—and then, in concern [ph], I talked to Stephen and Druscie [ph] and said, "Hey, I don't know if you're aware of this." And they said, "Oh, we're very aware of it." And there's—and actually upon purchasing the property, Preservation Chapel Hill gave them a quitclaim. So that's no longer in effect.

Epting: Preservation Chapel Hill—

Mehlman: Yes, I have a copy of it if you need it.

Epting: Gave a quitclaim which—

Mehlman: To Stephen and Druscie upon—before the—

Epting: Yeah, I wonder if you could provide us a copy of that.

Mehlman: No problem, I will. And then—[OVERLAPPING]

Epting: When did that happen?

Mehlman: At the sale of the property. And in regard to the circle, I guess I would ask, you know, what constitutes substantial? I look at the circle and see that it bisected and it's—pavers would engage the circle, and I think it can be done quite elegantly. And once again, in regard to the property, the client's desire is to maintain and restore these gardens, and work with—I have not been able to get into detail. I've talked with Mr. Swanson about the project, and I don't know what elements were from the original portion, and what elements were from his interventions with Dail Dixon on the property.

Epting: Yeah, and I'm delighted to know that he is engaged to execute plans for that. I—but I have to say that I feel completely unprepared without seeing those plans to vote on this proposal. It seems to me that that ought—

M: Yes [ph].

Epting: —those plans ought to be a part of your presentation, so we would know exactly what is proposed in terms of impacts on substantial features of this property. We are, in fact, bound to consider those things.

Mehlman: Well, as Mr. Swanson indicated to me, a little bit of the chicken and the egg in terms of—with zoning, doing your zoning application, and doing the historic district application. Do you get the zoning application completely finished, and then come in here and have to change all that for the client base [ph]? And our

goal here was to talk about the architecture and the buildings on the site. And I agree that site features are extremely relevant, and all I can do is reiterate that only where there is architecture proposed on this plan will it intervene with the site.

Epting: Well, I for one would not be prepared to vote on this until I had seen those other aspects of the proposal. I don't know how the rest of the commission feels. Certainly, I'm not going to make a ruling about that, but if the commission agrees, then I would suggest that this matter be deferred until the remaining plans can be provided about the things that we're asking about. The trees, the garden area, the—a precise way in which that circle is to be bisected.

I would love to see—I guess that solid line that says—no, that's setback line. I noted when I was there late this afternoon, a number of rock walls that seemed to be original. When by “original,” I mean it may have been—

M: Here [ph].

Epting: There since the—

Mehlman: Rock wall.

Epting: Yeah.

Mehlman: Rock wall. This—[OVERLAPPING]

Epting: My own view of that—[OVERLAPPING]

Mehlman: —wall on the site where the garage is going. There's this—

Epting: My own view would be that any condition that we might impose would, for certain, require the protection of those rock walls. But likewise, the garden areas that they—if they didn't enclose, certainly they're surrounded, so.

Mehlman: I know rock walls are extremely important and they are defining—character-defining elements for the district. A lot of times, they border the property and they give a face to the property. These rock walls are interior rock walls. There's—an extreme amount of linear footage of these rock walls. And this rock wall at the rear of the property where the garage is proposed, would have to be removed. That one is about 18 inches high, and considering the amount of rock wall on the property, and that that is the natural termination of where the driveway is, it sets it—it sets the garage to the rear of the site. I think it's a well-suited location for that, and it's certainly not destroying a character-defining element that's defining this property to the street and to passersby.

Epting: Well, sir, you've just made my point for me.

Mehlman: [INDISCERNIBLE]

Epting: Your presentation, I mean, we're now 40 minutes into your presentation and you're only just now mentioning that a significant part of a historic feature of that property, the rock walls, of which we are very fond and very protective in our duties here, is to be destroyed. You know, there's—

Mehlman: [INDISCERNIBLE]

Epting: There was nothing at all in the proposal that suggests that the wall—that rock wall was going to have to come down, or if it was, I missed it. But that is exactly why we need to see the product of—at least the preliminary product of Mr. Swanson's work in order to be able to imagine, and in fact, to appreciate the full extent of the impact of this proposal on the character of the district. When people start talking

about taking down historic rock walls within the district, I at least become very concerned about that.

Mehlman: [INDISCERNIBLE]

Epting: So I would need to see more than we see today, and the question is whether the rest of the commission likewise feels like this is—this proposal is not ready for action.

Mehlman: If I may, I just want to assure you—there's no goal here to pull wool over anybody's eyes about a rock wall. There's a lot in this proposal that I was presenting to you, and within the two site plans, there's—existing rock walls are noted, and the proposal for the existing structures are noted [ph]. And I have indicated numerous times that the only site features that would be removed are where new architecture is proposed. So if that wasn't picked up, I apologize.

Epting: I hope you won't deduce from my remarks that I thought any wool was being pulled anywhere. I just didn't understand it that way, and I think it needs to be clarified. And I think it certainly needs to be well understood by the applicant that that's a significant feature that this commission will want detailed information about.

What we would like to do is to try to work with the applicant so that we come out with a project that is not incongruous with the special character of the historic district. That's our job. It is not to obstruct. It is not to delay. But we don't have enough information about those—the full proposal, in my opinion.

We are somewhat at a disadvantage because the architect who is responsible for

the design is not here. On the other hand, his work is at some distance and I understand that.

So my own quandary at this point is whether we should continue with our hearing on this matter tonight, or whether we should wait until we have supplemental materials that are responsive to these concerns. I know there are others here who want to speak [ph].

M: Can you find out if there are other people [ph]—[OVERLAPPING]

Epting: So. If—I would ask if you are—if your presentation is complete, if you have any others who want to speak in favor of the application, we would hear them at this time.

Mehlman: I will ask one item, and I have no idea where it would go, but if there's any possibility that the architecture regarding the house and the garage, since the garage is going in a rock wall, could be considered separately, and any motion for an approval could be made for the home tonight. It would, I know, keep the clients on a schedule. The second part—like I said, the additions at the home—there's no—there's not mature features there. It would keep the projects on schedule for the client, and I know that they would like that, and would gladly come back with an entire landscape plan and a garage proposal.

Epting: We hear your request. Let's—are there others who want to speak in favor of this proposal?

White: Well, I—

Epting: Are there others who wish to speak in opposition to this proposal, or simply to make a public comment about the proposal? Mrs. Burns?

C. Burns: There were a number of people who signed up before me. I actually object. I'm not so much—I don't want my testimony to be characterized as objecting to the project. My name is Catharine Burns. I live at 609 North Street. I would like to reiterate and ask for not only an explanation. You said that both staff and counsel have determined that the notice requirements were met. That ought to be—that's a good example of something that ought to be detailed in the minutes.

I am on the list for notification. I believe they're your current rules of procedure. If they aren't, then you should change what's available on your website. It says that those people who have requested to be on that list will receive their notice with full details of an application 10 days before, and I do not understand how you can just say three days—three working days is adequate.

So that's my first concern and I would like—because there's a precedent, it is not easy to take the time to monitor, and prepare, and come to these hearings. If willy-nilly, the staff and the commission can change their minds on the time, I think that is an issue that seriously needs to be addressed because it's not fair to the public.

I have a number of concerns, not the least of which is I look forward to meeting my new neighbors. These will be my neighbors more so than just adjacent property. We share stewardship for one of the most—arguably the most historic residential property in Chapel Hill. I'm going to slow down and hit the highlights.

Because of the notice, I'm not prepared to—I based on the materials that were available in the application, significant additional information has been

presented tonight, and that's not fair to someone trying to comment. My interest is not in opposing a project; it is in the integrity of this process, and having a project and a record so that you have a project that meets the legal requirements. And I don't see how that can happen when additional information is presented not in a staff report available 3, 4, 10 days ahead, but substantially ahead.

So first, I want to say, I have never discussed this issue and this application with my husband. It is not easy to do that, but I want it to be on the record, we have shared no information and no discussion of this. I assumed he would recuse himself, but I didn't know that, or that you would recuse him, but I didn't know that, so we went to great lengths to avoid that.

I don't know when I get the feedback on the rationale where three days' notice is adequate, but I would like that at some point. My objection to the staff report, and also the certification of this application as complete, because the staff does finally now certify that but I—there obviously is significant information. You have never—even in the worst of the times that I've observed this commission—taken things piecemeal and not considered proposed changes to a landscape separate and apart from changes to a building. The application has to be complete for what is going to be done in this project.

I think that a professionally done staff report, which provides the evidence that you need to make your decision, should include historic background. Sometimes the overall survey and the brief descriptions of a property are adequate and that should be noted when that's the case. This property is of tremendous significance. It—I would like to introduce into evidence, first, easily available to

staff had they—and maybe they read all of this, but it needs to be part of your record, *Town and Gown Architecture of Chapel Hill, North Carolina*, sections on Dr. Coker, this neighborhood.

In addition, I've copied from a book on Dr. Coker, the father of botany in the Southeastern United States. A major historical figure to the University of North Carolina; had major significant importance in the development of Chapel Hill. His own property—this is the remaining core of the property that was extremely important to—the development of Chapel Hill. Why none of that has been included or considered? But I'm also going to—well, let me make this statement.

I have said this before, but there are a number of you who are new members of this commission since I have testified, and I have in court cases been certified in an expert in historic preservation. You consider the evidence as it comes to you. You can consider my background and expertise as expert testimony or not, but I don't think that's irrelevant.

I also have worked on conservation and historic preservation easements since 1984. I have extensive experience. The idea—and I'll—particularly, the most important piece of evidence I'm going to introduce is the easement—when Dr. Coker—Dr. Coker died, and his widow owned this property. At her death, she left it to the University of North Carolina. I think there's ample evidence that that was a gift made because of the significance and the intended preservation of that—of this property. And when I say “this property,” it is not just 609 North

Street and its current metes and bounds [ph], but this 1.3 acres that's included in that extraordinarily important easement.

The University of North Carolina required as the purchasers [ph]—they weren't just purchasers, they were accepted as stewards who would protect this property, that they execute an easement that very clearly notes the reasons and the significance for that easement being created, and it covers—certain formal gardens and surroundings. The most formal of the formal gardens is the part that is included on this property.

The idea that you can extinguish an easement by quitclaim deed with no proceedings is so ridiculous and wrong. If I had come to this meeting and been told that Preservation Chapel Hill had somehow reviewed, and approved, and agreed, and documented thoroughly that this proposal was consistent with and acceptable under the enforcement of the easement, then I might have been able to respond to that. But yet again, that's an example of what should have been included in the materials available to anybody interested in this project in advance.

Three days is not enough. You could be the most dedicated person in the world with time on your hands. You cannot prepare that in three days. I wish—I don't know who Professor French is. I look forward to meeting you, whichever one you are. But this is—nobody—maybe they came to my husband. We haven't talked about it, but I don't think so.

I—the remedy for failure to properly administer and enforce a conservation easement by a nonprofit is first of all—well, the attorney general of

North Carolina and the Internal Revenue Service. There's a great deal at stake. It's a major topic. They are meant—I could provide you law review articles but—I attended a workshop in 2012 with members of attorney general staff from six or seven states, the leading experts, and the head of the Internal Revenue Service's division that deals with the administration of conservation easements. And if an easement is improperly attempted to be extinguished, there are remedies, and those involve particularly loss of status as a charitable easement, as a conservation easement holder, and loss of nonprofit status, and I do not say that lightly.

But the idea that you are considering—even if everything was absolutely right and Preservation Chapel Hill were doing its proper duty in reviewing this, this shouldn't be before you, before you have evidence of that documentation. And if the Town of Chapel Hill is accepting what has been purported to be a quitclaim deed, that the easement has been extinguished, that's just wrong. So these are my pieces of evidence [ph]—[OVERLAPPING]

Epting: We'll let those documents that you are now handing the secretary, be admitted into the record, and thank you for those remarks. I share your concern about the purported quitclaim of the conservation easement. Not just because, for many years, I have been involved with those kinds of transactions for the Preservation Society, but in particular, because those who are protected by that easement are those who own properties nearby.

And you know, it's clear as a bell that this action was taken, whatever it's legal effect, without any notice or opportunity for those other people who are

protected by that conservation easement to participate. Which I take to be—and I say these words without restraint—a violation of the fiduciary duty of the trustee under that conservation easement, the holder of the conservation easement.

So it is not enough, certainly, to say, “Oh, well, that conservation easement doesn’t apply to this lot; it applies to the other lot.” It applied to that property when it was all one property, and certainly, is intended to protect the adjacent property, and we don’t have any way, because of its absence from the record, any discussion of it other than what I’m having now, to consider the impact on the project.

So I am not going to extend this meeting tonight for the purpose of having a further argument about whether the notice was appropriate, and here’s why. I don’t think we’re in a position where we’re prepared to vote tonight. And I think I understand that the commission would think that it ought to be deferred to a later meeting until the record can be supplemented. And that being the case, of course, you will have at least another month to look at these materials and to prepare to respond to them. I said earlier that I inquired of the secretary—I think I said of the lawyer, but I inquired of our commission secretary, and not Brian—

F: I didn’t think that was—[OVERLAPPING]

Epting: And I think the—I was satisfied with the answer that Jake gave me in that regard, but I don’t want you to think that we simply ignored the notice. The notice is what we ask about as we do every agenda meeting. You know, do we have appropriate notice to go forward with this matter here? And so, Brian, I know you’re anxious to say something—

Ferrell: I'll just say briefly—and I know that because of the proposed continuation, the notice objection is essentially moot for this meeting [ph]. But I believe what the secretary was mentioning was the mailed notice date. As the speaker rightly noted, there are a number of notice provisions in your rules related to notification of a sunshine list, and others that are relevant. And I'll say no more about that but there are additional deadlines that are important.

White: I have a question.

Epting: Mr. White?

White: For the benefit of those of us with no legal training whatsoever, you mentioned twice that the applicability of this quitclaim—alleged quitclaim is—was, quote, “wrong,” unquote. Do you mean that it is legally invalid, or it simply something of which you disapprove?

C. Burns: Historic—I mean it is not legally valid.

White: Okay.

C. Burns: Historic preservation and conservation easements are essentially the same. I believe the—I know the federal law uses the same term for both and the north—whether North Carolina statute refers to them together. They are perpetual deed restrictions. There are—it's an extraordinarily important area of conservation and historic preservation and land use in the United States. There are implications because—and they are tightly regulated because they are considered in the public interest, and people are given tax benefits in recognition of that. They are perpetual.

Now, in extremely limited circumstances, they can be either changed, transferred, but there are very, very strict rules about this. In my opinion, and I will acknowledge there is some slight disagreement, and that's where a lot of these law review articles—I believe that in order to change in any way, because of changed circumstances or transferred to another holder, the parties, particularly the holder of the easement, needs to go to court and get a judge to look at the evidence, and declare because it's a public trust. It's not just—

Now, the idea—and then there's some people that say that the charity itself—the easement-holding entity has the ability as long as they thoroughly document it and make a decision. Basically, the rule is, either the public value—the conservation and historic preservation value—remains the same or is increased. Then you can make a change. And there are some very sophisticated easement-holding organizations that would rather not have to go to court, and they think they're qualified to make that determination.

But the idea that you could just simply say by quitclaim, with no evidence, that you're extinguishing an easement is, in my opinion, legally absurd. And I say that—I served on the board of Preservation Chapel Hill, and if that is the case, I am extraordinarily pained and disappointed.

M: [INDISCERNIBLE]

Epting: Before you ask the question, would you say just two sentences about your qualifications? We didn't introduce you as a lawyer, but I know of your imminence in that—

C. Burns: In the past, I have had a sheet, that I think I submitted, because I was offering what I represented as clear expert testimony. I majored in architectural history at the University of Virginia. I have a law degree. I'm not a practicing lawyer currently. But with—well, I worked for the Pittsburgh History and Landmarks Foundation, and then went back to law school. I worked for two years with a major law firm, and then joined the National Trust for Historic Preservation in the legal department. Then I became the director of preservation services there, where I was in charge of preservation professionals in state and local, and interestingly, historic preservation commissions and the information that goes to them. I've served on the board of Land Trusts [ph]. I hope this [ph]—I won't bore you with my full details, but there have been—twice I testified in court in Virginia, trial-court-level cases, and been accepted by judges as an expert in historic preservation. And I was appointed by the governor of Virginia to a position that required—was described as historic preservation expert, so.

Epting: And I propose that we will accept your representations about your qualifications and would deem you an expert in historic preservation. But I would like for the record, for you to supplement the record with your resume by the time of the next hearing.

C. Burns: Okay. Be happy to do that.

Epting: And, okay, well, thank you very much. Are there other questions?

Schwartz: I had a question—[OVERLAPPING]

Epting: I'm sorry, David.

Schwartz: Are there particular aspects of the application that you think are or may be a violation of the conservation easement?

C. Burns: Well, I'm glad you asked that. _____ I started to say that. To be perfectly honest, I can't with complete confidence say I don't have concerns because I had such limited time to review. I think—there are two other things I would like to see, which I have not ever seen. The—my understanding and as I—and I have had occasion to read not just the easement, but some of the correspondence and documentation around it—the intention was that this lot be allowed to be subdivided off, and that an approved one residence be allowed there. And what I would like to see, and think is critically important to the record, is the documentation of that initial application. I think that's important.

What was—you know, it's been—so what is—from my expertise, what's so critically important and was, in my opinion, handled very well in that approval process, was that Dr. Coker's formal, somewhat sunken garden integrates still visually beautifully into the rest of the gardens. I'm going to assume—and I have every reason to think based on what I've heard—that these recent purchasers and they represent, you know, are wonderful people who value that.

But the problem is, if, in fact, this easement has been extinguished, their—that protection that was critically considered as part of the approval process has been removed. I mean, if that were the case, that a quitclaim deed could take that away. So what—so that is my biggest concern. I want a record that shows that these values and contributing features to the character of the district are recognized, and considered, and evaluated, so that if Professor French sells this

property in five years, somebody doesn't propose building a three-bay garage right smack in the middle of the formal garden.

What would—maybe you all would be able to prevent that. What if they want to subdivide it? By saying they've done a quitclaim deed on this easement, the value of that property, they—I believe there's subdivide-able lots and that is—would be so destructive. So I can't tell you because I only had a few days of—excuse me—but I had company. I had holidays and Christmas. I didn't take a tremendous amount of time. And I didn't have—so I said I would like to see what the Historic District Commission, at the time that the Peacock residence was approved—I think those records are an important part of the consideration. The other thing I'd like to see is Preservation Chapel Hill's review and approval at that time. So.

M: Just a follow-up—

C. Burns: I hope—I think that if things have slowed down, and there had been transparency, and a complete airing [ph] and appropriate approach, maybe you could have had a fully approvable project, but I am extremely worried about the precedent, and there are aspects of it that concern me.

Epting: Thank you.

C. Burns: Thank you so much.

Epting: And are there other questions of Catharine Burns?

Smith: Kimberly?

Kyser: No, not—[OVERLAPPING]

Epting: Are you through?

[INAUDIBLE]

Epting: My sense of this is that there's still work to be done if we're all to work together towards this project, and there's information that needs to be gathered. My suggestion is that we defer—we recess this public hearing until the next meeting, that we continue at that time if the materials are suitably provided. And I will work with the secretary to make sure that that is the case before it comes back on the agenda. Again, we're not trying to delay this. We're trying to be in a position to have all of the information we need to make some pretty critical determinations about a very important and beautiful property.

So without objection, I would say that we will recess this public hearing to the next meeting, contingent on the applicant's provision of supplemental materials as the secretary may direct. David?

Schwartz: I want to make sure that the applicant feels like they know what supplemental materials they are being asked to provide.

Epting: Well, I'm not going to be able to make a list of one through six right now, but I suggest that the secretary and I will talk about that, and will develop that over the next day or so. So again, the applicant won't be delayed and will have a clear direction about what we want to see.

Lowman: And may I state that the next meeting, just for clarification, is February 12th. That is what is on the calendar.

Epting: And we will—

Lowman: At 6:30, same room [ph].

Epting: And you folks have my commitment that we will go to work on this tomorrow so that you won't be delayed beyond—

Smith: Excuse me. I do have a question if we are requiring a landscape plan for this, there's not very much time to put that together, right? There's only a few days before those materials—yeah. And I'm sure Catharine Burns and other neighbors would want to know what that plan looks like. And so I just wonder whether the February meeting will really—that they will have enough time—
[OVERLAPPING]

Epting: We will try to make the February meeting, but if the materials are not available, then we'll go to the next meeting. We're going to try as hard as we can to do our part of it, and I'm sure the applicant's representatives will do so, as well.

Okay, is there any objection to proceeding in that way then? This matter is recessed and deferred to the next agenda for the purposes stated.

White: Could I just add one personal question?

Epting: Yes, sir.

White: Could whatever additional information is asked for be sure to include detailed information on the disposition of all of the rock walls shown in the existing site plan that we were given?

Epting: That's number one-and-a-half on my list.

M: Okay.

M: Okay.

White: Because they're all there. They're all there. There are a lot of walls on the existing site plan.

M: Yeah.

White: And none on the proposed. Now, does that mean they're going to be gone or—

Epting: Well, we're going to find out.

White: —or that the architect thought that maybe they weren't—simply weren't relevant because they were far from the house? I don't know.

Epting: We're going to find out.

M: Okay.

Epting: Okay. All right? Thank you very much. We'll move ahead. We'll look forward to seeing you next time. As you are going, I will say to the architect that it is particularly important to me to have some explanation from the preservation society, which is now Preservation Chapel Hill, about this matter of the attempt to extinguish the easement. That's going to be—

Mehlman: [INDISCERNIBLE]

Epting: Good.

Mehlman: All I have is the document. I know nothing [ph] [INDISCERNIBLE].

Epting: Right. Okay, very well. Thank you and thank you for your fulsome presentation.

[END TRANSCRIPT 01:49:59]

[END RECORDING]

EXHIBIT E

**Brown & Bunch
Town of Chapel Hill Historic District Commission
306 North Boundary 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
Ferrell: Brian Ferrell, Counsel to Commission
Lowman: Jake Lowman, Staff
Mehlman: Erik Mehlman, Architect for Applicant
Swanson: David Swanson, Landscape Architect for Applicant
Cumbie: Stephen Cumbie, Applicant
W. Burns: Woodrow Burns, Witness
Hunt: Paula Hunt, Witness
Gravely: Frances Gravely, Witness
Hemsey: Jessica Hemsey, Witness
Williams: Christianna Williams, Witness
Camp: William Camp, Witness
C. Burns: Catharine Burns, Witness
Brown: Linda Brown, Witness
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 00:19:24]

Epting: The first application tonight is continuation of the hearing on the 306 North Boundary Street application. And as I said earlier, I have been recused from further participation in that matter, so I'm going to step aside now and ask the vice chair to run that agenda item.

Murphy: All right, so this is my first time doing this tonight, so bear with me, everybody.
[LAUGHTER]

Ferrell: And let me, as we get started here—

M: Yeah, but let's get the applicant [ph].

Ferrell: —there was a request, a threshold issue, raised about the minutes versus the record. I believe what I understood the applicant to say is he was interested in some materials that he presented at the first meeting on this application to be included in the record of the proceedings in this case. And as you know, your meeting minutes are oftentimes summary meeting minutes, and so they don't contain, often, everything, or certainly not a verbatim recitation of the evidence that was presented to you. So I believe what the applicant is asking, that a set of information previously presented, that perhaps he has again tonight, become part of your record. So if you would, at the appropriate time, just request that that information be part of the record, I think that might accomplish what you are going for.

And we have one more, before we get started, threshold issue. I believe Commissioner Locke wasn't present at the first meeting, and the only other meeting, on this item.

M: Right.

Ferrell: So your rules require that for a member to participate and vote on a matter, that he or she must assure the chair that he has become familiar with all of the submittals and materials in the case, and one way to do that is watch the prior meeting and review the application. So, would you speak, Commissioner Locke, to—if whether or not you've reviewed prior meeting minutes and the video in this case?

Locke: Yes. I reviewed the minutes twice, I watched the video footage from the January meeting twice, and then I also reviewed the documents in full—so all of the attachments that you're going to see on the agenda items.

Ferrell: Thank you.

Locke: You're welcome.

Ferrell: I believe there was one more question to me, lingering from the last meeting. There was some discussion about private covenants that came up in this matter. My general view, just so you can have it in mind as you consider the testimony tonight, is that the Historic District Commission doesn't have the authority to determine applicability, enforceability of private covenants that were made between private parties.

My further view is that, to the extent you have evidence in the record of a set of covenants, they may contain some information about the—that may inform your congruity standards, such that if the covenants say something about historically there was a rock foundation in this building, and there's a question about whether or not the materials in the application are congruous, you could look to the factual information in those covenants as some sort of supporting evidence, possibly if you find that it's persuasive. But I don't find anywhere in the state statutes or the design guidelines that call upon the commission to apply private covenants in its congruity determination. So I know that was a lingering question. I just wanted to speak to that at the outset.

And I believe that takes care of the housekeeping matters, if you will, from the prior application.

Murphy: Thank you. Let's hear from the applicant. Welcome back.

Mehlman: I'm sorry if I've been lingering. I didn't know so much was going to happen before I started.

Well, thank you, commissioners, for having us here again. Here to review the property proposal for an addition and—garage and accessory dwelling unit at 306 North Boundary.

[INAUDIBLE]

Mehlman: Sorry. We presented last meeting, and a lot of information came up, requests for more information, and I've just heard some petitions that had some direct information regarding our specific property. And I just want to say that this wasn't part of what I was thinking about in my presentation tonight, but please, you ask any questions of me that you need to. We scrambled from the last meeting to get things together. I know that now when I look at what we had, we were supposed to have a survey with all the trees on it before the last meeting; it didn't come in. Our surveyor said, "I'll have it in a couple of days."

And then there were some questions about what items on the site were historic and what were not historic, being from the Coker property, and I told you we were engaged with David Swanson, who's here tonight, but he hadn't been able to start the project.

Kyser: Excuse me, sir, what is your name?

Mehlman: I'm sorry, Erik Mehlman.

Kyser: Okay.

Mehlman: And I'm representing the project, the applicant. I'm sorry about that.

We are happy that we've been able to have the little [ph]—the time to get things together. We sent in supplemental information within two weeks. It was hard to get that together. We have more information that's new tonight, and so

we ask your patience when looking at this, and please ask any questions on the supplemental information. We are able to get it in, we are told, that actually as a supplement, is only due tonight anyway, but we tried to get as much to you as early as possible.

Once again, my name is Erik Mehlman. I'm with BuildSense. We are joined tonight—

Murphy: Brian, can I just—I'm sorry to interrupt you. Can I just ask you a question regarding supplemental information—

Ferrell: Sure.

Murphy: —that is submitted after the deadline for public review?

Ferrell: Right. So the applicant has—I understand there were some materials that were on the agenda that were posted on the agenda, and typically an applicant is free to offer evidence during the hearing itself. What the commission feels like it needs to review, and what the timeline that the commission feels like it needs to review that information is within the discretion of the commission.

Murphy: Okay, thank you.

Mehlman: With us tonight is Mr. Stephen Cumbie, owner of the property, it's 306 North Boundary. Thank you. Druscilla French sends her regrets; she's not able to make it tonight. Also here is Thomas French from Thomas French architecture. He's the designer of the work. And David Swanson is also with us, the landscape architect who designed the original work for the Peacock house in 1990. All of them are available if questions need to be directed their way. And once again, my

name's Erik Mehlman. I'm with BuildSense. I'm the staff architect there, and we are also the builder.

Last meeting we discussed the project in regards to the LUMO and Sections A through J, and talked about the fact that the project is a non-historic property, non-contributing property in the Franklin-Rosemary Historic District. We discussed that the proposed additions and the garage are not visible from the street. We talked about the context of the neighborhood—very varied architecture there—and we also talked about the new additions and accessory dwelling structure being designed sensitively to the existing site. What questions came up and why “site” is highlighted in red is, we didn't have some answers there. And like I said earlier, we've worked really hard to illustrate those tonight and to show you what good work we've done to address all that.

The five charges that were given to us after the meeting were to provide a landscape plan showing all walls, trees, other existing significant site features, and how they will be affected, and provided a narrative referencing the relevant design guidelines. We're going to clarify about the stucco versus brick on additions, look at the screen porch operation, try to find the COA application from 1990, and be prepared to discuss the legality of the quitclaim.

I'm jumping right into the most important thing, which is the site, and the information that we were able to extract on the site with David Swanson's help. This is a plan from circa 1920, from the Wilson Library at UNC, that shows the Coker gardens. It's not exactly to scale, but it's pretty well done, and what you can see is the original Coker house and a path that moves northward, and then off

of that, a garden that works out to the west that is a three-part parterre formal garden. You can see the old site walls to the north, and you can see a little bit of the site walls here.

David Swanson did a site analysis, which is included in that—the certificate of appropriateness application from 1990. Forgive the faded quality of this, but it was hand-drawn, which shows David’s depth of knowledge and in [ph] work. What I’ve done here is I’ve added some highlights. The magenta lines show the Coker site walls from that historic analysis, showing what was existing prior to the 1990 work. The green ellipse here is a line of what David had referred to us as the Coker hollies. It’s a strong line of hollies that are between 12 and some larger—very impressive, and all of them were kept as a part of the original work.

If we move on, we can see the—one of the original design proposals from Mr. Swanson in regard to what would be done with the new plan. And what you can see, so if I flick back and forth, is that the gardens that are on that site now are, in fact, a reinterpretation, a re-visioning of what the original Coker spirit was. All of that area was, in fact, torn up in 1990 and re-graded, and this entire new landscape was planted.

If I continue, you will notice, though, that in this design intent, the northern walls were kept, the wall around the path, and some of the southern walls were kept, as well. The Coker hollies were maintained, and the design of the house works with an axial connection both to the south and to the east, into the garden. What we see today—and this is an overlay on the full site survey, an

overlay done by Mr. Swanson, as well, with more detail to it. And if we add the lines, we can see that as a result of the work in 1990, all the northern walls remained, the line of Coker hollies remained, and some of the walls that were part of the original Coker gardens were truncated.

Here we see the proposal on the boards [ph] today. And here we see that all the original Coker site walls and the original line of Coker hollies are still being maintained. There are some subtle changes happening to the garden as it was re-envisioned in 1990, and the garage is being—the accessory dwelling unit and garage is being placed to the northwest, still. I'm going to get back to there in a second within an enlarged [ph] site plan for you.

This is just an interesting shot David provided for us from when he walked the site in 1990. This is what he first saw when he got there; this is the Coker gardens at that time. It had become fully overgrown, and it was lots of growth, but definitely unmanaged. Here are some photos from the work in 1990. You can see the entire area, post-excavation, with new site walls and new formal parterre gardens being implemented.

If we return to the plan that we're reviewing today, the proposal for today, once again, we see—our intention is to leave all historic site elements on this site. None of them are to be adjusted, truncated, moved, demolished. The original line of Coker hollies will remain, all site walls that are intact will remain. From when we submitted supplemental information at—two weeks in, and we were told by staff that technically with the application in, all supplemental information comes

at a later time. There's no deadline on that. So we kept working up to this deadline, and we show you this today.

The—our clients, Steve and Druscie [ph], said, “Hey, we concede. Let's not go with a three-car garage.” We've reduced it to a two-car garage. We got information about—that was—the most relevant information is that this here, the north of the site [ph] next to the shed, is a 47-inch-diameter hackberry, and regardless of the wall, we're 10 feet away from that, and there's no desire to take out what would be considered the most significant site feature on that side of the site.

To walk you through this, the garage is here. There's a small extension for some garbage and recycling cans. There's an existing screened fence there that will match. There's a bit more driveway area in gravel to be added. These paths, some of them are on top of the old ones. It's just a little bit of tweaking and re-envisioning of those, but they're—some of them aren't fully defined. Now they will be.

And on the east addition, Thomas and Stephen redesigned this stair, along with David, in order to engage this—the circle in a better manner. And David suggested, because of the work that needs to be redone for the drainage of that circle, simply take the efforts, and give us a few more feet, and move it, because the entire thing is not working well for drainage at this time.

M: Can you elaborate on that?

Mehlman: This circle—can you see the ghosted line underneath right here?

M: Yeah.

Mehlman: That's the old circle in the center. It's simply been moved [ph] approximately four feet, and that's just to allow the engagement of the stairs to come down here in a better manner. Once again, that was done as a 1990 element, so we—once again, I think we're still keeping in the spirit of what was redone at that time, and making it better in the process.

So, new addition to the south has remained the same. And as I said, the one to the east has remained the same, just some of the stairs have changed a bit.

In regard—I think I've—I updated the application in terms of site features and plantings. Page 11, Guideline 1: "No historic built site features from the original Coker gardens layout will be removed as a result of the proposed construction." Oh, there are a total of nine trees that will be removed. They're X-ed out [ph] here on the plan. None of those trees—in this legend here, you'll see that none of those trees were part of the original Coker gardens, though two are significant-size pines, here and here, and those would have been—

Smith: Could you show that again? I'm sorry, I missed—

Mehlman: Two are significant-size pines.

Smith: Right, where are they again?

Kyser: Where?

Mehlman: They are here and here in this new driveway extension.

Kyser: What's here and here?

Smith: We don't see—

Mehlman: I'm using—I'm trying to use the mouse—

M: [OVERLAPPING] the garage.

Smith: Okay.

Kyser: Okay.

M: With the garage there _____.

Kyser: Okay.

Smith: Right.

Mehlman: Sorry. Do you see where I'm moving the mouse?

Smith: Those two you plan on taking out?

Mehlman: These are two pines. Basically, the charge became hackberry or pines, and the pines, although large in size, they are close to the house. And it became a decision, if a tree is going to be in danger, the pines seemed more susceptible, and we made that decision. As we—goes through, I've talked about the three- to two-car garage change, and keeping the 47-inch hackberry.

Here are some details from the new car—new garage and accessory dwelling unit design.

Kyser: I have to ask him. Just I can't see it on that screen [ph].

Mehlman: The four elevations—

Kyser: I don't see where it is [ph].

Mehlman: —they maintain materials congruous with the existing site and the existing house. If you need a refresher on those materials: stucco, brick, masonry, which we have located, the same brick is available now as was built in 1990. I included a few pictures of the screens for the garbage and recycling area. Also, just to bring you back up to speed, there's precast lintels on the house, copper roof, brick, once

again, stucco, painted columns. There's wood windows, which are intended to be matched with aluminum-clad wood windows.

I'll go quickly through the plans. You've seen these before. The only change is to the stair, once again, to the east, to the gardens. No changes in other locations.

One of our other points that was requested of us was to talk about the brick versus stucco question for the south and the east additions. The east addition, as indicated prior, in prior meeting, is stucco and it remains unchanged. It makes sense that stucco on a second-floor brick—if you ask a brick if it wants to be on a second floor only, it doesn't want to be there. It likes to go to the ground, so—

Smith: I was just there today. I thought the whole side there was brick. That's what I saw.

Mehlman: No, this is the proposed addition on the east side. There's currently—

Smith: Okay, so there's currently brick there.

Mehlman: There's currently brick and stucco on this house. If you'll—

Smith: Stucco on the side, yeah.

Mehlman: You'll see there's brick on this form, and then there's stucco on this form.

Smith: Okay, I see.

Mehlman: There is no appendage on the east right now.

Smith: Right. So where are you proposing the stucco, again? On the top half?

Mehlman: On this east elevation—

Smith: Yep.

Mehlman: —this area here is stucco.

Smith: Okay.

Mehlman: Mm-hmm. And to the south, the main entry, we know that both materials, the— both the brick and the stucco, are existing and congruous and appropriate materials. Tom, and Steve, and Druscie talked about the material on the south elevation, and prefer to use the brick masonry there, not only for its textural quality, its tactile quality, and a little bit more of a sense of grandeur at the front entry, but also for the fact that it's more durable long-term, has less maintenance, especially in our moist North Carolina climate.

Here are west and north elevations, unchanged. The other question was about the all-view patio enclosure system that was indicated on the east patio. It's a simple system that allows for quality and ease of use for three-season porches. It's—would infill in between the columns on the east porch. And it's an aluminum frame system with sliding panels of glass and screen, but also accept hinged doors as well. You can see from some—oops—from some examples that we've pulled from other projects, it's a very appropriate and nice-looking material, and it'll give them the ability to open and close the east porch per the time of year and the weather.

One of the other requests was to retrieve a COA application from 1990. We had requested that way back at the time of our initial meeting with staff. They said they just didn't know if it was going to be available or not. They did dig it up for us and got it to us a few days ago. Simpler at that time, a one-page application. A highlighted section from other text on the Coker residence. And

three site plans, which we've talked about and seen tonight as part of the historic information, and elevations from the original project.

I return to the—what we started with. And not to be repetitive, but I've highlighted the site issue in green. I feel confident in the way that we've approached this site, that it's sensitive. Any regard and any—either the Historic District Commission, or any preservation agreements, or any items like that, in regard to historic items at the site, they're being kept intact.

Lastly, in terms of the five items that we were asked to present tonight: we have provided the landscape plan; we've clarified the additions as to stucco or brick; talked about the screen porch operation; provided the COA approval information, or application information from the '90s. And we are prepared to discuss the legality, but if—unless I misunderstood anything, Mr. Ferrell, it sounded like that—Mr. Ferrell, unless I've misunderstood something, in terms of the legality issue, it sounds like private agreements between—excuse me—agreements between private parties are not a subject that we are to be interpreting or enforcing in this setting.

Ferrell: Certainly. Let the applicant make the case that the applicant thinks is necessary. If the commission has any questions about my advice on the covenant said [ph] I'm happy to address those.

Mehlman: With that, I will take any questions and be glad to illustrate anything that you have questions about.

- Murphy: So before we take comments from commissioners, does anyone else from your group that was sworn, would they like to speak, or present anything, or just be available for questions?
- Mehlman: They're here and available for questions.
- Murphy: Okay, thank you.
- W. Burns: I have some information that I would just like—Walter Woodrow Burns, owner of 306—609 North Street, the adjacent property. I'm not here to speak yea or nay for—[OVERLAPPING]
- Ferrell: Dr. Burns, I'm sorry to interrupt you, and this will apply to everyone speaking tonight—we've got a big group. When you come and introduce yourself, if you will say whether or not you've been sworn, and if you haven't, the secretary will swear you in.
- W. Burns: I have been sworn.
- Ferrell: Thank you very much.
- W. Burns: I just want to present some historical information about the properties that I think are pertinent to what they're planning to do. Some of this I've already given to David Swanson, their landscape architect. The information includes a tree inventory that was given to me and my late wife in 1985, that I think is pertinent to the trees on the Cumbie property, as well as the trees that were on my property.
- There is also some other historical information and photos that I found in my files that I have previously obtained from the Coker files at the Wilson Library, and also from the Coker family, that they provided to me when we bought the property. And it's a matter of information, and I would like to submit

these files for the public record. I would like for Jake, you or Becky, to photograph these so that the Cumbies may have them as well as the commissioners of the HDC.

Smith: Sean, I just have a question. I think you brought this up a little before, but there seems to be a substantial amount of new information that we did not get. For me to be comfortable with just looking at what's being presented right now, to have enough time to really take it in and think about it, I don't know that that's what you were trying to address, that we need at least the 10 days before, but supplemental material can be introduced during our meeting.

But I'm finding the volume of this to be comprehensive, and I'm just feeling uncomfortable being able to vote on something without a little more time to really understand it.

Murphy: Yeah. So I was trying to understand what our actual procedures and guidelines for—were for new information. I still haven't determined exactly what was new information versus what was submitted in the formal application. I was trying to compare the two documents as we were going through them. So I don't know whether anyone else on the commission shares Commissioner Smith's opinion of the new information.

Schwartz: Maybe Jake, could you clarify to us which—what information was sent to us with the package for tonight, and what is—that Mr. Mehlman has just presented, what of that is new to us tonight?

Lowman: I don't believe I can speak to every piece, but there was a section in the agenda that was titled "Supplementary Material," so all of that was sent 10 days prior.

And we have not—we didn't receive, as staff, some of the new material that was presented here tonight.

Murphy: So if I could ask the applicant, maybe—

Mehlman: Yes.

Murphy: From what I saw, it appears that the east stair, as well as that circular garden, was modified.

Mehlman: Yes, correct. And—

Murphy: And then, was the garage—was the—

Mehlman: From what was sent—and please bear with me.

Murphy: Sure.

Mehlman: We didn't [ph]—once again, we give you the information—like I said, we've been working diligently on it. We didn't want to miss an opportunity to get in here. I thought there was a formal deadline, and when I asked staff about that, they're like, "Well, technically, because you have an application in, everything's supplemental at this point."

M: Right.

Mehlman: So the—so we got as much information as we could within the two weeks, and we've been working on it more. And that's why I say, "Hey, I think we actually made some great decisions since then," but I understand your concern about how much is here.

The garage that we turned in 10 days ago, was in that location, because—

Murphy: Okay.

Mehlman: —basically, I just got the full site survey at that time, and saw the hackberry, and said, “Well, we’re not going to put that there anyway.” And so we made these changes to the garage, and pulled it forward, and made it a two-car garage. Otherwise, what you’re looking at, except for the eastern stair and moving this circle four feet, those are the changes.

Smith: Well, I thought you send the historic—excuse me.

Kyser: No, go ahead.

Smith: Well, the historic documents of what the Coker gardens looked like before, that is new.

Mehlman: I did send that in the supplemental package 10 days ago, but it didn’t have the color-coded delineations that I put on there for tonight.

Smith: Okay, I don’t know why I did not notice that. I guess—okay. So are you saying that these gardens aren’t historic? Are you saying that the garden there, just because the property itself is an historic piece of property, owned by someone very significant in our town, are you indicating that you don’t feel that that design or that garden there is historic in any way? Or—[OVERLAPPING]

Mehlman: I am actually stating—I am just stating that the original gardens that were there by—placed there by Dr. Coker—

Smith: Yeah. This, now [ph].

Mehlman: —do not exist in that parterre anymore. That parterre, with the circle and the square, was a re-envisioning of the original gardens in that spirit, but it was all dug out. At the time, in 1990, all of this was completely redone. So if I back up again—sorry.

Smith: Yeah, could you go back to that first—

Mehlman: Here?

Smith: No, keep going.

Mehlman: Not here.

Smith: To the very beginning of the—

Mehlman: The old Coker garden?

Smith: Yeah, because—I'm sorry, I—

Mehlman: And this was in the supplemental package, this here.

Smith: Keep—okay, right there. Would you educate me on where is the house that exists now?

Mehlman: Here.

Smith: Right there, that's what I thought.

Mehlman: Mm-hmm.

Smith: Okay. And so the circular garden—

Mehlman: So—

Smith: —is right there where that parterre—

Mehlman: So a new garden was placed there with a larger circle, and a new square was placed here, and let me—can you see it there?

Smith: Yes.

Mehlman: This was one of David Swanson's original designs when they were working on the 1990 project. So you can see, a much larger circle was placed here, a new square was placed here, and all of this area was removed except for the row of

hollies that borders the north and the rock walls, which wrap the existing walkway from the Coker house and wrap along the south side, as well.

Smith: Okay. And you mentioned some walls that are not intact. Which one—that you’re going to protect the ones that are—

Kyser: Some are truncated.

Smith: Some are—

Kyser: Truncated is the word.

Smith: Truncated.

Mehlman: Notice the southern line here in some of the planning?

Smith: Yeah.

Mehlman: And then I’m going to go to what is actually there, existing. So the—in some of the planning, they were carried all the way across. I think what ended up happening was, basically, this intervention of the drive, this wall picks up on the idea that it was an original wall, but it’s not. It’s actually a new wall that was placed there. None of those walls are going to be removed as part of the new design. I need to look at what’s—none of these existing site walls will be removed. There is a little bit of work that gets done at the front, but you can see, there’s an axial connection that’s still maintained.

Kyser: What do you mean by “a little work is being done at the front”? Do you mean it’s—are they going to disturb these walls?

Mehlman: Well, construction—[OVERLAPPING]

Kyser: You’ve said “remove,” but are they going to be disturbed?

Mehlman: Well, we're going to—we're proposing to do an addition—I'm just going to blow this up. This addition is at the south, and so there will be construction happening here, and usually as a result of construction, anything within about 10 to 15 feet of that construction is disturbed. It usually gets rebuilt, if it needs to be rebuilt, or it's rebuilt as it is designed. But you—simply, it's difficult to stay away from something when you're trying to perform the work to do an addition.

Kyser: Back to the rules of procedure, I'm not sure that changes that come to us—you know, we haven't seen these before. I'm not sure that that's—

Murphy: Well, it sounds like if we are not comfortable with those, we could make a motion that—

Locke: Yeah. Well, I do have one question. When was the decision to move the garage? When did that take place?

Mehlman: Over the past week.

Locke: Over the past week, okay. Yeah. [INDISCERNIBLE]

Mehlman: Since the supplemental information was turned in two weeks ago, we've been working on that.

Schwartz: Are there other people who are signed up to speak on this issue?

Murphy: Yeah, I would suggest because we have the applicants here tonight, that we hear and have a full conversation, hear from all members of the public that are here tonight that'd like to speak on the issue. If the commission is still not comfortable at the end of that, with the level of the understanding of the information, then we can make a determination what to do at that point.

F: Good plan.

Mehlman: And once again, please hear that there was—speed of process, there was no charge to try to pull things in late or not provide information. We've simply been working on it, and we weren't going to automatically push to the next meeting, because this is useful today.

Locke: Yes, and I think the—

Smith: We never thought that.

Locke: And I think the commission would like to say thank you for the hard work that everyone's put in on this. It's just, it seems that it's just—it's like hitting a moving target at this point, and it's kind of getting a little—it's kind of getting to this point where the public also has, you know, the right to kind of understand and process some of these changes that have happened over the past week. But I concur with the chair, and I think we should hear from pretty much all the parties at this point.

Mehlman: Okay. Gladly.

M: Okay.

White: Yeah. I—with the exception of the garage, everything that you've talked about was in the supplemental application materials that I received, and so I haven't had any problem digesting those. As far as information that I have not been privy to, the information that Mr. Burns just submitted is something that, as far as I know, none of us have seen.

Smith: Right.

White: Plus, he submitted it as information that might be of concern, rather than bearing positively or negatively on the application, and so I'm not even clear as to what the relevance might be.

F: Let the public speak now [ph].

Ferrell: The commission gets to determine the relevance and how substantial, material, and competent evidence that is presented to you and comes into the record is. So ultimately, you'll be the judge of it. I understand that you haven't seen that information yet, so you—it's difficult to make that determination.

White: Will we? Are we going to be—are we going to get it right now?

Ferrell: Yeah, it was submitted. I didn't hear any objection to it being introduced, and so to the extent that the commission wants to look at that, I guess it's here, that can be passed around. Or maybe that has a bearing on ultimately what you decide to do at this point with the application.

Murphy: Yeah, please, Jake, would you pass that around?

White: Yeah.

[INAUDIBLE]

Locke: And just to clarify, the walls on the south end of the house that may get disrupted, those are re-creation, right—[OVERLAPPING]

Mehlman: Not original—they are not original Coker garden walls.

Locke: Okay, got you. Do we have an idea of when they were installed?

Mehlman: During the construction of the house in 1990.

Locke: Got you. Cool. Thank you.

M: But you are replacing and repairing in kind with this project.

- Mehlman: Anything that gets removed at that location, that is not redesigned as a new element, will be replaced in—exactly as it has been found. I mean, I will be—I don't mind saying, when you build a garage this close to that wall in the back, we will have to deconstruct and reconstruct. And that's part of the process.
- M: It will be just a section of the wall [ph].
- Mehlman: I'm sure it happens all the time in the historic district.
- White: So at the risk of being redundant, you have basically stated, as I believe, in exact quotation, Guideline 1 on page 11 of our guidelines, saying that you intend to—let me paraphrase—you intend to retain and preserve [ph] site features and plantings that are important in defining the overall historic character of sites and streetscapes within the historic district. Which is a long way of saying you're going to keep all of the old walls.
- Mehlman: Everything that we've determined, with Mr. Swanson's help, that is original Coker material is going to remain.
- M: Okay.
- F: I have that.
- Murphy: Any other commissioners have further questions for the applicant?
- Schwartz: I may have after I hear from the public.
- Murphy: From the public.
- Smith: Well, I had a general question about—even though you keep restating that this isn't a contributing house, and—but it is within the historic district, so doesn't that mean that it should still follow the guidelines of—within the historic district. Even though it—you're not calling it a contributing or historic house as listed [ph]

on the register or anything like that, it's still within the historic district, and we need to apply the guidelines related to that.

Mehlman: Absolutely. I'm just stating, for the record, that it's not been listed in the National Register of Historic Places as a contributing building.

Smith: Okay.

Mehlman: And I think you need to be 50 years old to qualify, in general, per the secretary's standards [ph], to be a historic structure. So technically, it's not a historic structure by those—that definition either.

Smith: Okay.

Mehlman: Just as a point of reference.

Smith: All right. Thank you.

Locke: I have a question for counsel. Who actually gets to determine whether or not a building is historic, in this setting?

Ferrell: Well, I don't think that's necessarily relevant to your determination. What your determination is tonight is, what the statutory charge is, is to determine whether or not the proposal in front of you is not incongruous with the special character of the district, and that's your charge. So—you know, the secretary of interior and the National Register designations may be relevant as points of information to you.

But again, your ultimate charge is to determine whether or not the proposal is congruous or incongruous with the special character of the historic district. As—and you do that by, of course, applying the Land Use Management

Ordinance and the criteria, your A through J, if you will, and of course, the guidelines that inform those criteria.

Kyser: I have a question for counsel, or maybe an expert witness in the audience. To—because what’s complicating this is that the structure’s not historic, it’s not contributing, but the landscape is, because it’s part of the most—one of the most important properties in Chapel Hill. So we—our charge is to preserve what is left of the historic landscape. So you have two things going on: a non-contributing structure on a very important and significant land setting.

Ferrell: Right. And when you say “landscape,” I’m going to refer to historic features generally, instead of “landscape.” I know your guidelines have some reference to, I think, character-defining landscape, but you’re A-through-J guidelines really speak to structures and defining features. And so, no, I think you’re exactly right. I think that your charge is to determine whether or not what’s being proposed is congruous with the special character of the district, and that’s informed by your guidelines, which certainly references things like historical defining features—like the walls, I think is a primary example of that.

Kyser: [LAUGHS] There’s no clear-cut answer—[OVERLAPPING]

Ferrell: No, I think you apply—you have to look at the project and apply the guidelines, certainly.

Kyser: Okay.

Ferrell: I think that is the charge. And while I think—

Kyser: Well, I think then page 11, number one, sort of is pretty clear. Does everybody else agree with that?

Mehlman: And I hope we've been clear as to the fact that we're not working, or moving, or doing anything to the most character-defining features of the site, I would say being the historic features from the original Coker gardens.

Murphy: Unless there are any other questions, I'd like to hear from any other members of the public that are here to speak tonight on behalf of this application. Thank you. Come on.

F: I didn't [ph] [INDISCERNIBLE].

Murphy: I couldn't hear you, I'm sorry.

Ferrell: I believe what he said it's—he'd like to hear from members of the public that have signed up to speak on this item.

Murphy: I have the list here, but it doesn't have to be in any particular order. And please state your name when you come up, as well as if you've been sworn.

W. Burns: The information that I provided was not to confuse y'all.

F: No.

W. Burns: Some of this that you have before you—that has been circulated, basically the old photographs that I had in my files, I have provided some of those to David Swanson previously. Many of them, at the time that I met with him, to give him the tree inventory, that the university provided my late wife and I when we bought the property, he did not have. The tree inventory that you have before you, I think is important [ph] to the landscape plan that they are proposing.

The other thing that I have not said, when the property was purchased from the university in 1985, it was purchased by Ms. Lee [ph] and my late wife and I as a unit. It's 4.5 acres, thereabouts, and the way the property was divided

was that approximately an acre and a third. Ms. Lee, it was deeded to her, and the 2.8 acres that included the Coker house was deeded to me. All I'm saying by that is that the properties and the way that we hoped to manage the properties, to keep them from being subdivided in the future, was that they are inextricably linked by what is done [ph].

The Peacocks, in 1994 or '95, when they built their house—I sat on the commission at that time and was one of the ones that voted to approve their project and their landscape plan. We have been very good neighbors over the last 25 years, and I think both of us have tried to maintain the properties simultaneously that were contiguous with the property lines.

So all I'm trying to imply to the commission is that what—it's important that the historic parts of that garden that Dr. Coker designed and developed be preserved, because it's going to affect the property that I currently own and the house that I own. And I think Florence and Jim Peacock were sensitive to that, as we—my late wife and I—were sensitive, as well, and they were sensitive in trying to design something that would mutually benefit both properties.

In the photographs that I have provided for you were photographs that were taken—some were taken as far back as 1908, most of them were in 1920—that show what the gardens looked like when Dr. Coker designed them and built them. Obviously, they changed over time. You can see the path that leads from the my house down the east end of their garden was an arbor in 1920s. We chose not to replace that arbor and create the path, or maintain the path, that Dr. Coker built at that time. And the reason we didn't replace the arbor was because the tree

canopy that had grown in that area over the 50 or some-odd years that he had designed that garden.

But like any property, there are going to be changes that occur. From my own standpoint, I just want to make sure that the design and what is approved is congruous with the Coker house and that property, and that's the reason that I submitted these old photographs, to give you some semblance of the history of the way that it has evolved over the last 30 years.

I have provided, and I wanted the staff to make copies of this to give to Mr. Cumbie and his wife, as well as David Swanson and his wife, because some of them they have not seen. And whether that's going to impact their design or tweak it or not is up to them, but it's information that I think is helpful, to make sure that this property—these properties are continuing to be preserved. It's the last four-and-a-half acres of a man that was very significant to this town and to this university.

And that's the reason that we have—I know we're not to speak about easements and whatnot tonight, that's not the issue, but that's the reason that we put these conservation easements on the property, to ensure that the legacy to Dr. Coker was maintained in posterity. He's very important to not only the town, the community, the university, just by the things that he has done for us. And so am I passionate about it? I am very passionate about Dr. Coker and I'm very passionate about what he's done.

If you walk through the arboretum today and you walk on even the Cumbie property or my property now, you can see the same plantings that are in

the arboretum that are on our properties. And that's the way Dr. Coker did things when he was in charge of building and grounds at the university. He planted things in the arboretum just as well as he planted things on his property. And that's all I have to say. I'd be happy to answer any questions, though.

Smith: I do. I have one. So there are several trees, and shrubs, and things that are underlined here, and it says that these should not be disturbed. And you have just, it sounds like, given information to the owners and David Swanson that might make them think again about the landscape design. Are you saying that you got indication from them that they would like to have more time to take in the information you've just given them?

W. Burns: I've not had a discussion. I mean, I spoke with Mr. Swanson. I was asked to give him the tree inventory, which I did, and when we met, I said, "David, I will not speak to your proposal, because I'm recused and I can't do that, and I won't do it." All I wanted to do is provide the information that hopefully would be helpful to him and in his design, and what was appropriate to what they're planning [ph].

When we bought the property in 1995, just as the photograph that he showed of how the lower [ph]—I call it the sunken garden, or the lower garden—was completely overgrown. It was the same way with the whole property. The—there were vines, there were weeds, and basically, as a landscape, it had been virtually destroyed. And when we cleared it, I told the people, told the men that came to help clear it [ph], if there was a shrub or anything taller than me or at least my height, to leave it. And what we ended up doing in the course of that was uncovering a camellia garden that was not apparent on that property. We

uncovered Mrs. Coker's cutting garden, which you have a picture of. It's not on the Peacock property.

But their property, when Florence and Jim took it, was just as in bad a shape as ours was when we restored our garden. And I have to say that what David did to that garden back then was miraculous. And so, there's a sensitivity that I know that he has in preserving the—I guess I would say, the bones of the garden. And I'm hoping that it will be preserved in posterity, because it's the last—except for the arboretum, it's the last piece of property that we have in this town that you can date back to the influence that Dr. Coker had on this community.

White: Yeah, I've got a question. For starters, you're not sitting on this commission at the moment, you're speaking as a private citizen, and I think that you—since you state that you feel passionately about this, I think you're obligated to tell us, what is your bottom line. Are you in favor—if you were able to wave your magic wand, would you in—be in favor of or opposed to this application?

W. Burns: Counsel? [LAUGHTER]

White: He's a private citizen.

F: That's right.

Ferrell: What I'll say is, of course, I don't represent you as a private individual, Dr. Burns, as you well know. I certainly appreciate all of your hard work on this commission, and I believe you'll have to decide for yourself whether it's appropriate and whether this is a question you want to ask. I will say, you're under no obligation to answer.

W. Burns: I like the sensitivity that they have gone about in designing this property. There's some tweaks that I would make. I like the fact that they—when it was first presented, the garage that they were going to do was going to end up either covering or taking down the walls. They have changed that to preserve the—that part of the property. I would hope that they would encroach less on the formal garden and the center parterre that they have designed, that maybe they could—tweak that a little bit so that there would be less intrusion on that. But I think that the design that they—that he's come up with as far as the gardens go, I would have no problem with.

The walk [ph] that is—would be on the very east end of that sunken garden needs to be maintained. Over the years, it has provided a pedestrian access for neighbors that live on the North Boundary Street area. It has provided a pedestrian easement for the Peacock children to come and play on my property unimpeded for 30 years. It has provided a pedestrian easement for at least three neighbors that work at the university. Rather than having to walk all the way around North Boundary Street to get to the university, have crossed that path and down my back drive to get to work. I think that should be continued.

So there are things that are—that occur on the property that you're not asked to vote on, yea or nay, but these are things that happen, and have happened over the last 30 years. And so, it's important that I think that sort of community be maintained, and that's what Dr. Coker and Mrs. Coker, his widow, would like. I can remember people coming up to us and saying that children would come up

into our yard, build snowmen, and wave to Mrs. Coker who was in her bedroom in the top of our house. She was unable to get out.

So it's that sort of spirit that needs to be maintained, and I think that's what Dr. Coker emphasized when he owned the property. He died in 1953. Mrs. Coker did not die until 1983, so she lived in that house alone for 30 years. So there's a history that needs to be understood and maintained. And in my discussions with Mr. Cumbie, to this point, I think that that understanding was shared.

So if I was sitting on the commission, I might make some suggestions to tweak the plan. I would ensure that not only the holly trees are maintained, but I don't know—I did not go and do a tree inventory on their property from the tree inventory that I had. I did on mine, and have it annotated, what you had _____ an annotated one [ph], because trees over the years age and fail and fall down, and hurricanes come and take them down, as well. And so you have to take, you know, in consideration all of that.

But what's planted on both of those properties, you can go to the arboretum, and walk through the arboretum, and see exactly what he planted there is planted on his private property, and it's important.

Kyser: So those pine trees aren't just pine trees, the large pines that plan to be gone [ph].

W. Burns: I think there's some pines that are listed on the inventory.

Kyser: Yeah, I was trying to find that, but I'm looking specifically for those ones in the front of the new garage. They seem significant to me, but I don't know the

relative significance of that with the other shrub at the back of the property, but I just wondered about your opinion about that.

Burns: Well, I haven't—I don't know. I don't—I haven't walked that area in a number of years. And I don't know what's back there, so it would—I couldn't comment on that. I'd have to rely on what David Swanson said about that.

Murphy: Thank you, Dr. Burns. It appears that we have a member of the applicant's team that might want to make a comment, and then let's hear from the remaining public that like to speak.

Cumbie: Thank you, Mr. Chairman. I'm Steve Cumbie. My wife and I own 306 North Boundary. And I really agree with exactly what Dr. Burns had said.

Ferrell: Mr. Cumbie, were you sworn in?

Cumbie: Yeah, I am sworn in, sorry. Sorry. Sorry, I should have said that first. But—so we haven't lived here as long as most of you people, but I have two degrees from the university. It's a place that I grew to love as a freshman and have loved ever since, and we did a historic property renovation on Glenburnie, and worked really hard to do it in a way that it would be a credit to the neighborhood, as well as ourselves. So, we are sensitive to the whole idea of historic preservation.

Now, when we bought the property, we weren't sure what was—what part was original Coker work and what part had been done when the Peacocks built the house. And so that's one of the reasons we hired David Swanson, and I'd be happy to have him come up and talk, too. But he has helped guide Erik and BuildSense in terms of putting together the presentation here. And once we realized that there were actually some historic walls that our design was

impacting, we moved the garage. And you know, because we want to keep the vision that Dr. Coker had originally, and it was updated in 1990 or '90—whenever the Peacocks built their house. And you know, you saw some of the pictures of it under construction.

But still, that vision of that area, which comes out to the east of our house, but that was a garden that Dr. Coker originally designed, it's not the same as he designed it. But it's basically the same as David Swanson designed for the Peacocks [ph]. And that was the whole idea, is that we maintain that, and once—I mean, certainly we're keeping all of the—those holly trees, which are beautiful.

And so, I guess I just wanted to try to let you know—and I don't know many of you, I do know Kimberly a little bit—and—but I wanted to let you know that we're not opposed to this whole idea of trying to maintain the vision of what that property was. And hopefully, we've done that. Now, maybe there are some tweaks, and we're open. We had—I've had the pleasure of meeting twice with Dr. Burns and his wife, and we learned some things there, and maybe there's still some other things we need to learn. But anyway, we want to be a contributing part of the community.

It's not a historic house, but I think what we're going to do to the house will be something that everybody will be proud of and not detract from that area. And yet, the gardens, we're trying to maintain not only what Dr. Coker did, but what the Peacocks and Mr. Swanson did in the 1990s.

So, in any event, I'd be happy to try to answer any questions, too, if you've got them, but I would also, if David's willing, ask him to speak to—that

area where those two pine trees are coming out is very overgrown, and it would be fine if you wanted to go take a look at it. In fact, a lot of the limbs of those pine trees lower down have been obscured by overgrowth. And in some case—I don't know how healthy they actually are, to be honest.

There is a third one that's larger than the two that we're talking about, that we are maintaining there. And it—I don't know what the diameter is, but it's much larger than the two that we're showing that would have to be removed in order to do the drive for this garage. So, in any event, maybe David would like to speak to that, because he knows that area probably better than anybody in the room, except perhaps Dr. Burns. But anyway, thank you for letting me speak.

Murphy: Thank you, Mr. Cumbie. I'd like to hear from anyone else from the public that would like to speak. Come on up, ma'am. Please let us know who you are and confirm that you have been sworn.

Hunt: Yes, my name is Paula Hunt. Good evening to all the members of the commission. I have been sworn in. I own the property at 310 North Boundary Street, which is immediately adjacent to 306. So good evening to my new neighbors. I moved to Chapel Hill in 1980, and my then seven-, eight-year-old daughter is one of the children who played on the Coker property and made friends with Mrs. Coker through the window. So I do have a knowledge of the grounds dating back a considerable period of time, back to when Mrs. Coker was actually living there.

As it turns out, my intention this evening was to address the question of the garage, which floored me when I found out that it was to be a three-car—a

garage with a separate apartment on the second story. Things have changed, and I am really, really heartened to hear that things have changed. But what is distressing to me is that much of this material has just come out. I know that I have spent some precious time—because I could have spent it elsewhere—reviewing the plans, both the textual portions and the visual portions, in trying to understand what was going to be taking place.

Now, all of a sudden, we're presented with a whole different set of plans, particularly with regard to the garage and with regard to the trees, which were my two big topics for this evening. I don't know what to make of this, because I have not had a chance to look at this material. I can sort of see it up on—you know, projected up there, but I cannot see it in detail, and I have not heard a great deal in detail.

So I very much appreciate—I really honestly say this—the moves that have been made to remember the Coker legacy, but I don't feel party to it. I don't understand it yet. And this is all very significant, because that garage and those trees, that entire stand of trees, makes a large part of my visual surroundings. The—I could go on further, but tonight, my new point is that we—I and other neighbors—have not really had a chance to see this material and to look at it carefully, and even to walk—if I walk my property, I can see all that. I don't have—I have been tempted to trespass—

Cumbie: No, that's fine [ph]—[OVERLAPPING]

Hunt: —but I have not—[LAUGHS]—I have just looked from my own land. But all of a sudden, all that is irrelevant because things have changed.

So that is my main point, and before I stop taking up your time, I do want to repeat that the—this new garage, although much improved, is a bit of an eyesore for the neighbors who live immediately adjacent to the property. The old version pushed up against not one, but two setback borders, so it was really out there. Trees are a major question. Take those down, they really affect our skyline. Bless you. [LAUGHTER]

And there is a question of height, as well, because the entire 306 property, or a great deal of it anyway, is at an elevation considerably higher than the surrounding properties. So that if I were to stand in my driveway and look up toward the garage, I really would have to look up. I'd look up not only the 25 feet or so that are in the plans, but a great deal more than those 25 feet, because I'd be a whole lot lower down. Which simply is a way of saying that this is much more—a much more prominent feature than it might otherwise be if it were not so closely located, and if it were somewhat smaller.

The trees—Dr. Burns has been eloquent on the trees and the connection with the Coker legacy. For me, they're just beautiful trees that I have admired for many years. I sort of counted seven, eight, nine trees in this particular stand, comprising deciduous and evergreen. We've talked about a couple of the evergreens. I don't know what shape they're in. I think taking anything down that is in good shape—I don't know, I would question that. And also take into consideration the fact that not only those trees that need to be taken down for construction will be damaged, but proximate trees, because of building equipment, soil compaction, root damage. So that what survives immediately

might not survive in the long run. Again, Dr. Burns has done this wonderful connection with Dr. Coker.

People have spent a good bit of time talking about the gardens, and I wholeheartedly agree that this is very important to preserve. I would make the point, though, that a camellia bush or a bunch of daffodils are much more easily replaceable than centenary trees. These trees have been there a long time. They might have planted by Dr. Coker. I'm looking for confirmation, because obviously, I haven't had a chance to check. They're not going to be replaced in our lifetimes, in our children's lifetimes, and I think that's an important consideration. And I thank you all for your time. I really, really, really appreciate it.

M: Thank you.

Murphy: Thank you very much. Ma'am, come on up, please.

Gravely: My name is Frances Gravely—[OVERLAPPING]

Murphy: Mrs. Gravely, excuse me, I think you came in late. Have you been sworn?

Gravely: Yes.

Murphy: Oh, you were sworn. Okay, thank you.

Gravely: By marriage to David Frankstone, I'm related to Louise Venable Coker and to President Venable of the university.

Smith: Could you speak into the mic, please? So—

Gravely: Oh, I'm sorry.

Smith: Yeah, thank you.

Gravelly: By marriage to David Frankstone, we are related to Louise Coker—her name is Louise Coker Venable, Dr. Coker’s wife, and President Venable of the university. We were, in part, gifted by Mrs. Coker, and her sister, and John Manning to have a couple of acres on Dr. Coker’s 40 acres. We—we no longer live on this property, either of us, but our house is just below the Coker property and just below the house we’re in discussion with. When we chose the land, we chose a piece that had a significant original tree, and we had a picture of Dr. Coker’s farmer standing under that tree with baby watermelons. And he had the—our back yard we chose because it was the fenced-in garden of Dr. Coker, and that space is a field that is available to all the neighborhood children to play, as well.

I represent both of us in saying that we don’t feel that the garage built, at all is in keeping with the original land, which we have known intimately since I was 21, and I’m now 71. My engagement picture was taken on the garden that is on your property. And it was overgrown, but it has been an incredibly important location—we cleared it, in part, and it was an incredibly important thing to us.

The original land, even with the Peacocks making as small an imprint as they could, the space—they put their garage under their house because the space where the garage is was open to the lawn of Dr. Coker’s house. Our driveway was put in outside the home place because, as a citizen, we felt that was important, as well. We—I also am a member of the W.C. Coker Garden Club, which Louise Coker formed, and—with neighbors. And that group is not in favor of the addition. Many of the ladies who are there, the older women, have known that property intimately, as well. And children play on their land, obviously, as

the Cokers do. I won't repeat anything else, because it has already been said, but I agree with many of the things spoken to.

Oh, those trees are original, and I'm not—the pine trees. And I'm not sure that they're unhealthy, having left that property three years ago to be in a smaller retirement house that is also in the historic district, across from Franklin Street.

Locke: I have one question. To the best of your knowledge, where the garage is proposed to be installed, just to make sure, you have known there always to be trees there?

Gravelly: Since I have been there.

Locke: Okay. Since you were 21. [LAUGHS]

Gravelly: Okay.

Locke: All right. Is—okay. Even though since then it has developed an overgrown characteristic, you—once again, to the best of your knowledge, remember there always being trees in that area of the lot, if you will? Because you said some of the pine trees were original.

Gravelly: Oh, yeah. The two that we're talking about have been there since 1970, I know, because we moved our [ph] driveway to avoid—I mean, we chose our land to avoid that space.

Locke: Okay. And just to clarify, are those the ones that are going to be proposed to be cut down for the garage?

Gravelly: I'm sure.

Locke: Okay.

Gravelly: Oh, well, I'm not sure, because if you're talking about the garage according to where it was on the picture that I just saw—

Locke: Right.

Gravelly: —yes.

Locke: Okay.

F: [INDISCERNIBLE]

Locke: Yeah, there's—

Smith: There's more than two, it looks like.

Kyser: Three, four.

Smith: One, two, three, four, five, right in the middle of the garage, unless I'm reading that wrong—[OVERLAPPING]

Locke: There's—yeah, I think you're right. I think the smaller X's mean the trees are smaller in diameter, and then the larger X's—they're kind of difficult to see—where I believe the drive path, I think that's what that thing is, would have to take out some of the larger, thicker X's, which would mean the larger diameter in trees, which I think means they're older.

M: You're correct.

M: Yeah.

Locke: I think that's how trees work.

Gravelly: Oh, I wanted to say something else. No, that's been said. I don't want to repeat myself.

White: I have a question.

Gravelly: Yes?

White: You say your engagement picture was taken in the sunken garden?

Gravelly: It was.

White: Does any part of that garden remain?

Gravely: Oh, yes, definitely. The garden that is in front of your house going toward the—I mean, going the—from the side and out the dining room, if you’ve seen the house plans, toward the Coker property—

White: To the east?

Gravely: —is absolutely—its footprint was absolutely there, and the pathways are the same, and a number of the plants on that property are very original.

White: Are the same. Are the same.

Gravely: Are the same.

White: Today [ph]. Okay.

Smith: Is that the circle you’re talking about, or the square? I don’t know what you mean by the “sunken property.” Can you—

F: No, it was the original drawing, it was—

Smith: Oh, the original drawing.

M: Yeah [ph]. You asked about the—

Smith: And that’s gone—

M: —original garden.

F: But that—

F: She had her picture taken there.

F: Oh, okay, but that was already taken out.

Gravely: The original sunken garden that you see at the house.

F: [INDISCERNIBLE]

Murphy: Based upon the information that was presented to us earlier, the only remaining pieces of the original garden, as I understand it, that are still remaining, are the line of hollies as well as some of the perimeter stone walls. The main garden area was torn up in the '90s and reconstructed.

Gravelly: I don't think that's true.

Murphy: I'm stating that based upon the previous presentation of information.

Smith: Yeah, that's what I'm—

White: I didn't—when I visited this property a month ago, I didn't—we're talking about the eastern side of the house, correct?

Smith: Right.

Gravelly: Is it eastern, Woody?

White: I didn't see any—

Gravelly: Yes, those two square plots of garden that were there were there, were there in 19—

White: Today?

Gravelly: They were there in the '60s when I knew that property.

White: Today? Today?

Gravelly: Oh, today, yes. The outline of them [ph] and some of the bushes are absolutely originally—were originally there.

White: Not just the stone walls.

Gravelly: No. I mean, the stone wall was, but some of the plants. They had some of the camellias. There were stone steps moving out toward the arboretum path. I mean, not the arboretum, but the stone path that went out to the arbor.

White: Because when I was there a month or so ago, there was essentially what we see on that picture, a circle and a square garden. Are they parts of the original? On the eastern side of the house, there's a circle, an ellipse—

Gravelly: No, the circle—

Murphy: I think we have to clarify that with the applicant.

Kyser: [OVERLAPPING] '70, you had your picture taken, Frances, on what was the original plan?

Gravelly: Yes.

Kyser: The complicated squares and circles and so forth. Isn't that what you're saying [ph]?

Gravelly: Yes, that are to the east.

Kyser: Yes. And now—

Gravelly: I—the—

Kyser: —most of that is gone, but she's trying to just tell you, what thinks is left are camellias, and stones, and something, and something—[OVERLAPPING]

Gravelly: David Frankstone has an even bigger brain and a better memory than I, plus he is the—everybody knows his honesty as a lawyer, and he—I think he could—would testify to this, too.

F: Okay.

Murphy: Thank you. Perhaps for the sake of clarity, we could hear from Mr. Swanson, if you would be willing to give us an understanding so that we're all on the same page regarding, from the original 1920s garden, what today remains, and of those

sections of the original garden that remain, what are going to be modified by this application?

Gravelly: Also, the older members of the Coker Garden Club who have been there even longer and were there as great friends of the Cokers, they could second the motion, I think.

M: Thank you.

Murphy: Thank you.

Swanson: Okay, so I'm David Swanson, and I was sworn in. So. [LAUGHTER]

M: Thank you.

Swanson: And—all right. So, I'm not sure how to proceed with all this, but I'll answer the questions as I can. Whew. I guess I could go way back or just give you a quick synopsis. I think the question at hand—

Murphy: Perhaps you want to flip back to the original plan, possibly?

Swanson: Sure. You might have to drive.

Mehlman: I can drive for you [ph] [INDISCERNIBLE].

Locke: I have a question in the meantime.

Swanson: Sure.

Locke: How old is a 28-inch pine in diameter?

Swanson: It's probably 80 years old. It could be 80 to—

Locke: Okay, how much is a 26-inch pine?

Swanson: So probably a little bit less, you know, a little bit around there [ph].

Locke: Okay, cool, thanks.

Swanson: Fifty, 70 years old.

F: Maybe [ph].

M: Yeah. So we could—

F: See here, holly, holly—13-inch pine, 30-inch pine.

Swanson: Well—[LAUGHS]

Smith: That's where all these are.

Swanson: I'm not sure how to go about my conversation here with you all, but—

Locke: If I could recommend, just briefly go over the basic design of what it originally looked like.

Swanson: Sure.

Locke: And then I guess reiterate very quickly the changes that were made in the '90s, and then what exists today.

Swanson: That's fair enough. Okay.

M: [INDISCERNIBLE]

Murphy: Yes, and what you're modifying with this current application that was pre-1990s.

Swanson: Okay. Well, that's fair enough. Because it's a big story and—[LAUGHTER]

Murphy: We've already heard many pieces of the story. Let's stick to the facts.

Swanson: Exactly. Exactly, thank you. So, depicted actually from this very image that you see on the wall, when we were engaged and I was teamed up with Dail Dixon, the architect, we were engaged by the Peacocks to assist with the design of the house—we know it as the Peacock house. We went through a very thorough—I went through a very thorough analysis and evaluation inventory of all the existing plants. I know this—I knew the significance of the garden, knew the significance that it had in Chapel Hill, back at the time.

So I myself went to the Wilson Library and went through the boxes and found a lot of material and documented what was there as best as I could, using maps that we had at the time, recognizing this is a lot of hand-drawn information.

So we made a very careful—I would say plant-by-plant inventory at the time, and I had it documented, and it—I think I saw it in some slide. It was actually—it was one of those—right in there, and this is—you can't read it—for those of you in the public [ph], you can't read it. That, where Erik is—has his mouse there is part of the inventory. So there's a little chart for each plant, and I put a value of, you know, the condition of the plant, and whether it was in the—part of the Coker original garden, or it was a part of the larger landscape. And so that was part of that inventory back—done in the 1990s.

We knew when we were designing a new house that we would be impacting the, you know, the footprint of some of the plants. That's just a compromise one had to make at the time. We did the best we could, and I think as was expressed earlier, we took the essence of what Dr. Coker's garden was and did a—I won't say abstraction, but it was a simplified version of that, using the spirit. We tried to stay in the spirit of the Dr. Coker's garden by developing two of the parterres into formal gardens. And then, actually where the footprint of the house was, we turned—we tried to capture the motor court, what now is a motor court, and took that space and made a new space there, which now is the approach into the new house.

A couple of things I'll just say in passing. So I don't know if I'm—where I am with answering your question or not, but I want to say a couple of important

things. The original garden—garage that was proposed, I don't know whether Mr. Cumbie and the others—that's good, okay, right there. I think something that—and we chatted about this just the other day when we walked the property—it's an old roadbed that was there, part of the farm that the—the Tenney farm, connected to the Tenney farm, as—where there was the Coker garden, and the connection, and that might go back to your property, as well.

And so, you know, when I saw that, I said, “You know, we really want to maintain that old roadbed.” The Peacocks were very careful about that, as well. So I think that—I mean, that's a—it's not an element, because it's just a—it's a space, but it's one of those type of things.

F: Where is it on this—

M: You can go point [ph].

Swanson: So it's sandwiched be—I'll try pointing here. It's hard to see, this graphics [ph] wouldn't necessarily depict that, but it's essentially where my mouse is traveling. And it curls around. You walk it right now, and I think you've heard, it's there. It's an old garden road, if you will. So I think that was something that we felt was important to preserve as well. So I just want to add that to the—a contributing part of the landscape. And it's interesting, because it's not an element, it's a space. [LAUGHS]

So yes, we—like we did when we designed—and when I say “we,” the design team had the new house, we did have some impact on some of the trees that were there, and the same thing. When a new owner comes in and the garden evolves yet one more time, and there is impact to additional trees. So—let me

just pause a little bit here. Don't let me—[LAUGHS]—and by just saying that I'm sort of new into their team, I've just been engaged just a couple of weeks ago, so I'm kind of getting on board here. Trying to get up to speed.

Locke: And could you quickly just state your professional—

Swanson: Okay, I'm a landscape architect, and I'm local.

Locke: Perfect, thank you.

Swanson: And I would—I think it's important to put in the record that not only have I worked on this garden 35—30 years ago, but I've done a lot of work at Coker Arboretum over the years, going back 25, almost 30 years. So I'll just leave it at that. And so I share a lot of the passion that everybody else here in the audience shares with Dr. Coker's legacy.

So we're—you know, we're in the process of evaluating what—again, what are the significant trees? We've mapped them, the surveyors mapped them very diligently, and I've gone back and re-mapped all the next level of shrubs. And granted, Dr. Peacock and Florence were not the—I'll say, the best of gardeners. They did the best they could, but as they aged, things got overgrown again. So here we go, it's started to—if you were to walk it even today, you'll see some declining—the hollies that are significant, that we're talking about, a lot of ice damage—and I think it's ice damage, it may have come from a snowstorm—but a lot of the branches have come down, and they certainly need to be taken care of.

So, yeah, we've documented what's out there currently, and there's a lot of plants that are not appropriate that, in my opinion, need to be selectively move—come out, but that's part of an evolution of any garden.

And then specifically to those two pine trees, that's something that the commission yourselves are going to have to make an evaluation of. And I realize it's a hard choice any time you do anything of significance around trees. It's—you do have to make choices. In my view, that—those trees are not part of the original Coker garden. They're on the edge of it. When I say the “Coker garden,” I'm talking about the three parterres that you saw in the image earlier. The hollies defined at one side. And I'll—another item I want to point out to you, when Dr. Peacock and Florence originally had the property, and the earlier folks in the audience would remember this, there was a line—another even more significant line of Serbian spruce on the south side. And unfortunately, those just aged out. So we lost, I think, one or two in the course of building the original house, the Peacock house, but the others have just declined. And on Dr. Burns's property, there's still one Norway spruce, and then there's still one remaining spruce.

So, let's see, where does that leave me in terms of trees? So yes, we—to make a garage work, we've shown the trees that were in the footprint of the garage and the associated driveway. And I know, again, something has to get compromised, and you know, in my opinion, the pine trees are—you know, while valuable, but they're not a significant contributing value to the Coker gardens. And that's a decision you have to make.

Murphy: Any questions?

Swanson: Anything else I can provide? We haven't had an arborist out there, and if need be, we can get an arborist out there to look at that. I think that's probably something I would advise on.

Locke: I would just ask, if someone could just help him look at the original plan from 1920? Yeah, thanks [ph]. In your professional opinion, from this survey—

M: Sure.

Locke: —were there trees historically where the driveway would be going to the garage?

Swanson: From this rendering?

Locke: From this rendering from 1920.

Swanson: Those little clusters of—this is about where the footprint of the Peacock house is, and one would—one could say that this little grouping here is depicting that stand of trees.

F: That's what I thought.

Locke: Cool. All right, thank you.

Kyser: Just one more?

Swanson: Sure.

Smith: Hi, David. He's my neighbor. [LAUGHTER] Do you feel, in your opinion, that if you had more time—you mentioned that you were on this case for about two weeks—that if you were given more time, that you might be able to do a better job in assessing what is really needing to be protected there; that if you came back to the commission with that information, that would make a significant difference or—because two weeks, I know, is not very long to be on a project.

Swanson: Sure.

Smith: And of this historic property—and it looked like, from what Jamie just said, that those could—like the other woman was testifying, that those were—those—

Swanson: Oh, they were definitely there when Dr. Coker—

Smith: They were planted.

Swanson: —they're 80-year-old trees for sure.

Smith: Yeah.

Swanson: Yeah, they were [ph]—I'm not disputing that.

Smith: They were planted. Yeah, so anyway. I would appreciate your expertise on being given more time—

Swanson: Sure.

Smith: —to really evaluate what is important to do here in that landscape.

M: Okay _____.

Murphy: Thank you, Mr. Swanson. Any other members of the public? Come on up, ma'am.

Hemsey: I'm Jessica Hemsey, and I was sworn in. I'm also fortunate enough to be a neighbor in this beautiful part of town. And I happen to live down below the property that's being discussed this evening, and we share a lot of similar concerns to what's been brought up, predominantly surrounding the preservation of the historical property and the advent of a new individual building that is being proposed as garage and an apartment on top. Similar to Paula Hunt, it really distorts our direct view and our privacy in what currently is a beautifully natural

space that's been nicely preserved by those trees. I walk through there every day to work myself.

So some of the concerns we wanted to bring up was just the large size-ness [ph] of this new structure and some concern of what the use of that, as a potential rental property, or down the road, being sold as a separate unit. And then also, just to—in closing, because of the way that that property is higher than the others adjacent, we're very concerned about the runoff of mud and clay to our own properties. So, thank you for listening.

F: Thank you.

Murphy: Thank you. Go ahead, come up, sir, if you've been sworn. Sorry, I would go by name, but I can't read all the names on the list. Some are signatures.

Williams: [INDISCERNIBLE]. My name's Christianna Williams, and I was sworn in. And I also live adjacent to this property, right next to the Hemseys, so it's 508 North Boundary, and we're just sort of north of the stone walls that are in pink here.

And I will say, our biggest concern was the stone walls, and I feel that we haven't had—I feel like I haven't had enough time to evaluate the changes since the last meeting, and I think if—it seems also that given the importance of this, this property, that I don't see what the rush is. I think y'all should have more time to evaluate their changes [ph]. I think it's an extremely encouraging development that a landscaper—that a landscape architect that was involved in the 1990s renovation is—has been engaged again. But I still think that a bit more research and time needs to be put into evaluating the changes and to determine if this really

is appropriate. And I won't say any more, but I thank you very much for your time.

Murphy: Thank you very much. Mrs. Burns, would you like to come up?

F: _____ it's Mr. Camp.

[INAUDIBLE]

Murphy: Okay.

Camp: I'll be very quick. My name is William Camp. I'm at 400 North Boundary Street. I'm about two houses from that property. And I only have a couple of things. This is R-1 back there, it's not R-2, and R-1, to me, is—I kind of think of that as single-family dwellings. And putting an extra building on there for apartments—for an apartment, I really am not sure that I see that that fits in with that type of neighborhood back there. Also, there—you'll wind up with five—places for five cars and garages. I just don't see that as fitting in or being consistent with the neighborhood back there. At most, there's a three-car garage, and most of them are two-car garages. And so I think this is bordering on a misuse of the R-1 zoning. Thank you.

M: For the record, Mr. Chair, the secretary did swear in that witness.

Murphy: I did see Jake. Thank you. I'll have—Mr. Camp, please sign in, though, before you leave.

C. Burns: My name's Catharine Burns. Again, I live at 609 North Street, and I have been affirmed. I think it's late. I think that I don't want to say everything I have to say, but if you want me to, I will. I prepared some testimony that addressed the application as it was available to me over the last week as carefully as I could. I

don't know whether I'm allowed to approach you, but I have copies for each member.

Murphy: Sure. Obviously, we will not be able to read these all tonight.

Locke: And are they all the same?

C. Burns: Last—yes.

M: Okay.

C. Burns: Except that my printer ran out of ink, so a couple of you are missing the final page.

Locke: Okay.

C. Burns: On the final piece [ph]. And I was asked at the January session to submit a statement of my historic preservation background. I did not intend to submit that tonight, but I just decided I would stick it in the envelope. I'm not—I'm here as a neighbor and concerned citizen, but if it gives any particular—if it's of interest to you, I do have a great deal of experience in historic preservation and preservation law.

One thing I'd like to have you look at—and it, honestly, I'm going to assume that you're not going to vote to give a certificate of appropriateness tonight, because those of us—and particularly my neighbors that are adjacent on the other side—have not had an opportunity to study the additional material and adequately respond to it. My neighbor—this is a photograph, if the staff could—I want my iPad back, [LAUGHTER] but maybe you could project it, or—it shows that when the Peacock house was built, on the eastern portico, they were very careful to preserve the stone wall. My interpretation of what I've seen of the

application is that that would be sacrificed. That may be not true with the changed—and I hope—I think I heard a couple of people say that they were making an effort to avoid doing that. Before you act, and vote, and grant a certificate, not just you, but the public needs to know the answer to that question.

Just in a nutshell, one of the things I think is not handled sufficiently in the proceedings that I've observed, under state law, you are required to—the character of the district that you are—thank you—I'd be glad to email this photograph if you're—it was taken by my neighbor Henrik Dohlman, who would be here, but he's in California tonight.

Kyser: That photograph represents the staircase that's coming from the dining room, living room, coming out towards the—

C. Burns: Towards the two—

Kyser: To two—yes.

C. Burns: —reminiscent parterres.

Kyser: Okay.

C. Burns: What you are required to do is to judge this proposal and application for whether it is congruent with the character of the district as defined by the significance report that was issued in 1976. What I have done in my testimony is excerpt from that—that's a 48-page report. I hope all of you have copies. I hope you refer to the—to it on a regular basis as Franklin-Rosemary applications come up. But if not, I went through and pointed out places that the character of this particular lot—now, there are going to be many lots that come up, and you have to rely on general references to the character of the district—but in this case, this property is

so important, and in 1976 was recognized as such, that it was included in that significance report. So any findings you make, I would hope that you do, in terms of the significance of this property.

There are other applicants—I am assuming that—it was said, that you were going ahead so that we could get something of a hearing [ph]. I'm happy to—it's been my pleasure to meet Mr. Cumbie and have very constructive, positive, conversations with him. We're happy to share any of this information. I think—well, let me just read you the last sentence of this statement, and then I will sit down unless you have other questions, but.

Well, you can read my next-to-last paragraph. It might be considered too critical, and I've been reprimanded, but that said, "It seems to me that some adjustments in the design and provision of additional information, with—that with some adjustments, the Cumbies could submit an approvable application, achieve their goals, and enjoy many years in one of the most priceless sites in Chapel Hill." So that's my hope. I'm happy to work toward that end between now and when you consider, but I do not think it would be fair to the public or the process to expect us to have responded. Honestly, sitting back there, you can't even read. We don't even have copies of the changes that were made. So unless there are any questions, thank you very much.

Smith: Just one. I want to know if I'm one of the people that's missing a last page. What page—

C. Burns: I think it was 20—there's 23.

F: [INDISCERNIBLE]

Kyser: It doesn't look like that, unless that's her original or something.

C. Burns: I don't _____.

F: Well, that's the significance report.

F: Which is the _____.

C. Burns: It is the end of the significance report [ph]. Page 23.

Smith: Is that it? Because it looks like it could go on.

F: No, _____.

C. Burns: Yes. If you have 23, you have the complete one.

Smith: Okay.

C. Burns: I have—I still have—

Smith: That was the one you—[OVERLAPPING]

C. Burns: I still have the one that's incomplete, so.

Smith: Okay. Thank you.

Schwartz: I have a question. In the sentence that you just read, you refer to some adjustments in the design and provision of additional information. Have you shared the specific adjustments that you think would be necessary to—

C. Burns: I do in my statement—

Schwartz: Yeah? Okay.

C. Burns: —which I will give the applicant. We've generally discussed it—

[INAUDIBLE]

C. Burns: —but we actually honestly didn't have time to discuss it in detail. If you'd like me to summarize it, it's protecting the stone walls. I would argue that, you know, a priceless, extraordinarily well documented site—yes, you might see some

photographs of some bulldozers coming in and taking off, you know, a foot, six inches of property. That does not mean that every remnant of that original garden was lost. You can't require them—but what I said to Mr. Cumbie the other day is, you don't want to allow or encourage anything that would be—irreversibly damage the remnants, even if they're buried, you know.

I can't believe that somebody somewhere in the future is not going to own that property and want to get Mr. Swanson to actually restore those gardens, because they're spectacular, and there are photographs that haven't been submitted to you that make them even more priceless seeming. But—so, I'm not willing to say that the stone walls are the only feature that is worthy of very, very careful consideration and protection. And I tried my best in that three-page statement to detail how you would go about that.

Smith: And would you email that photo to Jake, and he can send it? Thank you.

C. Burns: Yes.

Lowman: I would ask that Mrs. Burns send me the original copy of that, for those that may not have the full copy, and so I can get that out to everybody—

F: Okay.

Lowman: —the photo and what you've submitted.

F: [INDISCERNIBLE]

C. Burns: And if he were—

M: Yeah, that whole packet.

C. Burns: here, Henrik Dohlman is a very good source.

Locke: And I have one question. This may be a little much, but I was wondering if you could elaborate just briefly about preservation methods and the potential for archeological sites.

C. Burns: Well, your guidelines that are adopted, which is what you have to rely on—

Locke: Right.

C. Burns: —are fairly general. But I think it is good preservation practice to do the research, avoid damage where there is a good chance that there are valuable resources. I feel very strongly that the best archeological practice is not to disturb something, but you need to leave it so that if in the future a professional archeological site is—excavation is done, that's possible still.

Locke: Do you know the definition of an archeological site? Like, is there a—in the preservation realm, is there an actual definition? Because we have it in our guidelines, but they talk about known archeological sites, so does that mean it has to be certified by a state organization? Does it have to be certified by us locally? Does it—I mean, maybe counsel has—I don't know about your archeological knowledge, but? [LAUGHTER]

Ferrell: I haven't looked at that particular provision, and I'm happy to do that, but at this point—

M: Okay.

Ferrell: —without taking a look at it, I can't offer you an opinion.

M: Yeah.

C. Burns: Always—

Locke: It's just sometimes overlooked in the preservation realm, so.

- C. Burns: It is. And I would not just say, “Okay, Mr. Swanson, you’ve been retained; do whatever you want,” but I think he would know to look, and he’ll follow his clients’ direction, but I think you all, in granting the certificate of appropriateness, shouldn’t authorize something that would be likely to destroy a valuable archeological resource.
- Locke: Thank you.
- C. Burns: Okay.
- Murphy: Are there any other members of the public that would like to speak tonight? I don’t believe there was anyone else signed in, so before we close the public hearing—
- White: I’d like to hear from Ms. Brown again. Linda? I found your petition exceedingly informative, but let me ask you the same question I directed to Dr. Burns. If you were sitting up here in our seats, would you be inclined to vote for or against this application?
- Ferrell: Before you answer, Ms. Brown, I know you spoke in public comments. Can you just—because you haven’t spoken on this item, have you been sworn in?
- Brown: Yes. I would probably recuse myself because of the way I feel about it.
- White: You probably what?
- Brown: Recuse myself, because of the way I feel about the property.
- White: Okay.
- Brown: Okay?
- Murphy: Okay, with that, I think we’d like to close the public hearing, if there are any other questions or comments.

Ferrell: Before you close the public hearing, there's been lots of discussion about whether or not you may want to leave it open and consider additional information. I'm certainly not trying to direct, Mr. Chairman, your process, but—

Murphy: Okay.

Ferrell: —to the extent you are going to consider moving it along—

Murphy: No, I was skipping a step in the process. We should keep the public hearing open if we're going to extend the meeting until—okay [ph].

Ferrell: If you'd like to recess the meeting to another time and date certain, I would recommend that you keep the public hearing open.

M: Yeah.

Ferrell: If that's the will of the commission.

Murphy: In my opinion, based upon the information that we've heard tonight and the new information provided—both by the applicant, as well as substantial information by members of the public—I think it would be prudent to extend this meeting till the next session. Do we need to discuss that with the applicant?

Ferrell: I think that's in the prerogative of the commission. It doesn't hurt to ask the applicant if they'd be willing to consent to a continuance till the—to the next meeting. You can certainly solicit that feedback.

Murphy: I do want to add, though—you know, I do want to add that that we—this commission appreciates the applicant's thoroughness in providing us all the information that we asked for at the last meeting. I understand due to time that some of it came in late. I think you've heard from the commission as well as the public, we just want a little more time. I think the public has provided some

information that may be valuable to you, as well. So hopefully, with a little more time, we can, you know, all be more comfortable with this application.

White: I've got a question for the counsel. At some point, if we keep continuing items, we run afoul of our own procedural rules, which we shouldn't ignore, and the application is automatically approved.

Ferrell: That's a great point, and I was certainly going to remind the commission that by the rules that govern the commission, you have 180 days from the submission of an application to act on it; otherwise, it's deemed approved. I checked with the secretary. This is just the second meeting that you have had this application, so you're good—a good distance away from the 180-day period on this one.

I'd also just note from the record that I understood the applicant to consent to a continuance of this matter until your next meeting. I just wanted—I didn't know if the recording picked that up. I just wanted to mention that for the record.

Smith: Oh, counsel, 180 days from when they submitted, or from we first heard it?

Ferrell: Right. I believe it's the submission.

Lowman: It's when an application is accepted, and we stamped it accepted on December 12th—

Smith: Okay.

Lowman: —2018.

Smith: And can we ask for—if, like, we want elevations and the new—the two-car [ph] garage, or the design of that?

Kyser: Yeah—

Smith: I don't think that was in—

Kyser: No, we didn't see that.

Smith: We didn't see that, correct?

M: No, they were in here.

M: Yeah, they were in there.

Locke: In his presentation, _____.

Smith: Okay.

M: Yeah, plans, elevations.

Smith: Okay, I'm confusing it with what we got before, so.

M: Yeah, we—did we actually received the new updated—

Kyser: I didn't see this.

M: —updated size of them?

Kyser: I didn't get any of this paperwork.

Smith: I didn't think so [ph].

M: Did we [ph].

Smith: We did?

Kyser: No.

Murphy: It was presented for the first time tonight, so it will be in public record after tonight.

F: Yeah.

Murphy: We'll have an opportunity to review it prior to the next meeting, along with all of the information that was submitted by the public.

F: _____ page 23.

Ferrell: And just to clarify, all of the photo exhibits, handouts that were presented tonight, the secretary's going to work hard to make all of those available, certainly to the applicant, to make sure you have a chance to review everything that's presented, and I think also your practice is to publish those online. So—look for that.

So, given the consent of the application, it would be in order, a motion would be in order to—recess this public hearing on this item till your next meeting, which is the second Tuesday of next month. And I'm—

M: The 12th.

Ferrell: It's the—it will be March 12th at the—your normal time, 6:30, in this room.

M: Somebody like to make a motion [ph]?

Locke: Real quick, if I want to make a motion to approve or deny a section of this part, do—we have to close the public hearing, right?

Ferrell: That—your normal practice is not to act on an application until all the evidence that may be before you is in, and you signify that evidentiary period ending by closing the public hearing. So I think that's your normal practice, if that answers your [ph]—

Murphy: I think the applicant just has a question or comment on the March date.

Mehlman: Two questions. One would be, is—if we continue now, is there a charge to us for specific items we need to address? There's a lot that's been thrown out here, and I'm not sure which ones come to the top. And the second one is in response to what I just heard, and I would be remiss if I didn't say it, so I will. Last time, I asked about a potential vote on the home versus the garage, and I'll still leave that open, because we've spent the majority of the time talking about the garage, and

we have shown and demonstrated that we're not affecting the historic Coker grounds as defined by walls and tree lines from the botanical survey that Mr. Swanson provided back in 1991.

So I'll leave that open, and those are the two requests. Continuation, what more information do we need, and possible breaking this into two [ph].

Ferrell: I'm not sure—I don't believe I took those comments to be a change to the applicant's consent to the continuance of the application. If I misunderstand that, I'll be happy for the applicant to clarify it. But the second question, of course, is any in your [ph] additional information, specific information from the applicant.

Murphy: I know that one part of the additional information that we requested was some information on those existing trees, the age of them, and actually the health of those trees. And then I think Mr. Swanson also was going to clarify, if possible, if, you know, the condition of some of those existing shrubbery there, and if it would be replanted, removed, replaced. I don't know whether other commissioners have items that they would like addressed.

Smith: Just one. Go ahead.

M: No, go ahead.

Smith: Well, the photo that Catharine Burns just showed of how one of those walls was protected with the Peacock house, so I'm just wondering, is that a wall that's being planned to be destroyed?

Mehlman: I did not—I was not able to see the photo. And I would defer—

F: I'd say yeah.

Mehlman: —to David Swanson on the walls that are within the—like a 10- to 15-foot radius of the original home from 1990. I'm sorry.

Murphy: So I think in that regard, the applicant needs some time to review the information as submitted.

F: Yeah.

Murphy: He did not have the—

Mehlman: I have no idea—[OVERLAPPING]

Murphy: He did not see the photograph nor the location tonight [ph].

F: Okay, yeah.

Mehlman: As far as the proposal we put together, once again, the walls that have the magenta highlights on them are the only walls that I am aware of that were from a Coker time. The only other walls were built on site in 1990.

Smith: Okay. And you said that you did submit elevations and plans of a two-car garage.

Mehlman: They're in the proposal.

Smith: You did? Because I'm only seeing three [ph].

Mehlman: They're in the information that we presented tonight.

Kyser: But we didn't get the packet [ph].

Smith: But we didn't get that.

M: Correct.

Mehlman: No, you did not get that with supplemental information [ph].

Murphy: Which is why we're keeping the public meeting [ph] open until—

Smith: Okay, good.

Murphy: —next month so we have an opportunity to review that information thoroughly.

Smith: Okay, good.

Mehlman: Thank you.

Schwartz: Wait. I would, I guess, consider this a request for information, but it's not exactly that. But have you received or you will receive the testimony that Catharine Burns submitted?

Mehlman: No, we have not received that.

Schwartz: Okay. So—

M: I've got a copy of it here [ph].

Schwartz: Okay. So I would ask that at the next session you prepare some response to the points that she makes in that testimony and think about whether you can make some of the adjustments that she is recommending, or just have a response. You may decide that those aren't going to work for you, but I'd like to—it would help me to hear a response to what she's suggesting.

Mehlman: Okay.

F: Good.

Murphy: With regard to your question concerning approval or voting on one portion of the application, being the house without the grounds or the garage, I believe at last month's meeting it was the feeling of the commission that the house and the gardens were tied so closely together that we did not want to separate the approval, and potentially impact the approval of one with the other. We wanted to keep those tied together. Unless there's a change of opinion on the commission tonight, I think we should not vote on a part of the application, and continue the public hearing until next month, so we can vote on a full application next month.

Smith: Agreed.

Kyser: Yep.

Murphy: I just wanted to answer that for the applicant. It's a valid question.

Mehlman: Okay. Got to ask the question.

Murphy: Yes. Thank you.

Kyser: May I ask a question of Catharine Burns? I only have to page 8 or 12 or something, is—so maybe—

Murphy: Well, I think Jake is going to provide a full document to everyone on the commission.

F: Yeah.

Kyser: [OVERLAPPING] comments on _____ of significance _____.

M: Which this one goes through 23 [ph].

Kyser: I don't have 23. I through nine.

Locke: Just to be clear—

Murphy: But I think we have the next—we need to take the information that we received tonight and spend some time outside of this public hearing reviewing it.

Kyser: I'm just saying I'm missing some pages.

Murphy: And Jake will get those to everyone.

C. Burns: [OVERLAPPING] you're missing two pages.

Kyser: Okay.

Locke: And the full copy will be available on the website.

F: Website, okay.

Locke: So everything talked about tonight will be on the website, correct?

Lowman: Correct.

Locke: Thank you, Jake.

Lowman: Correct. And, yeah. I will—whatever was submitted by any party tonight, I will have scanned in this week and sent out to the board.

F: Okay.

M: Okay.

Ferrell: So just for clarity, if you wouldn't mind just restating the motion and taking a vote on the continuance, and—

Murphy: Would someone like to make a motion to continue this meeting?

Kyser: I make a motion that we continue this particular application for 306 North Boundary until our next meeting, the 12th of March.

Schwartz: Second.

Murphy: All those in favor?

M/F: Aye.

Murphy: Thank you. We'll move on to the next item. Thank you very much.

Schwartz: Thank everybody who spoke on this item.

[END TRANSCRIPT 02:30:34]

[END RECORDING]

EXHIBIT F

**Brown & Bunch
Town of Chapel Hill Historic District Commission
306 North Boundary Street
March 12, 2019**

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
Ferrell: Brian Ferrell, Counsel to HDC
Mehlman: Erik Van Mehlman, Architect for Applicant
Swanson: David Swanson, Landscape Architect for Applicant
Cumbie: Stephen Cumbie, Applicant
C. Burns: Catharine Burns, Witness
W. Burns: Woodrow Burns, Witness
Brown: Linda Brown, Witness
Camp: William Camp, Witness
Joslin: Nell Joslin, Witness
Blackburn: Jill Blackburn, Witness
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 00:19:54]

[INAUDIBLE]

Swanson: So my name is David Swanson, and I'm the landscape architect, and—I worked on the project. What—the Carolina Inn, during Hurricane Michael, lost three large trees right in the front yard. I didn't do anything. I didn't do it.

M: I do have a presentation if you want it, but I don't think you need it.

M: It depends on what the condition—

Kyser: I just have a couple of—we're looking at them on a small screen.

Swanson: If you're looking at them on the small screen—so—

Smith: Yeah, that's the trouble.

Kyser: That's the trouble—[OVERLAPPING]

Smith: That's the trouble, it's on—

Kyser: I prefer them bigger.

Epting: Okay. Let's let him make his presentation then.

Swanson: Okay, so in the course of the removal of the trees that just came down in the hurricane, it was a good opportunity to correct an issue with ADA accessibility, and that's really the essence of what we presented to you all. There's not a good accessible way to the front entrance of the Carolina Inn at current [ph]. You have to go in the way back end and it's real convoluted.

So what we're proposing is a ramp that comes in off the east side, and we've tried to make it as discreet as possible. It's got a low stone wall. It's Chapel Hill stone to blend in. Brick sidewalks, again, to match the Carolina brick sidewalks. A low metal handrail, it has to have a guardrail, and the metal rail would, again, match the UNC standard rail. It is big on your screen now. If you'd like me to point to anything I can do so. _____ with this little box.

Smith: I just wasn't sure where it was. Do you—can you see—[OVERLAPPING]?

Swanson: The metal—okay, so the picture that you have—

Smith: I know—[OVERLAPPING]

Swanson: —in the—this is an elevation view.

Smith: Where is it? Is that it?

Swanson: And the handrail and the ramp would be—this is the east end. It's right here. This little box that you see here, detail is a blow-up of just the ramp. But it's located here, and it's sort of underground. So you really don't see it from the street.

Smith: Oh, it's there.

Swanson: That's why it's not apparent.

Smith: Okay.

Swanson: So—and that's sort of why it's not a huge issue, really.

Smith: I see.

Swanson: It's not going to be that visible.

Smith: Yeah.

Swanson: It's coming out of the ground. In plan view, that ramp is located right here. It's sort of slicing through the earth is what—if you will, to get up. We're re-changing—or changing the walkways. It's—this is—the current walkways that you see—on this map, you can't see it that well—but they're shown ghosted [ph] lightly. And the darker walkway that you see here is the new walkway.

Smith: Okay.

Swanson: And we're also putting in a brick walkway here that's going to take you from the parking lot.

We're doing other things, and if you went out there the past couple of days, you'll have seen a lot of activity going out there. They're putting in, which is really pretty neat, it's a type of gravel. It's a material that is going to allow the sod to go in there and a lot of pedestrian activity and still keep the grass. And we're pretty excited about that. I think it's going to allow that—the extensive events that they have and still maintain the grass. It's been a huge issue in the past. And then we're [ph] planting new trees and so on, so forth.

This sketch that you see here in the upper right-hand corner is a visual sketch of how that ramp might look. That's to help you visualize it.

Smith: Okay. I get it.

Epting: Now, are there other questions about the application? Thank you, David.

Smith: Thank you.

Epting: Is there—are there any questions about any of the other items on the consent agenda? If not, is there a motion to adopt and approve certificates of appropriateness based on the staff's report and recommendations, and the findings made in the staff reports? Those four items.

Smith: So moved.

Epting: Is there a second?

M: Second.

Epting: Further discussion? If not, all in favor say "aye."

M/F: Aye.

Epting: Any opposed? So the consent agenda then has been approved unanimously. And the next item on the agenda is the North Street application—I mean, North Boundary Street application, I believe. And I am recused, and so I'm going to go step outside and leave it to the Acting Chair Sean Murphy.

Smith: Do we have to vote to recuse you?

Epting: Already did.

Smith: Oh, good.

Epting: Last time.

Smith: Oh, that's right. It's continuation.

Murphy: Good evening.

Mehlman: Good evening. How are you tonight?

Murphy: Good, thank you.

Mehlman: Whoops. Okay. Thank you, commissioners, for having us here tonight, again.

We appreciate your time as always, and with the consideration of the discussion that was had, I am going to try to move through this as quickly as possible. With me—we are here to talk about 306 North Boundary for the third month and thank you. With us tonight are the owners of the property, Stephen Cumbie and Professor Druscilla French. Also here is David Swanson, a landscape architect and the most knowledgeable person about that—concerning the historical and botanical elements of that site, considering his analysis in the '90s and being back on the job again now.

Thomas French of Thomas French Architecture [ph] is the architect on the job. He was unable to join us tonight, though he was here last month. And once again, I'm Erik Mehlman with BuildSense in Durham, North Carolina representing the clients and their project.

We covered points from the first meeting last time, and I'm going to leave them alone. They were A through J that we covered. From the last meeting we had three direct requests from the February meeting from the HDC that we received following the meeting. One was, provide more detailed information on trees and landscape that may be affected by the proposed work. Two was clarify exactly what is original, changed in the '90s and proposed. And three, address

what's happening with a rock wall that was given into evidence in a photo underneath the south entry porch of the existing Peacock residence.

Jumping right in, this is the existing—I'm going to answer those three in order. So this is point number one: provide more detailed information on the trees and landscape that may be affected by the proposed work. This is an existing site survey of what you would find out on the site now if you walked out there with me from this chamber. There is the existing house and the eastern gardens, the driveway to the south, a driveway that comes into the east. All of the existing trees are noted on this plan.

The plan here is an overlay of the proposed work. We see the garage, the two-car garage in the northeast corner, located behind the home. We see the southern addition and the eastern addition, and we also have noted by the black X's, the trees that are going to be—that are proposed to be removed. To help clarify that I've added these green markers. There are six trees which are proposed to be removed. There's a seventh tree that's indicated by the X marker, but it's a hollowed one. The client Stephen and Druscie [ph] have requested to try to save that tree of their own accord. They like it. They want to try to save it. But David Swanson, as well as our arborist, and we have informed them that its proximity to the garage may endanger it. But we do have some reason to think that we—there might be hope for it. And we're going to try to save it, but we want it noted.

F: [INDISCERNIBLE]

Mehlman: That's the tree here next to the garage, number seven.

F: The 30-inch pine?

Mehlman: No, it is a 12-inch holly.

F: Twelve-inch holly. Okay, I see it on the list.

Mehlman: Okay, the garage, since the last meeting, has been subtly reoriented along with the driveway access in order to save these two pines here. I'm circling them. The 28 inch and the 29-inch pines that were the source of quite a bit of discussion at the last meeting. Thus there are six trees that are proposed to be removed, and those pines are going to be saved.

Point number two, what exactly is original, changed in the '90s and proposed? Here's the same site survey from today with a colored overlay. Tried to simplify the slides from last time into two slides only. This was in your packet that you received a few weeks ago. What we see is red is an indication of original Coker garden walls and hardscape. In blue, you see buildings from the Peacock residence, as well as hardscape from the Peacock residence, and driveways from the Peacock residence.

In the next slide we've added a light-blue color to indicate what is proposed. So once again, red is original Coker items. Dark blue are the Peacock residence items, and the light blue is the garage, the southern and eastern additions and hardscape. You'll also notice there—the trees which are to be removed are still noted here by the X's, and a new grouping of trees to screen the garage have been added to the north and to the west of the proposed garage location. Those tree species were included in the packets that you received. I've

blown them up here. If there are more questions about those selections, I will defer to David Swanson for more information.

The last item we are asked to address is what is happening with the rock wall underneath the existing home's south entry porch. This photo was submitted last—at the last meeting. What we're looking at here is the Peacock residence, and this is the southern entry stair, which spans out over some landscape and down onto grade. This wall, this stone wall that you're looking at, delineated [ph] in the dark blue, the tall section delineated in dark blue in the picture, also delineated in dark blue here in the plan is—was built in 1991. The wings that extend from it, and as I go down the plan, that extend down and around the driveway circle, were also built in 1991.

The short wall extensions delineated in a lighter blue, both in the picture and in the plan, are in line with the original Coker walls to the east. Those were built in 1991, either constructed or reconstructed if there were remnants. With the new proposed construction, you can see the plan—in the plan here, this is the southern addition. The stairs will jump out into the area that—they'll come all the way to grade over this area of blue wall. That wall of 1991, stone wall construction, will be removed. The blue wing walls, the short wing walls will remain in place after the work is done. Yes, sir?

Schwartz: There is also a low wall under the east facing steps. Do we know whether that one is—the provenance of it and how it will be affected by what you're proposing? That was actually the one that I thought we were originally talking

about. So I was surprised to see that it was, in fact, addressing—

[OVERLAPPING]

Mehlman: Well, I can address that it was not an original Coker wall. I haven't looked at that one in detail. But it's not an original Coker wall scheme, and if it's being affected by the east addition, which if it's in where the east—if it's similar to the situation that you just saw in the south, it's going to be removed as the new foundation comes down to the ground.

Schwartz: And the reason that we know that it's not part of the original Coker walls is just because it's not on—

Mehlman: It's—what you see here in red are the original Coker walls that remain on the site.

M: Okay.

Mehlman: So there's nothing within the footprint of the existing Peacock residence that was original Coker wall. Which makes sense because when they constructed that home in 1991, the construction would have facilitated maneuvering or removing things that were existing in that location.

M: Yeah. Thanks.

Mehlman: The—we've updated the application and—to reflect the work that we've shown here in terms of Guideline 1 for site features and plantings, no existing historic built site features from the original Coker gardens layout will be removed as a result of the proposed construction. A total of six trees, previously nine trees, are proposed to be removed from the site. The owners intend to save one tree, whose proximity to the new structure puts it in danger. None of these trees were part of the formal Coker design. All of them are located clearly on the plans. The

original proposed garage has been reduced from a three-car garage to a two-car garage, and moved considerably to the south in order to save the existing stone wall in that location, and to stay as far away as possible from the 47-inch diameter hackberry.

The most recent proposed two-car garage has been slightly shifted, and the drive and walkways reconfigured to save the two large pines, the 28-inch and 29-inch previously proposed to be removed. That's a little bit of a summary of what we just discussed.

And I'm hoping that we've showed that we're—we've given the information we need on trees and landscape. Clarified what's original from the Coker era, what was changed in the '90s, and what's proposed, and have addressed what's happening with the rock wall. I think that Stephen and Druscie and the design team have all been extremely accommodating with making design changes through this process. And I think it's a better building for it.

We have reduced the scope, the size, changed some materials, reduced the amount of trees to be removed, and saved all the stone walls that are from Coker era on the site. If you have any questions for me, I know that Stephen Cumbie wanted to say a few words. I don't know the appropriate time, for him to do that now.

Murphy: He can come forward now.

Mehlman: Okay.

Cumbie: Thank you, Mr. Chairman, commissioners. I'm Steve Cumbie. My wife and I are the owners of the property. And I just wanted to say a word about the garage. So

the original Peacock house was designed with a, quote, “two-car garage underneath.” If you’ve ever been in that garage, you can fit two cars in it, but it’s very tight. And if you’re trying to load or unload groceries or suitcases and the like, be a lot of door banging.

And so we had—as we sort of thought through a plan, we decided that we would try to only use that garage for one car, and primarily be my wife parking there. And so the part of the reason for the garage is to have another parking place for me. But I wanted to talk a little bit more about it. My wife and I are both in our 70s. This could be the last house we live in, we don’t know. But we’re sort of planning to live here for a long time.

And as a result—my wife has got some health issues already—but we’re thinking at some point in the future there might be some—a live-in type caregiver that would be here. Our preference would be for that kind of person not to be in the house with us, but to be in the apartment or the suite that’s over the garage. So that was—that’s really our long-term thinking about that accessory dwelling unit. And then there would also be a parking place in the garage for that caregiver if, in fact, they were living there.

So we have looked around in the historic district over the last few weeks. There—the idea of a detached garage, in many cases with a suite over the top, is fairly prevalent in the historic district. We actually, just from the street, took pictures of eight or nine situations like that. And I think there are others that are more concealed. Ours would be more concealed, you know. It would really not be so visible.

So I don't think it's a departure, even in the historic district, from other situations that are similar. So with that, I'll conclude my remarks. If there's any questions, I'd be glad to answer questions. Yes, ma'am?

F: Just a comment [ph]. I appreciate the information you just shared.

Cumbie: Okay. Well, thank you. Anything else?

Murphy: Any commissioners have any comments for the applicant?

Schwartz: Do you happen to know offhand the addresses of some of the houses where you saw these garage suites?

Cumbie: I've got pictures. There are a number in the historic district, the Franklin—you know—Rosemary Historic District. But—a couple of pictures were taken in the Gimghoul area. I can supply all that, but—

Schwartz: Was it your impression that these were, you know, built within the last 30, 40 years or were they within the—

Cumbie: Oh no, these were all relatively—maybe one or two were perhaps a little older. But most of them looked very current. I will actually submit the pictures that I took, and we'll follow that up with the actual addresses, but.

M: Okay. Thank you.

Cumbie: Sure.

Smith: I'd just like to comment. While it's important to show what is already existing, sometimes when you just look at the result, you do not know the situation that went through this commission. Whether they approved of those, whether the commission was actually operating then, which I am assuming, based on what you're saying, that it was. But there's a great fluctuation in even the

commission's assessment of things due to the changing in membership, due to the regard—

M: Right.

Smith: —or disregard of the historic guidelines in the recent past.

And so I think our charge is more to take a look at what is—what you're proposing at your site—

M: Okay.

Smith: —and see if it fits the congruity of it. That's the most important thing I just wanted to add, yeah.

Cumbie: Yes ma'am, I understand. Okay, thank you.

Murphy: Thank you very much. If there's no other comments from commissioners, I'd like to open up to public comment.

M: _____ taking [ph] this.

Smith: Oh, we have comments—question for him.

Murphy: Oh, sure.

Smith: No, go ahead.

Schwartz: The—when you first presented the plan it—my recollection is that the deck, the east facing—the new east facing deck encroached over the circular garden. And what you've—plans that you've presented most recently show the deck no longer overlapping that circle. But there was no mention of that in the text, whether that was a change. And so I'm not sure what the actual—you know, what you're proposing now to do with that deck, whether there's been a change in what you're planning to do there to prevent the overlap with that circle.

Mehlman: I know it was entered in the discussion at last meeting, and I'm glad to repeat it. And you can see in this graphic here, the circle in the center—I'm going to flip back and forth—is now in light blue. The suggestion from David Swanson was to shift the circle by four feet, because there's some drainage issues out there anyway. And he doesn't like the existing sod conditions that were planted. So the whole thing—that whole center circle is going to be shifted.

Schwartz: The deck is as it was, but it's the circle that's going to be moved.

Mehlman: Yes. And just to refresh your memories, that was all work that was developed by Mr. Swanson during the 1991 gardens work. None of that is original Coker design.

M: Okay, thank you.

Smith: I just had a question in general because I'm swimming in papers here. And I wanted to know from the chair and other people's understanding, is that this new material that we have that's called "supplemental information," that is—that's the proposal at this point, correct? Because there is a difference in the other plans. And so I'm just assuming that these plans that I'm looking at, the site plan with the over low—overlay, with the tree removal, and so on, that is what we're voting on tonight. Not previous proposals that have—

Locke: I think I can clarify that.

Smith: Yeah, can you?

Locke: That—it is supplemental information. So it updates some of the previously submitted information.

Smith: Only—

M: So—

Smith: —we have to figure out which it—update—just the things it updates.

Locke: Well, I mean, the applicant in his—in those supplemental materials, outlined what the clarification and what the supplemental materials were related to. Both for this meeting, as well as the previous meeting.

Kyser: But in fact, you’ve moved the garage.

Mehlman: And we show that in these plans that were submitted—[OVERLAPPING]

Kyser: Yeah, so from one plan to the next, there—that’s a change, not just a supplement.

Smith: Right.

Murphy: Well, it is a—the changes are supplemental information.

F: Okay.

Smith: Well, can you see how there could be confusion there?

Kyser: Yeah, exactly.

Murphy: Absolutely, absolutely.

F: Okay, because actually—

Murphy: But I guess to the point, the applicant has not redone the entire application, just provided updated information twice now.

Smith: I understand that. I’m just wondering what exactly I’m voting on, and I want to be clear about that. I want to be sure we’re all clear about that, too. I know since the January meeting, before David Swanson changed the pattern of the steps, I thought that there was a change there. Am I wrong about that?

Mehlman: When you say “change there,” can you be more specific?

Smith: Yeah, the east wing that goes out. Instead of the steps going straight down, did they go like that before?

Mehlman: Yes, they were—all of the architecture changes, the—when I say “architecture changes to the main house,” all of them were—are current since last meeting in February. Everything’s consistent with what we turned in, in February. I would say the only change, if I recall, in February was the change in the stair pattern as it approached the garden—[OVERLAPPING]

Smith: Right, that’s what I’m pointing out.

Mehlman: Yeah.

Smith: So that’s different?

Mehlman: That was presented different—

Smith: In February.

Mehlman: —from the original January package. It was presented differently in February, and it is the same as February now.

Smith: Okay, that’s what I want to be clear of because this meeting has been continued—

Mehlman: Commissioner Kyser, just—

Smith: —since January.

Mehlman: The architecture of the garage is exactly the same as it was. The orientation of it was shifted by maybe a foot or two, torqued slightly, so that we could get the driveway and the access to move around those pine trees. So very subtle, but changed.

F: Okay, thank you.

Smith: But it looks like the square footage of the garage changed, I mean the shape of it and so on.

Mehlman: From the original January proposal—

Smith: Yes.

Mehlman: —it was changed when we came in February.

Smith: Yes, it's smaller.

Mehlman: Yes, it is.

Smith: And it's more square.

Mehlman: Yes.

Murphy: Any other questions or comments? Thank you again, Mr. Mehlman.

Mehlman: Thank you.

Murphy: At this point, we'd like to hear from any members of the public that signed up to speak on behalf of this matter. Sure, come up Mr. Burns. If you would, state your name for the record and if you've been sworn.

W. Burns: Woodrow Burns, I'm a recused member of the HDC for this COA application. I have some comments that I want to make that basically supplement comments that I made at the last hearing.

Ferrell: Dr. Burns, you were sworn in, weren't you this evening?

W. Burns: I was sworn in.

Ferrell: Thank you.

W. Burns: The first thing I wanted to talk about is standing according to the General Statute 340, 160A-393. I have standing, and also, I refer to Owens, Lovelady [ph] pages 30, 31 which states that I have standing to be able to get up and speak and testify.

But Lovelady's book says that I have to request from the commission that you acknowledge officially that I do have standing for testimony.

Murphy: I'm going to—

M: Mister—

Murphy: —refer to counsel on that one. [LAUGHTER]

Ferrell: Mr. Chair, it's been a little while since we've talked about standing to participate as a party in an evidentiary hearing on a certificate of appropriateness. And the way it works is, typically, you have a public comment per—a public hearing aspect to each of your COA evidentiary hearings. And it's not necessary, according to your past practice, for each person who speaks in—during that public comment period to actually have standing, that—a legal standing which allows a person to participate in the proceedings as a party.

Only limited individuals in a quasi-judicial setting have—qualify as a party. There is a general statute that, I believe, Dr. Burns was quoting from that deals with appeals in the nature of certiorari that lays out essentially the basic standards for standing. And so certain groups and individuals are able to participate in evidentiary hearings as a party. And it's important if you're a party because you can cross-examine witnesses. You can present argument and do other things that members of the public generally don't have the due process rights to do.

So that's why the standing question is important, and it is appropriate at the beginning of a proceeding if an opponent or a person wants to assert that they have standing in regards to an application for the commission to rule on that. So I

want to talk a little bit about what constitutes standing. Generally, if you—there are certain statutory—a list of statutory folks that have standing. And then there is a catch-all, if you will, and people with special damages, distinct from the rest of the community generally, are recognized as have standing. People with ownership interests or entities with ownership interest in the property that's the subject of the decision being at issue certainly have standing. And that would be the owner that you've heard from earlier tonight.

And an interest in the property that is created by easement, restriction, or covenant could also give an individual standing to participate as a party. Contract purchasers have standing, and certain associations that—unincorporated associations that I don't believe have any bearing on your deliberations this evening, could also have standing.

So what I would recommend is that you ask Dr. Burns to provide you with the basis upon which he's asserting that he has standing. Listen to Dr. Burns's evidence on that question and then make a ruling accordingly.

White: I have a question for council. What's the difference between—what's the point of getting standing? Does that mean that every citizen who wants to speak to this application has to have standing?

F: No.

White: Your—then what's the difference?

M: Right, the difference is, parties with standing are able to do—to participate in certain ways in the hearing that members of the general public are not. So, for instance, if Dr. Burns is found to have standing in this case, he would be

permitted to cross-examine other witnesses to the proceeding. Members of the general public do not have the ability to participate in that way, and that's a distinct—that's one distinction, due process rights attached to applicants and other parties with legal standing to the proceeding, as well.

M: Dr. Burns—[OVERLAPPING]

W. Burns: To answer your question Sean, I have standing because, one, any person meeting any of the following criteria has an interest created either by easement, restriction, or covenant of the property that is subject to the decision that is before you. I have standing because of easements that were on my property and on the property in question that were established in 1985. And I'm going to talk a little bit about that.

Murphy: Can I ask you, are those easements still standing? Because I understand, and I'm not a real estate attorney, but I understand from some of our previous applications, comments on this matter, that those are no longer standing for easements [ph].

Ferrell: I think that's an interesting question. Again, what I would recommend is that you hear all the basis for standing that Dr. Burns is asserting and then perhaps it'll help clear that up. And if not, we can deal with it more [ph].

W. Burns: And the other reason that I have standing is, is a person who will suffer special damages as a result of the decision that's being appealed. And I will get into that as I get into the information I want to provide. I do have a question, several questions Brian. Do you know on what date the determination was made

regarding the easement decision that was made about this property, and what could be and could not be discussed?

Ferrell: I'm happy to address any questions that the board has for me, but I do believe, before we get into that, that it is proper to address the issue of standing. You've heard the assertions here. And Dr. Burns, just to clarify, you live next door, right?

W. Burns: Correct.

Ferrell Okay, all right. So—and the special damages, in addition, the case law says that simply living—simply being a neighbor in and of itself is not necessarily—doesn't constitute special damages to provide standing. However, other—oftentimes though, it is the neighbors that have standing in a case like this to appear. But just being a neighbor isn't enough. So can you elaborate a little bit on the special damages Dr. Burns?

W. Burns: Yes, let me give a little history first. In 1985 my late wife, Mary Jane Christina Lee [ph] and I purchased what was then the Coker property. It consisted of 4.1 acres. We entered in agreement with the university in June of that year, in which there were three easements that we had to agree to before we purchased the property. One was a geological easement in honor of Mrs. Coker, which runs along the North Street boundary of my property, which is the north end, has nothing to do with the application's property per se.

The other was a right-of-way easement that we gave to the Little Creek—had to agree to give to the Little Creek Company [ph]. They were doing development along North Boundary Street, and they had a right-of-way easement to build a road along my—it would have been my eastern driveway, which we

ended up having to settle in court. And it is an easement that was granted, but it is a pedestrian easement and not a vehicular easement.

The university asked us to grant easements on the entire property in the home, designated—implying [ph] that we agree to honor and create an easement that would honor the house, the originality of the house, the restoration of the house, as well as the preservation of the garden. And I've got copies of the agreement to purchase, as well as the easement that we created in 1985.

Murphy: So if I could jump in, Mr. Burns. Which of those easements are still in place on the property today? I think—[OVERLAPPING]

W. Burns: In my mind, that is in question. And the reason it's in question is that in August of this year, the Preservation Chapel Hill, which held the easements, issued a quitclaim deed, but—

Murphy: I have it here, dated 8/27.

W. Burns: That's right, that affected the Peacock-Cumbie property. Our information and our—with consultation through Preservation North Carolina and the National Trust for Historic Preservation, advised us because of that quitclaim deed that was executed, it affected my property, as well. Not that my easement was extinguished, but it affected the property. And that when we put the easements in [ph] with the university in 1985, they were put in as one easement.

And what we had been advised is that until this issue was resolved, the easement on my property is invalidated as well, or is in limbo. It's not—we've been told that it is, in effect, non-existent. And the way that—a simple way of resolving that on our advice from Preservation North Carolina and the National

Trust is, that new easements be created. One with Mr. Cumbie and Ms. French, and one on my property that would be created to protect the properties, again, as a whole.

Ferrell: All right Mr. Chair, so you've heard the allegation of standing, which is essentially a multiple easement, it's a pedestrian easement, some easements that may or may not be applicable anymore, but certainly in the past—the testimony is that there were easements, reciprocal easements perhaps on both properties. And the allegation of standing as a neighbor with special damages. So that's the evidence that you have on standing. So it would be proper to—

Murphy: So is this a—go ahead.

Ferrell: —to move forward on that question, so you can get to the evidentiary portion of the hearing tonight [ph].

Murphy: Is this a chair question, or is this something that the commission has to make a motion and vote on?

Ferrell: Yeah, the commission can make a motion, and second, and vote on it, just to have it clear for the record. The applicant has asked for the commission to rule—I mean, excuse me, Dr. Burns has asked for the commission to specifically rule on that question.

Murphy: So I'm trying to understand, if there's no current easement—

F: Well—

Ferrell: And that—

Murphy: —which is not under our purview.

Ferrell: That's right—[OVERLAPPING]

Murphy: But the information that we have, that tells us that there is no current easement on the property, is that—

Ferrell: Well, you heard, I believe, something about additional easements, including a pedestrian easement tonight. And you also heard allegations of standing related to being a neighbor and special damages in that regard. So I think there are multiple aspects of the standing argument that—

Murphy: I'm wondering if just by nature of being a neighbor, without easements, are—is there any standing?

Ferrell: Right.

Murphy: Because by that definition, then any neighbor, in any historic district, could have standing.

Ferrell: And it—I believe the case law is clear that being a neighbor alone is not. However, you've heard some additional testimony about why Dr. Burns believes that he—his position is unique, and he does have special damages that have to do, I believe, with some of these other easement issues. And again, in the statute, having an interest in property, in addition to a fee owner—in an ownership interest, could constitute standing, so.

Kyser: May I add something that might clarify this whole issue with—in my recollection of our joint meeting with David Owens, it was the Board of Adjustment and the Historic District Commission, someone in the audience from the Board of Adjustment asked this very question. Does a neighbor have standing? And he said, because of the situations in the historic district, because they're quasi-legal, he said, yes, they do have standing.

Ferrell: I think it is generally neighbors that do have standing. I think that is certainly true. And I believe that you've heard a showing, a proffer of evidence tonight about that, that would be sufficient one way or another for you to make a decision. So I think if there's a motion to be made on the question, you can get past the threshold about standing and move on to the evidence.

Schwartz: I'm comfortable granting standing to Dr. Burns.

F: I second that.

Murphy: Would you like to—[OVERLAPPING]

F: I second that.

Murphy: Okay. Discussion? Any discussion?

F: No.

Murphy: All those in favor to the motion [ph]?

M/F: Aye.

Murphy: All those opposed? One, two—that's unanimous.

W. Burns: Thank you.

Murphy: Continue please, Dr. Burns.

W. Burns: Before I get into what I wanted to basically expand on my comments from last was—I sent a memo last Saturday to—addressed to you Sean, as well as members of the commission, of issues that I have had with the whole process that we've been dealing with. And I was informed that—by staff that the memo that I submitted needed to be brought as evidence at the meeting tonight. And I'm going to distribute copies of that to each of you.

[INAUDIBLE]

F: Thank you.

Murphy: Dr. Burns, I'm going to ask, for our sake as well as the public's and the other applications, that you please hold your comments to five minutes or less—

[OVERLAPPING]

W. Burns: I am going to try.

Murphy: —green. I would like to not use the green, yellow, and red-light system, but in the sake of the respect for the rest of the public and the applicant, I'd like to speed this up [ph].

Ferrell: And Commissioner White asked me an important question a few minutes ago which is, what difference does it make if you have standing? And I gave one example. Another example, Mr. Chair, is that parties with standing are able to present evidence and testimony and information in the same manner that they can if they're an applicant. So while it—

Murphy: This is a poor time to find that out.

Ferrell: Yeah, so whether—while it—I agree it makes good sense as a practical matter and as a legal matter for—to move things along and have members of the public limited in their testimony, parties are generally given more leeway in that respect.

White: I have a question for counsel. If it is true that someone who has standing is entitled to talk for more than, as the chair has just suggested, five minutes, does that mean that we are required to waive our one hour per application principle?

Ferrell: Just keep in mind that your one-hour application was not a one-hour hard stop. It was a one hour tonight hard stop. And then you—[OVERLAPPING]

White: No, no, no. I'm just saying—are you saying—no, let's just—

Ferrell: In coming back, right—[OVERLAPPING]

White: Let's just say hypothetically that Dr. Burns wanted to speak for 20 minutes. That goes over the one hour that's been allocated for this issue. Do we have to allow that?

Ferrell: I think that the chair is always empowered to limit the testimony to substantial, material, and competent evidence. That is—something that the chair is always able to—

M: It is.

White: That's not exactly an answer to my question [ph].

Ferrell: —to control. That is the answer. I mean—[OVERLAPPING]

Murphy: It is my intention—

Ferrell: —that's true.

Murphy: —to finish the public testimony and take a vote on this application tonight.

Ferrell: And the commission, as it's constructed and sits right now, has the ability to control its proceeding in that way.

Murphy: Go ahead please, Dr. Burns.

W. Burns: Let's see, Jake [ph].

Schwartz: Dr. Burns, can I ask a question that might enable us to expedite a little bit?

W. Burns: Yes.

Schwartz: Are there specific aspects of the proposal that, from what you've heard, that you feel are grounds for denying a certificate of appropriateness?

W. Burns: I have to answer that David in the sense that I am recused to speak about the specific items that are in that proposal. And I don't feel like I should be able to answer that question.

M: Okay.

Schwartz: The reason I'm asking is as I looked through the materials, it seems to be primarily about the easements and what the status of the easements, as opposed to the specific changes that the applicant is proposing to make to the property. And we are not really in a position to make any judgment about [ph]—
[OVERLAPPING]

W. Burns: And I understand that, and I—and that's—I realize that this is not under your purview or our purview as commissioners to make decisions about that. Our purview is to talk about the application that's in front of you and you making decisions based on that.

What I wanted to, basically, elaborate on my discussions from last month was, this is a historic property. And I have spent—and my late wife and I spent 30 years restoring this property and as mister—as—I guess—David Swanson said in one of his earlier remarks of Mr. Cumbie, that the gardens were in sort of disrepair. And thankfully, when the Peacocks bought the property, they did a great deal in repairing the—or renovating, or restoring that part of the garden.

I spent 30 years on this property. It took us 10 years to restore the home and restore the gardens to where I think they are right now. And I would have to say that it's been a—when we first started, neither my late wife nor I knew a thing about Dr. Coker. Over the—much to speak of—and over the 30 years that we've

lived there, we have learned about him, and have been educated about the legacy that he leaves this town.

I just wanted to ensure that this property, which is the—probably [ph] the last thing that he has left us, as far as his history and legacy, needs to be protected and taken care of. And so this is my—you know, my major concern. And the thing that has happened that upsets me the most, which y'all can't comment on really, is the fact that the easements have been put—have been removed and have been put in limbo. Mr. Cumbie said that he—after the COA application process is completed, he will discuss that with us.

We have—he has—I know a—and he's discussed that, as I have discussed it, with the president of Preservation North Carolina to reestablish those easements. And hopefully, he will agree to it. I have agreed to the one that they have created for my property. But I'm relying on his easement, that his draft be approved, and we can, in effect [ph]—a new easement that not only protects my property, but also better protects his property.

Murphy: Excuse me, Dr. Burns, do you have comments or information to provide related directly to the application? Because we simply cannot rule on—
[OVERLAPPING]

W. Burns: I understand.

Murphy: —easement, past or future.

White: Could I—I have another question for counsel. In response to Mr. Schwartz's initial question, Dr. Burns said that he was a recused member of the commission and wasn't going to address certain issues. When he's up at the podium here,

having been recused, it seems to me that he is no different from any other citizen who has taken the podium. Recusal it—from the commission, it seems to me, is utterly irrelevant. He can answer a question. He can answer it “yes.” He can answer it “no.” Or he can decline to answer. But the fact that he’s on the commission, it seems to me, is temporarily irrelevant.

Ferrell: I agree with you.

Schwartz: So let me maybe ask the question a little differently. In the application, in the supplementary application materials for tonight’s meeting, the applicant has stated that all existing Coker-era site walls—and this is on page one, page one of that document, under Item 2: clarify what exactly is original, changed in the ’90s, and proposed. The applicant states, “All existing Coker-era site walls, paths, and stairs are to be retained, and all trees documented as part of the Coker garden design in the 1990 property botanical survey are to be retained.

Are there any other actions that you think the applicant should take or that would need to be taken to meet the concerns you have about safeguarding the historical, cultural values associated with that property?

W. Burns: I’m sorry, please repeat your question.

Schwartz: The applicant has stated that all existing Coker-era site walls, paths, and stairs are to be retained, and all trees documented as part of the Coker garden design in the 1990 property botanical survey are to be retained. Are there other things that would need to be done in order to meet your concerns about the property?

W. Burns: No. Let me ask—my wife was going to speak, as well. Let me get her to—

White: Have we ever dealt with the question of standing?

F: Pardon me? Yes, we did.

M: We did.

M: Oh, that's right.

M: You're right. Sorry.

Murphy: Okay.

C. Burns: My name is Catharine Burns. I live at 609 North Street, and I have been affirmed. I'd like to step back. We have given you a package of materials. One of the things that we had submitted was intended to come to you, Acting Chairman, a list to speed things along, but addressed vitally important issues, procedural issues that my husband has a due process right to assert and protect. And if they are not protected in this proceeding, he has a right to appeal. So it is not unimportant. It is actually critical and your duty to get those into the record and to hear those arguments.

The other thing, I am here—I'm going to be very careful how I say this—but in the January meeting, in a rather informal way, but I believe that the chairman at that point, Mr. Epting, recognized that I have had status as an expert witness. Counsel will tell you expert witnesses on certain topics are important to quasi-judicial proceedings and can play a role.

I have—had submitted, but not formally, at the last meeting, a list of my background and credentials. It is difficult, given the way this current commission operates, to have timely, constructive input. For instance, we could have saved a lot of time if our strictly procedural issues had been heard and acted on, either in advance or at the very beginning of this hearing. The way it is handled, you are

prohibited from even looking at procedural issues aimed at moving the proceedings along. We were told that cannot be discussed until we are in here under oath.

For you to then say we don't have time and aren't allowed to assert those, is, I think, a—well, I can't argue legal issues. But your counsel certainly can, and I would implore you to take a matter of this grave importance and allow for competent, timely, frankly, extraordinarily time-consuming testimony and input that we've put in. I have—and it's part of the packet that you've been handed, I have prepared a report. Somebody who has—you may choose not to recognize me as an expert, but I have been recognized and declared by courts and other entities to be an expert witness in architectural history and historic preservation.

Ferrell: So certainly there's a role for expert testimony in certain situations related to quasi-judicial decision-making, and that's essentially when an expert can be—when the specialized knowledge of the expert will be assistance to the commission in making its decision.

Murphy: I understand that.

Ferrell: Okay.

Murphy: And I remember from one of the previous meetings that—

Ferrell: Great.

Murphy: —Mrs. Burns was recognized.

Ferrell: And so the chair is recognizing Mrs. Burns as an expert at this point, in relation to the previous resume and experience and what she's testified to.

Murphy: Yes, that is correct.

C. Burns: Appreciate that.

Murphy: Now does that change what she can submit? Or is she speaking as a member of the public still?

Ferrell: When you're an—when you're qualified as an expert on a particular topic, and in this case, I'll let the expert tell you what her expertise is particularly, that expert can offer an opinion, right. Generally, witnesses are charged with providing you facts, right?

Murphy: Yeah.

Ferrell: And you use those facts, and apply them to the standards in front of you, and generate your opinions. When someone is qualified as an expert, they can provide opinion testimony, which is generally not permitted from lay witnesses. And I just would ask if there is—I'll just leave it at that.

Murphy: I would make one request of Mrs. Burns, that we please keep your opinions and your expert witness testimony to topics related to this specific application as submitted tonight and the two previous times.

C. Burns: And I appreciate that, and I hope and expect—I will tell you that my presentation is assuming that you have read and reviewed all of my prior testimony.

Smith: I just now—I did not—I'm just looking at it now. So I cannot say I can digest this at this moment.

C. Burns: So I have a written report, which I wrote up because I thought that would be more efficient and more helpful to you all. Frankly, I would have liked to have been able to submit that to—as evidence in advance. You've had a continuing hearing, but I was told I was not allowed to do that. I would have frankly liked to have sat

down with the applicants and gone over it, but I'm not allowed to do that. So here I am with my analysis that I have prepared, to be helpful to you.

I could read it. It's going to take more than five minutes. If you are determined to act, that's a problem. I think our due—my husband's due process rights would require that the evidence be thoroughly presented. So I'll ask you, what would you like me to do?

Murphy: I would like you to start your testimony so we can get through this matter tonight.

C. Burns: Okay.

White: [OVERLAPPING] the next few minutes—[OVERLAPPING]

C. Burns: The first step that you have to do as a commission is to consider—you want me to proceed, are you—is to look at the official significance report, what is the character of this historic district that you have to judge this project against? When you look at the significance report, this property has—it's very rare that you would have a single property held out [ph] as being central to the character of a historic district. But that is the case with the William C. Coker property.

And when I say that, I would like you to look at this picture. It is—I don't know how this advances, but—can somebody help me with—nothing's happening. Okay.

What—so I'm going to skip all of this, what I think is extraordinarily important material. But the William C. Coker property is both of these parcels of land. It is not—there is no distinction. So I ask that you consider that you are looking at the character of this combined 4.1 acres and its impact on the greater historic district.

White: But the Cumbies have no authority whatsoever to deal with a part of this large parcel which belongs to you. We have seen in the materials that they supplied that they have no intention of disturbing, much less obliterating, any of the original Coker walls or the documented plantings, with the exception of about four or five trees. I'm not sure that it's fair to the Cumbies to draw inferences from the entirety of this tract of land in ways that they are simply powerless to effect in any way.

C. Burns: I'm not trying to be unfair to anybody. I am trying to provide for this commission an essential analysis of the significance of this property to the greater historic district, which is your mandate and charge. I am going to skip—

M: I guess what the [ph]—

C. Burns: —against my better judgment, to the last section of my statement. I hope that you will take the time and consider my full statement. I will be available at any time in future meetings, whatever context you create, if you want—you or the Cumbies want to cross-examine me. But let me, in the interests of moving along, address those very specific issues of how I believe there are, in fact, issues where their proposal does not comply with the guidelines as applied in this case.

The—I would ask you, and I think this is something that has not been done often enough, your design guidelines, which Mr. White, you were on the committee that drafted them in 2001, so you well know this, but they are based on the secretary of the interior's standards. Which are a nationally adopted, accepted set of standards that there is a great deal of background, experience, and I would

urge you to look at a property of this significance in terms of the secretary of interior's standards.

This is also and—one of the more—most important cultural landscapes in North Carolina. So I'm sorry to burden you with this, but this is an extraordinarily important and threatened landscape. The—I would urge you to look, in addition to just the secretary of the interior's standards, to look at the companion guidelines for the treatment of cultural landscapes. Those guidelines encourage great respect for the landscape, and I think more care than what I have seen even in the amended proposal provides.

I do not think the applicant has adequately demonstrated for your—in order to allow you to approve the certificate of appropriateness, what they would, if they had—if they were fully complying with those standards and guidelines. I think the district setting, which is what I initially had pointed out, was extraordinarily important in terms of the proposals they have made. I find that, particularly the garage, I would argue, is not consistent with the district setting.

The other guideline is—the next guideline that I would bring your attention to is pages 11 and 12, the site features and planning. Initially, they had no site plan. So when you say, well, they keep having to come back, no applicant should have been—application should have been filed if they hadn't done the site plan. They decided where they'd like to have buildings and how they'd like to expand the buildings before they did the site analysis and the careful historic landscape site planning.

There are many aspects of an—and in many ways, and when you look at this aerial view, it is very clear that the most formal garden is, in fact, on this parcel of land, and will be very much directly affected. If you don't mind, I would like to introduce this into evidence, but also have it passed out to the commissioners so that they can look at it while I'm addressing this issue.

White: [OVERLAPPING] if I may interrupt just for a second? When I think of the Coker gardens, I'm—most of what I draw my conclusions from is the 1920 grounds plan.

C. Burns: That's exactly what I was asking that they pass that to you.

White: The greatest part of which was obliterated when the Peacocks built their house.

C. Burns: I was extremely disturbed to hear that asserted at the last hearing. I completely disagree with that. Yes, they did choose—

White: The 1920 site plan includes a formal garden with three distinct sections. And as far as I can tell, two of them are just gone. I walked over every square foot of that property and I can't—there is the circle that was added by the Peacocks and beyond that a square formal garden.

C. Burns: You haven't—

White: And the part on the far left has vanished utterly.

Murphy: But regardless of their present state, this application is not touching those gardens at all, as I understand it.

White: Right.

M: [INDISCERNIBLE]

Murphy: So it really should not be part of our discussions.

M: Let's her finish what she was going to say.

C. Burns: I'm looking. I disagree. I believe that—and I believe that if Mr. Swanson were up and elaborating on what was submitted to you—which I think is wholly insufficient to convince you that you have complied with a cultural landscape and its protection and the regulations, the guidelines that you have and that you're required to apply—I think Mr. Swanson—he certainly did a lot more analysis in 1991. But many of his present—his submittals here are based on that [ph]. We'll submit for evidence an article in *Chapel Hill Magazine* in which the Peacocks explained that they restored those gardens.

So you may think and be of the opinion that they have been obliterated. But I would urge you to recognize that that ground is—has evidence of the original gardens, and it would be absolutely wrong to submit that they are of no significance because the circle was shifted, or Mr. Swanson came up with a modern interpretation of that.

Locke: I have one question about your cultural landscape rehabilitation. Would you find that what they did in the '90s is an appropriate rehabilitation for a cultural landscape?

C. Burns: I think it was—well, one of the things about the guidelines is it gives you a spectrum of what you do.

Locke: Right.

C. Burns: I think it was respectful. It was researched and recognized, the history.

Locke: And it won an award if I'm correct, right?

C. Burns: It was certainly not a restoration of the original 1920s garden.

Locke: Right, but it was more or less a rehabilitation.

C. Burns: Yes, that would be a good term.

Locke: In your professional manner, yeah [ph].

C. Burns: I'm not particularly pleased with that as a term. I think—

Locke: Did it—okay, did it win a preservation award, if I'm correct?

C. Burns: I don't know. I have no knowledge of that.

Locke: Right? Do you guys remember that, no? All right, I thought that they—a part of their rehabilitation efforts won some type of award with Preservation Chapel Hill?

Smith: I think that was another property.

Locke: Okay, sorry. My mistake then.

Smith: That was—that's the property they live at I think now, not—

Locke: Oh, gotcha. All right, my bad.

F: Right [ph].

C. Burns: I don't think that's right [ph]. I'm just—I'm going to cut to the chase under protest, because I think this is very important, and I think there—I have been forced to skip over things that lay the foundation for my conclusions.

Ferrell: I think you should allow the opponent and his witnesses to submit the testimony and that they see—they deem necessary.

Murphy: Okay. [INDISCERNIBLE]

C. Burns: And I have submitted this statement. I would just simply ask that you carefully—[LAUGHTER]—read it. I'm going to address—so I think a good deal more care needs to be taken to look at the rehabilitated landscape and the opportunity to protect the original Coker landscape. The expansion of the residence, in my view

it comes—encroaches far too severely on the second parterre that was not destroyed. Yes, in fact, the 1991 house was built on the westernmost parterre. But its virtue was that the other two were saved. To allow an extension that comes into that circle, whether you're shifting the circle or not, in my opinion, is not sufficiently protective of the qualities and character of the original Coker landscape.

The garage, I'm going to—I think it's an improvement that it's smaller. It's an improvement in some ways that it has been moved back. But I have watched this commission, I would urge you to look at the section of your guidelines that deal with garages. Garages are allowed as long as they are consistent with—the garages of historic character in the district. Whether it has been by people not getting permission and building inappropriate garages, or frankly, this commission making mistakes, you have, in fact, approved some large garages that have residences above them that I think are absolutely in violation of your guidelines.

I don't know what to say about that. I remember when I first came to North Carolina and became familiar with the district I live in, I asked the representatives of the State Historic Preservation Office, and they said, don't—every case is—needs to be decided on its own. It needs to be based on thorough evidence, an understanding of the significance of the site. And the fact that a mistake has been made before does not allow the commission to make a mistake again.

I think if you looked at the garages that have residences above them, you would find that they were recent. That they were ill advised or made because people—members of the commission did what they should not do and looked at the circumstances of the applicant. So they were not applying due process where they treat every single application strictly in terms of the character of the site and the application of the guidelines. What they did was say, “Oh, my gosh, they’re old. They’re nice. They’re—you know, they need a therapy dog, so we’re going to let them do this.”

You shouldn’t do that. That’s not allowed. You have to look at the character of the site and say, “Is this a garage that meets the description of the guide of—in the guidelines of being similar to traditional, historic—typically historic garages?” So maybe you need to have an inventory done. I don’t think there’s a single historic two-story residence above a garage in the Franklin historic—Franklin-Rosemary Historic District. I could be wrong. I haven’t undertaken to do that. I simply live in the district and observe.

Again, I urge you to read—you may not agree with me, but it is very sincere and carefully crafted report that I have submitted to you. If you have any questions, or the applicant has any questions—and, you know, frankly, I wish there were an opportunity to engage with, particularly, David Swanson because he has studied this property. And I think if you asked him, “Did you do your plans as you would a professional applying the standards as you’re familiar with them, the secretary of the interior’s standards and these guidelines for cultural

landscapes? Or did you come up with a design and a justification to suit a great expansion of a residence?”

One thing I’d—I think I have seen this commission make a mistake of, the Peacock residence is not what you’re looking at for compatibility, or—the Peacock residence is beyond the bounds. It is not considered historic. It’s not representative of the character of the district. But what you are forced—required to do is that, if it’s going to be expanded, if it’s going to encroach on this priceless—I didn’t say it, in 1976 the report says, “This landscape is irreplaceable.”

So I urge you to take the time, take all of the time that you need, get all the expertise that you need. Call on people to help. Craft a response that thoroughly and perpetual—well, it’s not your charge to perpetually protect it. But recognize that you are going to have other applications and requests to pick away at an irreplaceable landscape. And it’s vitally important that your record be thorough, be fully aware of the significance of this property. Any questions?

Murphy: Do we have any questions from the commissioners?

Locke: Yeah, I have a question.

F: Yes. Yes.

Locke: Okay, I’ll start if that’s all right?

F: Yes, good.

Locke: You said that not many significant—significance reports point out individual properties. Two questions. First, how many significance reports have you seen,

and how many—I guess, what percentage would you say actually do point out specific properties?

C. Burns: Well, I've only lived in North Carolina for four years. And North Carolina has this—you know, for me—

Locke: The significance report?

C. Burns: —for me, unusual system of statutorily requiring the significance reports.

Locke: Okay.

C. Burns: The ones that I have read are the Chapel Hill districts, done at different times. I can't remember whether Gimghoul—I bet you they're—probably Gimghoul Castle is considered central to the—but I do not remember that.

Locke: Okay, thank you. Second question, you—in your slide, which you didn't get to all of it, which—

C. Burns: No, we've not been able to present our whole PowerPoint.

Locke: Which I would say that it's kind of unfortunate. But I would like for you to define a historic cultural landscape please.

C. Burns: Cultural landscape is the relationship of buildings to environmental and landscape features that helps tell a story from earlier period.

Locke: Right. Yeah. They're very, very difficult to actually define, just for everyone to know [ph].

C. Burns: But when they are actually documented, it's the documentation where extraordinarily important information allows a process like this to protect a vulnerable place.

Locke: Perfect, and so if you are defining this as a cultural landscape, what section of our guidelines, as an expert, would you recommend us actually look at?

C. Burns: The ones I just listed, which are—site features and planting, as well as district setting.

Locke: Okay, thank you. And then, I asked you about the appropriate rehabilitations of a cultural landscape. Got to ask a cultural landscape professional about that one because that's difficult. And then I guess my last question, I believe I asked you last time is, what about the archeological section of our guidelines? And how does that pertain for a historic property such as this, with site disturbance? And in your professional opinion, does any of this site actually need archeological digs?

C. Burns: Well, first of all, my professional opinion is that you should never dig where you don't have to.

Locke: Okay.

C. Burns: So, for instance, at Jamestown, for centuries the site was left undisturbed. It was not found until much later. I wouldn't recommend a dig because you would then be disturbing the land that you don't need to. But there is so much documentation of what Dr. Coker—and what I haven't had a chance to elaborate on for you is the impact of John Nolen, one of the most important land planners in American history, who worked with Dr. Coker, spent time with him. And I believe his influence is reflected in this greater landscape.

M: Interesting [ph].

C. Burns: And so, I said last time, I hope the Cumbies will do the very best job they can. I hope they will take the time to allow David Swanson to do what I think is—would

be a more thorough and more careful coordination of their architectural plans with a landscape preservation plan. But yes, archeology should not be ruled out if it's part of the documentation, it's important enough to determine.

Locke: What evidence do you have to suggest that John Nolen worked on this property?

C. Burns: Well, I've put it in my report. You want me to read it to you?

Locke: Yes please.

C. Burns: John Nolen came to Chapel Hill to help plan the campus of the University of North Carolina, and he and Dr. Coker became close friends. There's extensive correspondence between them. And I haven't done—I can't—

Locke: Yeah.

C. Burns: —and frankly, I'm glad I didn't because I think if I had spent 100 hours documenting it, I wouldn't be allowed to actually enter it into evidence.

Locke: Okay, yeah.

C. Burns: So I—it is not wild speculation. There is close documentation that they worked together and shared ideas and appreciations of landscapes.

Locke: Thank you.

Murphy: Other questions from commissioners?

F: You go.

F: No, go ahead [INDISCERNIBLE]

F: What?

Murphy: Do we have any other questions from the commissioners?

Kyser: No, but thank you so much for all your comments and—

C. Burns: I appreciate it.

Schwartz: But I do [ph]. I'm trying—I'm wrestling with, you know, how to, you know, elicit from you the information that would help us to decide and to make this judgment about whether what they're proposing to do is congruent with our guidelines. There are these issues of the easement and the process by which that was treated. Certainly, there is a lot of information about the historical significance of the property, and a desire to have that significance honored and respected.

But are there very—are there specific things? You've mentioned that a more careful coordination between the landscape—assessment of the existing landscape, with the architectural plans would be warranted. Are there other things besides—I mean, I think—you suggested that the architectural plans came first and then the—sort of the landscape treatment was, sort of [ph], made to fit pre-existing architectural plans. And you suggested that was kind of backwards, that what should take precedence is the landscape, because since that's what holds the historic significance of that site.

C. Burns: Correct.

Schwartz: And then the architectural plans should actually be made to fit with that. Are there other things—and I'm—that would be great for you to be able to have that conversation directly with David Swanson and with the builder. I don't know if—apparently, if they're not allowed to talk to each other about this outside of this hearing, when are they supposed to—

Ferrell: No, no, that's a misunderstanding of the way ex parte communication works. So ex parte communication says, "No party or applicant may talk to the decision

maker outside of the evidentiary hearing to—in order to preserve [ph] due process.” Which allows that everyone, party opponents and applicants, have the same access to information and the same ability to cross-examine witnesses who provide testimony. So ex parte communication limits communication to you, right? It doesn’t at all, as far as I’m concerned, limit conversation among parties.

C. Burns: Well, but I—it’s not my job to go and find these applicants and express my opinion to them. They only—I’m only allowed to present my conclusions.

White: No, no, you’re entitled to talk to any of your neighbors about anything.

C. Burns: And I have met with—

White: You’re entitled to talk to David Swanson.

C. Burns: And I have.

White: Good, okay. So who are you not entitled to communicate with?

M: Us.

White: Us, okay, except for in this venue.

Murphy: Well, earlier in testimony you did say that you wish you had the opportunity to talk to Mr. Swanson.

C. Burns: Well, I wish that the evidence were gathered by the commission, that there were opportunities for back and forth, and discussion, and full consideration.

White: But it—wouldn’t that be like judges, attorneys, and jurors talking about stuff among themselves?

C. Burns: No, I don’t mean with you. But in order to—

Schwartz: Go back to this section from the application that I’ve already—I think I’ve come back to it a number of times, but maybe I haven’t talked to you about it. They’re

stating that all existing Coker-era site walls, paths, and stairs will be retained, and all the trees documented as part of the Coker garden design in the 1990 survey will be retained. Are—do you feel that—do you question whether they will actually be able to live up to that aspiration, or that they don't have the information that they will need to be able to honor what they're saying they're going to do?

C. Burns: I hope that in your review you assure yourselves and feel very confident that those representations are absolutely correct. I don't know. I will say, since you've asked me, there is a section of this landscape known as the "promenade" that I, frankly, had not been aware of until I started hearing about it in these proceedings, that I don't think there has been adequate treatment of. I think the new location of the garage affects at least the approach to that part of the property. And it deserves to be fully and completely analyzed, and I am worried that it is vulnerable.

White: Could you point that—

C. Burns: And I will say, I had requested on February 1st, after the first hearing, that the commission ask—convene a public hearing, because this was such an important issue, such an irreplaceable landscape. And there's so many people here who are very much interested. I'm not going to take time, but there—Nell Joslin is here from Raleigh. Her mother wrote—late mother wrote a book on Dr. Coker. Jill Blackburn is the author of a book about Dr. Coker. She's here. I doubt that under your new guide—your new time frame, they're going to be able to speak to you tonight. But—

[OVERLAPPING—INDISCERNIBLE]

F: They've already gone through that and I—

Murphy: We've already extended that [ph]. Any other questions—

F: Well.

Murphy: —or comments for Mrs. Burns?

Kyser: Yes. I would like to get at what I—to summarize what I think the issue here is,
and you help me.

F: Okay.

Kyser: There was a binding agreement, an easement is a legal agreement, isn't it?

C. Burns: Well, let me—okay.

Kyser: Just back when you set it up, it's some form of—it had some legality to it, doesn't
it? Anyway—[OVERLAPPING]

C. Burns: If I could—[OVERLAPPING]

Kyser: The fact that you never knew about the dissolution of this quietly in the summer
of 19—of 2018, you didn't know about it until January. It just seems like that
was a missing element in the original application.

C. Burns: Correct.

Kyser: So it's a flawed application to begin with, doesn't include—

Murphy: But an easement is not pertinent information to an application before the HDC, is
it? I'm going to ask our counsel.

Ferrell: Let me clarify what I think about the easement, is that this commission has no
authority to review its applicability or its enforceability as to private parties that
may be subject to it. The easement document, I think, may—that was entered into

your record—may be relevant to the extent that it contains info—factual information about the historic aspects of the property that may assist you in determining whether or not the proposal is congruous or incongruous with the special character of the district.

So, for instance, to the extent the easement lays out for you, placements of historic stone walls, right—and some easements do have components like that, some [ph] conservation easements have an inventory of—or sort of a present inventory of the property. To the extent that there are facts in the easement that help you make the congruity determination, I think that it could be relevant. The enforceability, or the lack thereof, I don't think is within the purview of this commission, and quite frankly, I don't see how it's relevant to what you're ultimately called on to do tonight, which is determine whether or not the proposal is congruous with the special character of the historic district.

Does that help? I know there's been a lot of talk—[OVERLAPPING]

Kyser: Could you repeat that last part?

F: Yeah [ph]. [LAUGHS]

Ferrell: Yeah, so my—to the extent that there are fact—pieces of factual information within the easement document that speak to the congruity of the—this project with the district as a whole, I think the covenants or—and the easements could be relevant, right. But the general enforceability or lack thereof, I do not believe is relevant whatsoever to your discussion this evening.

Kyser: Okay, but what I've heard from some of the commissions is that they don't care.

I mean, they're disregarding the fact that those easements have been dissolved.

So it sounds like they're disregarding the information that was contained within those. So I don't—

Ferrell: What I'm saying is, I want to make clear once again, to the extent there are pieces of factual information, there are facts contained within the easement about the property's _____ the subject property, to the extent that the easements have information, factual information that can be useful to you, it's available to you to use. But the enforceability, I think the question of enforceability should be disregarded for the purposes of your decision tonight.

Kyser: Okay. Thank you.

Murphy: Thank you.

C. Burns: And to that I will say, you are the last line of defense. This is the irreplaceable landscape and right now, as things stand, it is up to you. You are the only protection on that 1.3-acre parcel. That is extraordinarily important. I would like to ask for purposes—because I spoke in January, and as you will recall, I was quite flabbergasted, and I apologize if I was in shock at finding what had happened. And I confirmed it the next day. I don't recognize that that was entered into evidence during that January hearing.

But then at the beginning of the February meeting, I got a hint in listening to you, Mr. Ferrell, that you had made a determination with respect to the relevance. What I'd like to know is, was that ever reduced to writing? When was it made? How was it made? And if that is part of this proceeding, to what body can that determination, which I would like to have any evidence of the basis of which that determination was made, where would that appeal be made [ph]?

Ferrell: Well, parties certainly have the ability to cross-examine other witnesses and parties. Generally, not the lawyer for the commission. But what I'll say is, I have done no writing [ph] that I've provided to the commission. You have heard what I had to say about the covenants. I've not presented any memos or other written documents to the commission on the topic. You've heard, since you've been here, the sum total of my advice to the commission on that topic.

C. Burns: So no citation of authorities or anything that I could respond to _____.

Ferrell: You're happy to respond in argument however you'd like to do that, if you disagree.

C. Burns: Well, I'm here testifying based on architectural history and historic preservation. So that's why I'm avoiding—since I made that representation, I'm avoiding that topic.

Schwartz: You have—just leave aside the garage for the moment. With the main structure, you've suggested that the expansion to the eastward—to the east, is problematic in terms of, you know, conserving the landscape values there. Other than that, are there other aspects of the proposed plan that you think are problematic?

C. Burns: Well, one issue and guideline that I don't think were addressed, but I would hope that you will pay close attention to, is the exterior lighting. This is going to be an even larger, very tall residence. And right now, when the Peacocks owned the property, they had a very—have a very extensive lighting system, but it's at ground level. And I—one of the reasons I wanted to see the original COA, and while I think there is some material that's been presented, I don't think it was the

full record that would show what was required. But I suspect that lighting was part of that.

And I hope very much that you don't allow a much larger addition coming toward our section of the Coker property and the other parts of the cultural landscape that would flood inappropriately and change the character based on exterior lighting.

M: Okay.

M: Any others?

C. Burns: I think I—as I argue—and I hope you will read my entire memo—but each of the parts and their relationship to each other is so vitally important that, yes, I think you have to thoroughly analyze all of the impacts on the cultural landscape as a whole.

M: Thank you.

Murphy: Thank you Mrs. Burns. Do we have other members of the public that would like to speak? I see there's a few other people. I can see a few hands. Please come forward. State your name please.

F: Can we—

Murphy: Out of respect for everyone, please keep your information pertinent to the application before us.

Brown: Yes. I'm Linda Brown, and I am a neighbor of this property. I am a longtime resident of one of our historic districts, which I feel are under fire in this entire town. We have seen many, many changes in our historic districts, I told you last time, that I think sets precedent. And Mr. Cumbe referred to that in his tour

around the historic district, and he saw other two-story garages, which I am well aware of.

Now we have a property that—which has an incongruous structure on it and an application that seems, according to my reading of the guidelines, that you are asked to apply, to make it more incongruous. I walked the property recently and tried to visualize several proposed changes by the applicants. And I do commend them for these efforts. However, I cannot speak as eloquently as Mrs. Burns did about how important this property is. But I was struck with how intrusive the proposed two-story garage is on closely surrounding neighbors and the landscape.

I don't think that a buffer of trees, because this place where the garage is going to be sits up, I don't think a buffer of trees will help that much. I am concerned with how the enlarged footprint of the house and the resulting land disturbance associated with construction will impact the remaining landscape. And I believe that the town is running out of options to protect our historic districts and it's just a shame. It's very disheartening.

M: Thank you.

Murphy: Thank you very much. Do we—sir, come on up please. State your name and if you've been sworn.

Camp: Yes, my name is Bill Camp, William Camp, and I have been sworn. And I'm at 400 North Boundary Street, which is on the other side of the house that you can see in the corner of the picture there. So I'm—I have a house in between me and this property. And I'd like to speak to two terms that show up in the guidelines,

“minimal” and “overwhelming.” And in regard to additions, I noticed that one of the guidelines is minimal. You know, that it should be towards the back and minimal.

So in regard to this, I think that what was proposed for the house might qualify as minimal. But then when you add the garage and the apartment over that, now it starts to, you know, beg the question of what exactly did the guideline mean when it says “minimal”? I think maybe more importantly about that garage, is the notion of overwhelming. You know, is it—does it overwhelm the existing structure? Maybe not. But does it overwhelm neighboring properties? I think it might.

I think one of the things that I’m disappointed in the zoning laws in this town, is that it doesn’t really take into account that Chapel Hill is a very hilly landscape. And when they look at the height restrictions, they almost presume that, you know, you’re on an equal par, you know, and therefore this height should be okay as far as the sun blockage and, you know, how much it overwhelms your current house.

But in the case of this garage and the property down from it, the Hemsey property, there’s about a 10-foot change in the elevation just from their ground floor up to where the garage sits, approximately, if I read the contours right, that each one of those lines is two feet. And even more to their driveway.

So I think that to the extent that they have moved it away from what was permitted by the—technically permitted by the zoning laws, that certainly helps.

And I think that if I—if you wind up—I would ask one thing, is that [ph] to help

in this matter, if you do wind up approving it, I would request that you specifically say that, because the owner took into account the overwhelming effect that it would have if he had built it on the setback requirements, that moving it forward is possibly one reason why this might be more acceptable.

I think that it's certainly courteous to have done that, to have moved it back, and to have—but I would still look at the thing and say, it's 20-foot—it's a 26-foot-high structure sitting, you know, 10 feet higher up, and it's 26 feet and it's, like—it's still overwhelming. And I don't know whether it's appropriate or not in that regard. I saw that the last meeting, I stayed through to the end, that you actually didn't like one of the proposals for the new properties because they overwhelmed neighboring properties in terms of the second—two-floor high versus one-floor high.

So to that garage, I would ask, you know, okay, I can understand maybe you need a third car in that situation there. By the way, back in—back when it starts at North Street, I can speak to, with some intelligence, about the—all of that North Boundary section back there. There's about 28 houses, depending upon which ones you count at the beginning there. Most of that's R-1. I think the Burns property and a couple of the others are R-2, but it's R-1 back there. Not all of that is in the historic district. Back there there's two garages that are three-car garages. One's in the historic district and one's not.

There are four apartments, and they're all—and two of them are not in—well, one of them is not in the historic district and one is an R-2. And two of them are not in the historic district and one's not in—one is in R-2. There's only

one that—apartment [ph] that's an R-1 back there. And all the apartments are a part of the house. So I would ask that, you know, could the third bay of the garage have been put, you know, adjacent to the two-bay garage there now? That's actually—you know, it seems like that would be a feasible solution for the garage part.

Now, whether they want the apartment to be separated from the building, I can't speak to that. But the—to be consistent with what's back there now, there are four back there altogether, and they're basically part of the house. They're not separated there. Now, you can find them in other places, that's fine.

So I would just remind you that we're speaking about R-1 here versus R-2. So when the gentleman mentioned that there were other examples, I would question whether they were R-2 or R-1 examples. And also, whether they're really relevant because that's—we think of that as one neighborhood there. It's a dead end, by the way, back there in those three places there.

So to conclude, I don't want to sound crass or unreasonable, but realistically, what's happening over in Gimghoul, for instance, where properties that were modest at one time and turned into things that are very much larger, I fail to see how that's historic anymore. I truly don't think it's historic in this—in the way that they used to look. I think that that hasn't happened here yet, and I would be very sad to see that happen; to see development—or modifications to houses back there on that scale, which is certainly possible because the lots are big enough. People can come in there, and you know, throw a lot of effort at it,

and make these things huge monstrosities, in my opinion. I'll stop there. Thank you.

M: [INDISCERNIBLE]

Murphy: Thank you.

Camp: Thank you. You have questions, I'm sorry.

Murphy: Do any commissioners have comments or questions?

Smith: Well, there is solar setback, but I guess, you know, the city does have solar setbacks.

M: Yeah.

Smith: But you don't feel those are adequate, apparently?

Camp: Not when—yeah, it's 17 feet versus 14 feet, I think, is the difference on the north side. And when there's elevation changes, like—

Smith: Right.

Camp: —between this and the adjacent property. You know, then it becomes—well, you know, 10 more feet that's got height there—

Smith: Right.

Camp: —and may cast more of a shadow. And frankly, the back of this garage, I don't think they—it looks as well as the other parts of the detailing that they did, too. But that's an opinion about architecture. So I won't—

Smith: And you're sure that the garage is 26 feet tall.

Camp: I thought I saw that—to the peak from the ground—

Smith: Because that was one question I didn't ask tonight, I didn't get a chance to ask.

M: That sounds about right. To the peak, it is [ph].

M: To the peak.

Camp: To the peak, yeah, and that's because, you know, they make the thing really steep so they can put some things in there with some—

Smith: Dormers.

Camp: —knee walls and some—you know, to get the full apartment in there. You know, this is a single-family neighborhood. I'll just leave it at that.

Murphy: Thank you. Do we have any other members of the public that would like to— come on up ma'am, thank you.

Joslin: Thank you, and I really will be brief.

Murphy: Okay, please state your name and if you have been sworn.

Joslin: Yes. Nell Joslin and I live in Raleigh. I am the grand-niece or great-niece of William C. Coker. My mother was his niece, Mary Coker Joslin, she wrote a book about him. I just want to register my support for the position of Dr. Burns and the testimony of Catharine Burns. And one of William Coker's great contributions to landscape design was that he really considered how buildings complemented and fit in with the land. That was part of his culture, and that was huge.

So I just urge you to think about that in the context of your thoughts about preserving this cultural treasure. Thank you.

Murphy: Thank you—[OVERLAPPING]

White: I have a question.

Murphy: Jim [ph]?

Joslin: Yes sir.

White: What have you heard in all the discussion of this application that leads you to believe that the new landowners are going to do violence beyond what was already done to the formal gardens by building the Peacock house to the landscaping legacy of Coker?

Joslin: Well, I think the addition of that garage—and I have walked the property as well—it changes the character of the property, to put that there.

White: Okay, so it's mostly the garage, in your opinion.

Joslin: And the lack of attention, respect for that promenade that—

White: Where is the promenade? Can you point that out?

Joslin: That runs along the back of the property, correct Catharine? Yes, and it was the approach to the old garage, I believe.

White: Can you—if we—if somebody could bring the 1920 plan up?

M: Is that what—

White: Could—if somebody could do that—

M: Yeah.

M: —has been referred to as an old roadbed [ph]?

White: If somebody could do that? Could you point it out to us?

F: Oh, yeah.

M: [INDISCERNIBLE]

White: I've heard about this promenade.

F: Right.

White: But I have not seen anything in my visits to the property that indicate a promenade.

Murphy: Can we just point to it on this plan?

F: It's where this house is [ph].

White: Sure, where was it?

F: Right?

[INAUDIBLE]

Mehlman: Yeah. Hold on one second.

M: I think it was this one over here [ph].

Mehlman: Yep, I'm with you.

Kyser: No, I don't think that's it, but.

M: Hold on there a second.

[INAUDIBLE]

F: I'm going to get Catharine and Wood to point out that _____.

Mehlman: This one right here.

M: How about that.

[INAUDIBLE]

F: Is it in front of this?

F: Basically, it's _____.

M: _____ I think it's this here, where it curves around up to the—

[OVERLAPPING]

Murphy: Okay. Thank you.

M: It is fuzzy, but—[OVERLAPPING]

Ferrell: Well, no, let's minimize the conversation in the audience—

Murphy: Okay.

Ferrell: —because it's not part of the record if you're not at the microphone, so.

Murphy: Do we have any other members of the public that would like to speak tonight? It looks like we have one other person on the list. Please come up, ma'am.

F: Sean, could you point that out again?

M: The promenade?

M: _____ and it's separate from the road, correct?

M: No, it is _____.

M: It is the road [ph]. So—[OVERLAPPING]

F: It's like an English country lane, if you can _____.

Smith: Yeah, and it goes in front—

Ferrell: Again, we can't pick you up [ph] if you're not on the microphone.

Smith: —of that little building, right?

Ferrell: That's okay. We can't pick you up if you're not at the microphone.

Smith: Oh, Sean, does it go in front of that little building? I mean Jamie, I'm sorry.

Locke: That's all right [ph]. They're saying that it goes north of the—of the tripartite garden.

Schwartz: Can you show it to us on the site plan?

F: Yes. [INDISCERNIBLE]

F: Were you sworn in?

F: I was sworn in, yes.

F: You were not sworn in.

[INAUDIBLE]

Murphy: We can look at it right there.

[INAUDIBLE]

M: The road that we're discussing is here, behind this wall, behind the garage. It runs all the way around the site.

M: Yeah.

F: Yes.

[INAUDIBLE]

Murphy: Okay. Thank you, so it's clear where it is. Thank you very much.

Joslin: I'll just say my comment about the English country lane, which was not in the mic. But that's what it's a feeling—and the new garage does compromise that whole aura of that, which is really hard to articulate. But it's an important part of that landscape and that property.

Murphy: Thank you.

F: Thank you.

Murphy: Ma'am, you can come up now please.

Blackburn: I guess I'm not sworn in so—

Murphy: Okay, we can get you sworn in. Please state your name and then—Jake, are you going to swear? Okay.

F: _____, okay. So _____ say your name into the record _____.

Blackburn: Jill Ridky Blackburn.

F: And then I'll read this and—[OVERLAPPING]

White: Are we going to put the rest—

[INAUDIBLE]

[OATH ADMINISTERED]

Blackburn: Thank you for giving me the opportunity to come and talk to you.

Murphy: Please state your name ma'am. I'm sorry.

Blackburn: My name is Jill Ridky Blackburn.

Murphy: Okay.

Blackburn: I've been a resident of Chapel Hill for several decades now. I've been affiliated with the university. I've recently wrote a book about historic Coker Hills, a neighborhood in Chapel Hill that's named for Dr. Coker. In the process of doing that, I spent hours and years of research in the UNC Southern Collection, reading Dr. Coker's papers. I can confirm that it was Dr. Coker who brought Mr. Nolen to—from New York City to Chapel Hill. The university is designed and continues to get national and international accolades because of this design.

And it's all because of Dr. Coker's vision and friendship. Dr. Nolan—Mr. Nolan was also involved in the Coker estate and the design of the home, how the home was sited, the gardens. So the Coker estate—and I'm here to support Woody and Catharine Burns—the Coker estate is, without a doubt, one of the premier treasures that we have. Not only in—for our community but beyond, because Dr. Coker did work, not only for the campus, not only for our town, but through our state and beyond, in our country.

So this is really a historic significant piece of property, and your decision tonight will really direct the future of this property. The—and I do urge you to deny the certification of appropriateness tonight. I think there are many, many unresolved issues here, a legal issue, easement issues, design issues, that still need to get worked out in order for the Coker estate to be preserved. The North

Carolina Preservation is supporting the efforts of the Burn [ph] family and their work in being not owners of this property, as the Burns will say, but incredible stewards of this property and their appreciation of the historic significant [ph].

And I really urge—I mean, I understand that the Combs-French [ph] have bought into the historic district, and they have desires to have more modern amenities to their house. But you also have to consider, you know, is it reasonable to move into historic district and then try to re-conform and configure your property to be like a McMansion that you might find in Meadowmont?

So I do urge you to deny this certificate. I urge you to have the Cumbie-French to work closely with the Burns. They are neighbors. They're—this piece of property is connected in many different ways, historically alone. And they really need to be developing a better relationship and work out the design, the legal, and the easement issues before any future work is done in terms of approving this certificate.

Again, this is an extremely unique piece of property. We need to do everything we can in our town to protect this historic gem.

Murphy: Thank you, questions for Ms. Blackburn?

Schwartz: Thank you. Can you provide a little bit more detail about the ways in which you think the proposal compromises some of the historic values that we need to be trying to conserve?

Blackburn: Yeah, you know, this—it's very easy to undermine historic property. And that's why, you know, when you're in a historic district, I think—and you buy property in historic district, you have to go in appreciating the historic nature, and who

your neighbors are. And especially in a case like this where this was all originally connecting property.

And so, you know, I think when you're talking about, you know, three-car garages with apartments over it, and that are very high, lighting issues, changing garden configurations around, all of these factor into really undermining historic property. And you know, I think it would be just a disgrace for anything like that to happen.

White: Can you be a little more specific about what these applicants plan to do here that is going to violate the Coker legacy?

Blackburn: Well, but—

White: They're saving—pretty much what remains of the Coker legacy on this property are gardens and walls. And we've seen in their application that they have committed themselves not to do violence to either of those.

Blackburn: But I think what we've had—we see, and I think there is a lot of reading material that you've been given tonight, so I do really encourage you to take the time, again, before any decision is made to thoroughly read all the material that you've been given.

But from the information I've read, that there are legal issues that still haven't been—that are still pending. There are easement issues. There are design issues. You know, there are height issues. There is lightning—light issues, garden issues. And I think, you know, again, when you look at the historic siting of this house and the original property, these two properties are very congruent to

each other. They're not only next to each other, but they were part of a total parcel.

And I think you have to take that into consideration, and that the new owners of the Peacock house should be taking that into consideration, and approaching any type of redesign or remodeling with the highest sensitivity of how that will impact the Coker estate.

Murphy: Thank you. I believe that's all the members of the public we have for tonight.

Cumbie: May I respond?

Murphy: The applicant would like to speak. I think that's acceptable. I'll ask you to—

Cumbie: I apologize—Steve Cumbie, I apologize for lengthening this. I know it's been a long ordeal. But I do want to say a couple of things. One, about the easement, and clearly, I—as the—your attorney says, it's maybe not your purview, but it's okay to look at what it said. Well, I looked at what it said. When we put the house under contract, what had happened was, the easement was put on the entire property, the 4.1 acres. And when it was subdivided, it carried over, not only to the remaining Coker estate, but also to the property that we were going to buy.

And I don't know if you've had a chance to read it, but I would—you know, I've read it probably 10 times. And honestly, my feeling was, and being in the real estate business a long time, the easement really did not apply, it seemed to me, to the property we were buying. Other than it said it would be a single-family house. And that's what we see, too. Primarily it was about the property that the Burns retained.

And so that's why we asked that it be removed, because we didn't feel like that it really was applicable to our property, and that it may cause issues in the future when the next person wanted to buy it, or whatever. So, we had requested of the seller that they see if Chapel—Preservation Chapel Hill would remove it, and they agreed to because they agreed with us. It really didn't have much effect on our property.

Now having said that, we are doing everything we know how to do to preserve the legacy of the Cokers that remain on our property, and a lot of it is not there, as you know, and you've seen. And I think David and Erik have done a good job of cataloguing what does remain, the walls and the—there's a significant line of holly trees that are certainly going to be retained. So our—and the overall vision, there were three parterres. The third parterre is where the Peacocks built their house. So there's nothing you can do about that.

The other two, I believe David Swanson showed pictures of it when the Peacocks bought it, it was really an overgrown jungle. And he and the Peacocks tried to interpret the original vision of the Cokers, and that's what you had in the 1991 development. And that's what we're going to maintain. So I think that, really, when you cut through it all, we're doing everything we can with our proposal to maintain the legacy, what remains of the Coker legacy, on our property. So in any event—and honestly, we've had—since this whole thing about the easement came up, we've had an attorney also review it, because I'm not an attorney, and I agree to that.

But our attorney says that by getting released from the easement, it didn't at all void the Burns easement. Now, they're hearing something different, and so I guess attorneys can differ at times. But that was—it was certainly not our intent to have anything to do with, you know, violating—or voiding the easement on their property. And our attorney believes that it has not. Now, I think they have chosen to do a new easement with Preservation North Carolina, and have asked us to consider that too, and we said we would. We haven't said yes or no. But we felt like that having that discussion ongoing while this body was still considering our proposal, could create the potential for conflict.

And so we are willing to sit down with the Burns after this concludes, and talk about whether it makes sense for both of us.

Schwartz: You say when it concludes, do you mean when a decision is given, or when this meeting tonight concludes?

Cumbie: Well, when a decision is made. So any other questions? I'd be happy to answer.

Murphy: Thank you Mr. Cumbie. Okay, I'd like to close the public portion of the meeting so that we can speak as commissioners.

Mehlman: I want to just point out a couple of things, if I may.

Murphy: Okay, but this is the last back and forth.

Mehlman: I will. I just want to point out that—

White: I think we need a motion to close—[OVERLAPPING]

Mehlman: That easement information—

Murphy: Yeah.

Mehlman: That easement information has been in your packages since the beginning, so I'm hoping that you have looked at it, if it has any character, quality items that Mr. Ferrell had referred to. Last month, in the packet that Ms. Burns gave you, is included all of the items in terms of the significance report—

M: That's correct.

Mehlman: A lot of these things [ph]—it's all there. So I know that it was re-presented tonight. I don't know what new information was there, but I know you have a lot of the information under your review.

Murphy: Thank you.

Mehlman: And that's all I wanted to say. It's not-new-at-all [ph] information.

M: Thank you. I'd like to have a motion to close the public hearing.

F: So moved.

M: [INDISCERNIBLE]

Schwartz: Second.

Murphy: All those in favor?

M/F: Aye.

Murphy: Unanimous. Comments from the commissioners.

Schwartz: I'd like to take the pulse of the commission as to whether people feel that they are ready to vote on this tonight. And if not, whether people are available to perhaps have a second meeting devoted to this topic sooner than next month.

White: Well, we've—

F: Well—

White: —already spent twice as much time on this issue as our presently recused chair said we were going to. And I think it would be a good idea to move—keep moving through the agenda. We can either come back to this at—whenever, or we could have another meeting. Counsel could—we’ve heard a lot about the easements, and some people have said that procedurally we’re not in a position to go ahead and make a decision.

And I’d just like to know if counsel has any reason to believe that we would be on legally thin ice if we went ahead, or if there are issues, procedural, legal issues that do have to be worked out before we can make a decision.

Ferrell: Again, I don’t believe the enforceability or the lack thereof of the easement has any bearing on your decision. And so I don’t believe that that—working that out is a predicate to you guys making a decision. No.

Kyser: I would say that I’m not ready to vote on this tonight, so I would advocate for moving on with the agenda.

Locke: I would agree. Now that I—we have kind of a better idea of some of the background research that has gone into the Coker garden, and if John Nolen is involved, then we might have to take a second look at this whole idea, just in general. Because if John Nolen is involved, then it might be of national significance. So from a historic preservation standpoint, it makes it a very—it makes it very—we should get this right if that is the case.

And so I think that giving us more time to figure out some of that and possibly—don’t want to extend it too much, but if Coker was involved with John

Nolen, that's something that this commission should know. And we should also know who John Nolen is. So it's—I think we still have more evidence to find.

Smith: I would agree with that. I would like to be able to have some kind of open session in which we could pool our information so I can understand this better.

Murphy: My feeling is that we're—it's become unreasonable to continually ask the applicant to come here month after month, and the public continues to submit reams of information every month, perpetually delaying us from getting to a vote on this matter.

Ferrell: Mr. Chair, I'll just remind you that the board did vote to, you know, close the public hearing, you know, for the purposes of at least—for now, this evening.

Murphy: Sure.

Smith: Well, I wasn't going to ask, I just meant among us.

Ferrell: Well, the commission, as we've talked about before, doesn't find—it doesn't do independent research and find facts generally. It's the—

Smith: That's right.

Ferrell: —it receives evidence in that way. So the evidence upon which you base your decision is the evidence that's presented to you.

Murphy: So I guess my point is, we've gone through two months of this now, where at this meeting and the last meeting we were presented with the—an amount of new information, some of it new, some of it repetitive, that has prevented us from—we have not had adequate time to review the information, and it's preventing us from voting on the item. What if we push this off to a further meeting, what is going to prevent that from happening next month, and the month after that?

Schwartz: But on the other side—

Murphy: Mr. Schwartz [ph].

Schwartz: —one could say that all of that information that has come, you know, in the successive meetings, should have been made available to us from the outset. That it was a deficiency of the application not to—or of the staff support not to have provided that to us from the beginning.

M: Well—[OVERLAPPING]

Murphy: Well, only if that information is directly related to the application for the work that is being requested. Some of the information is not directly related to the application.

White: But a—you know, a significant amount of information was handed to us tonight.

F: That's right.

White: I mean, I don't know about my colleagues, but I have every reason to believe that they're just at least as conscientious as I am, and our agenda lists a whole bunch of stuff. And I have read every word. I'm not quite sure why we were offered all this new stuff tonight, but I have not digested it.

Schwartz: But I think what Sean's concern is that if we continue it, how do we know that we're not going to get another document—you know, another set of documents at the next meeting and the one after that? At some point we got to—

Murphy: At some point we owe the applicant a decision.

F: Yeah.

Ferrell: I mean, the commission [ph] has to decide for itself, but I'll reiterate, you closed the public hearing. I understand the issue of digesting information you got

tonight. But the public hearing is—has been closed for evidence at this point.

And unless you decide to reopen it, sounds like maybe there's some need [ph] to digest that.

[OVERLAPPING—INDISCERNIBLE]

White: So if we carry it over, it—there will be no new evidence?

M: Well, that's up to us.

Ferrell: That's right, it's up to the commission. It—but as of now, you have closed the public hearing for the receipt of evidence.

White: Okay.

Smith: And if we wanted to open it, we could, if we had questions in reviewing what we've gotten tonight?

Murphy: So our options currently, to vote on it—tell us our options.

Ferrell: Okay, so you certainly can vote on the application tonight. It is also within your discretion to continue to recess this public—this decision on this item to a time and date certain, which your next meeting is in April. And the secretary will get that time and date exactly for you.

M: Could we have one sooner?

Ferrell: You could call a special meeting. I know that presents certain issues for staff.

Murphy: What's the date, April?

M: April.

M: April 9th.

Ferrell: April 9th, so you could continue this matter until April 9th for the purposes of making a decision. You could conceivably call a special meeting. But again, that

does—I've heard from staff before, that involves some logistics that need to be worked out. And it wouldn't be a special meeting. It would just be continuing it to a different time than your next regular meeting. What—I want to remind you of a couple of things, which is, you heard from the secretary earlier about the expiration of the 100-day [ph] period in June.

As you know, if the commission doesn't act on applications within 180 days, the application is deemed approved. I just always want to put that into the forefront of your minds, as you're thinking about pushing things on, not that you're close to that deadline here.

And also, I want to bring to your attention the situation that we're in with—related to the voting members, right. So quorum is required of six. A decision has to be made by five. So to the extent that one of you would not be present at the next meeting, we'd have an issue voting on this. So there is that—you know, as you think about that, it's important to make sure that—being mindful of the 180 days, you've got to get to a vote, or not.

Schwartz: Two members have said that they're not prepared to vote this evening. So that seems to take a vote tonight off the table, because we wouldn't have five.

Murphy: So do we need a motion to postpone this issue until the April 9th agenda?

Schwartz: Well, I would rather, since we're all sitting here, and hopefully sort have—know our schedules, at least try—

White: I'd just as soon put it off, also. So that's three.

Schwartz: Yeah.

Kyser: But I think we just keep up with a regular scheduled meeting, I don't think we can get it _____.

Smith: [INDISCERNIBLE]

Schwartz: We can't commit to—[OVERLAPPING]

Murphy: I would agree.

Smith: No, not a sooner meeting.

Kyser: No.

M: Okay.

F: So.

Murphy: So do we have a motion?

Locke: Well, should we have a conversation about what we think anyways? Or are we just going to table everything till next time?

Murphy: Sure, if you'd like. If you have comments.

F: [INDISCERNIBLE]

Locke: Oh, yeah, I'm just asking, I'm posing the question.

Schwartz: I would suggest moving on to the other applications, and—if we're going—
[OVERLAPPING—INDISCERNIBLE]

Murphy: Why don't we review the information. There will be no public comment at the next meeting. We can comment based upon the new information at the next meeting, rather than discussing it now.

White: "New" being the stuff we got tonight.

Murphy: The stuff we've received tonight.

White: Yeah.

Murphy: Correct.

Smith: But, if in reviewing it, if we want to call people to testify, we can do that. Just because we've closed it, we can open the—

M: Right [ph].

Kyser: Yeah, we can reopen it.

Smith: —reopen, if we need to.

Kyser: Something really important, I mean, this is—

Smith: This is—

Kyser: —quasi-court, you know, so if you have a—new information that comes in, you can't say you're not going to hear it. I mean, you can, I guess—

[OVERLAPPING]

Murphy: That's fine.

Kyser: —judge.

Schwartz: Something that I heard from—

White: How would that work? Certainly, if we put this off—we closed the public hearing. If we continue this issue until next month, but along the way, when somebody reads the stuff that we got tonight and say [ph], "Wait a minute. I'd like to know more about that," and we want to reopen the public hearing, we would have to somehow communicate that desire to the person that we wanted to hear from, how would that be done, and under what kind of a time frame?

F: Good question.

White: I'm not sure that it—I'm not sure that it's simply procedurally feasible to take up this issue again among ourselves at the next meeting and decide at that point to

reopen the public hearing. Unless we want to invite everybody who came tonight to show up then also, just on the off chance that we might want to reopen the public hearing. I'd be inclined to put it off till next month, and not reopen the public hearing. I—you know, I—that's not for me to say.

F: Right.

White: The commission can do whatever it wants.

F: Right.

M: I would agree.

Smith: I'm just concerned that we hardly allowed Catharine Burns to say what she had to say. She has presented it in written form, but if I had questions of her or Dr. Burns, I would want to be able to ask those questions.

Schwartz: That, I guess, will be a—

White: I've—yeah, no [ph].

Schwartz: —decision that we would make at the next hearing.

Smith: And—but you can decide if you're going to let me do that or not. I'm just saying.

White: No. Well, the problem there is, again, that this process is potentially open-ended. There is a great deal of stuff that we received tonight, and as Ms. Burns stated in a—on a number of occasions, she was really truncating her comments. We have already demonstrated that our presently recused chair's idea of spending one hour per issue tonight is not working well. [LAUGHTER] And if we did this again next month, with the same agenda, i.e. with North Street at the top, I mean, north—with Boundary, North Street at the top, we could end up consuming another three hours if we decide to reopen the public hearing.

Smith: Well, it should be placed at the end of the night, perhaps.

Ferrell: Let's make that decision next month.

F: Yeah—[OVERLAPPING]

Murphy: If we're not going to vote on it tonight—

F: Yeah, let's—

Murphy: —let's get a motion to keep this—push this item to next month's agenda, and let's
get on to the two items that are after this.

F: Okay.

White: Excellent. Yeah, yeah.

Schwartz: So moved.

F: Second.

Murphy: All those in favor?

M/F: Aye.

M: Unanimous.

Schwartz: Thanks to everybody who has come out to speak on this application.

[END TRANSCRIPT 02:44:12]

[END RECORDING]

EXHIBIT G

**Brown & Bunch
Town of Chapel Hill Historic District Commission
306 North Boundary Street
April 9, 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
Lowman: Jake Lowman, Staff Liaison
Ferrell: Brian Ferrell, Counsel to Commission
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 02:52:58]

Epting: Now we reach 306 North Boundary Street and we—let's proceed. We're at 9:30 and Sean will take over as the chair for this item and this item will go—if it is not finished by 10:30, we have another item of business to do at 10:30, so don't forget that.

M: Stopwatch is on [ph].

Epting: And I'm also deferred [ph].

[INAUDIBLE]

Murphy: All right, commissioners, item before us is 306 North Boundary Street. At last month's meeting, we received some additional information from the public during the public comments section. We closed the public comments section, and so I guess what we'd like to do tonight is if there's any further discussion by the commissioners, and then if we'd like to come forward with a vote on the

application. And if there's any comments on the materials received at the March 12th meeting.

Schwartz: Can we ask whether there's any—the public hearing has been closed—but can we just ask whether there is anybody here in attendance who would want to request to reopen it for some specific purpose? And we can then decide whether we do or don't want to. But—[OVERLAPPING]

Murphy: We could see if anyone has signed up to speak on this matter, but it would take a vote of the commission to reopen the public hearing.

Schwartz: So, can we see—has anybody been—has anybody signed up?

M: No.

Schwartz: Okay. That makes it easy.

Murphy: So, without further ado, are there other comments from commissioners on the application materials as submitted on March 12th or additional materials submitted by the public on March 12th?

Smith: Yeah, but I need it. I have a lot to say but I don't want to go first, so someone else.

Murphy: Someone's got to go first, so let's go.

Smith: No, I always go first.

White: I'll go first.

Smith: Thank you.

White: It would nice if people can—or I would—I think it might not be a bad idea if people would refocus our discussion on the actual project that has been proposed.

Last month, we listened for about two hours and, as I recall, over 90% of the—of

what we heard bore upon the property, in general. Easements, gardens, walls, plantings, et cetera.

There is almost zero attention paid to the actual project proposed, which is essentially three parts—an eastern entry to the house, a southern entry to the house, and a garage. The previous month, in February, there were a number of comments about the garage, but again, we listened to over two hours, the overwhelming bulk of which was devoted to the property. The kinds of things I mentioned a second ago. So I think it might not be a bad idea for us to return our attention to the actual application.

Murphy: I would agree. This application is now on its fourth month before us. We have requested substantial additional information from the applicant. They've revised their plans multiple times. They've provided every piece of additional information that we've requested. They've sat through multiple public hearings and presentations, so I would reiterate Commissioner White's [ph] request that we focus specifically on the application materials as submitted in our comments.

M: Okay.

Smith: Well, there was substantial evidence submitted about the property, and largely, because the lot property is part, and that's part of what I will add later is my difficulty understanding that this preservation easement was made on 4.1 acres, and I won't go into all those details but that's the reason we focus so much on this very historic landscape. It's not just the house that's there. But I agree, and I would like to review the actual structure as a starting point.

Murphy: If I could ask counsel to clarify, which he already did, I believe, on two previous meetings. The easement is not an issue that is up for our discussion or ruling on.

Ferrell: Yeah. So, as to the easement, what I've said is that your role—there's nothing in the Land Use Management Ordinance or state statutes regarding the Historic District Commission's purview over certificate of appropriateness that give you any authority over interpreting or enforcing easements. Okay?

What I did say and what I do believe about the easement document is if it contains some factual evidence that bears on the congruity question due to, perhaps, site features—historic site features—that are explained or illustrated or otherwise documented in an easement, perhaps the easement document could be useful to you in your congruity determination for the purposes of determining the facts associated with what was on the property. But the enforcement of the easement is certainly not within the commission's purview to determine one way or another. Can I answer any more questions about the easement? Is that clear? Again—

Murphy: That is, thank you.

Kyser: May I ask the chair—could you summarize any detailed new information from last month to this that has nothing to do with the easement. Have the plans changed in any substantial—?

Murphy: No. Nothing from the applicant changed. It was only the info from the public.

Kyser: Okay, just making sure.

White: Could I go back to the easement—the easement question? As best I can tell from the oral and written testimony that we have received, there is no easement. You

know, if there were, why would Dr. Burns have stated in his written testimony of March 12th that they have approached the Cumbie-Frenches [ph] to write new easements. If there is one, you don't need a new one.

Ferrell: I don't know the answer to that, but what I'll say is the easement is irrelevant—other than for factual information that may be contained into it as it relates to the historic character of this property, the easement is irrelevant.

Let me just—let me again try to focus your attention on your job, and this time I'm going to read from the state-enabling legislation. So, the way the line of authority works is the legislature delegates certain authority to the local government in the historic preservation and then certification of appropriateness context, and then the town is able to, within the scope of its authority that it's been given from the state, develop its ordinance and standards and guidelines related to certificate of appropriateness.

But it can be no greater—the authority of the municipality—the Town of Chapel Hill in this case—can be no greater than delegated to it by the State of North Carolina. Okay, so, I'm just going to read it. It's just a couple sentences long, but perhaps this will be helpful.

Except as provided in Subsection B below, the commission shall have no jurisdiction over interior arrangements and shall take no action under this section, except to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features in the district which would be incongruous with the special character of the landmark or district.

So, that's it. Right? The Land Use Management Ordinance then takes that authority and puts it in the context of Chapel Hill's land use planning ordinances, and then the design guidelines which are a component required by statute further define—help this commission define—that special character of the particular district. Okay? But I think it's important to understand what the state-enabling legislation is—you know, what the state sees the role of the Historic District Commission in reviewing and granting certificates of appropriateness.

M: Thank you.

White: Is it fair, then, for me to conclude that in the absence of any claims to the contrary that would give rise to the relevance that you have just cited, that we can presume that everything we heard about easements over the last three months is simply irrelevant to our decision process? It seems that way to me.

Ferrell: Except to the extent that I've already expressed, if there's some factual component in the easement. Whether or not the easement is applicable to the property, I don't believe, bears any relationship to what your duty is under state law. And there's nothing that I read in the LUMO that attempts to expand on that outside of the parameters of what I've just read to you.

Kyser: I have another question right on top of that. Disregard completely the easement issue.

M: Okay.

Kyser: But it is in our guidelines to talk about protecting historic sites.

Murphy: We can do that without an easement.

Ferrell: Right.

F: Yeah.

Ferrell: And let me talk a little bit about that because there has been, and I think there is, a question about the interplay of the enabling legislation, right, which I've just read to you—I mean, that's the meat of it right there. There's not a whole lot—I mean, there's more about historic districts generally, certainly in statute, but as to the congruity determination, that's the key paragraph. Okay?

So, I think that there's certainly some question about how you take the enabling legislation, you use the town's Land Use Management Ordinance and the criteria established in the ordinance for congruity and then apply the guidelines to you're A-through-J criteria, if you will, to help inform your determinations of congruity. Right? I mean, I think that—so, what I'd say is, nothing you can do, whether it says so in the guidelines or not, if something in the guidelines contradicts the authority given to you in state law, you've got to follow the state law. Right? If that's your question.

Kyser: No, that's not my question.

Ferrell: Well, let me try it a different way. There's lots of conversate—there was lots of conversation and testimony about the landscape right here, for instance. The state statutes say that local governments can provide authority—certificate of appropriateness authority over significant landscaping features if the municipality, you know, chooses to do that.

In the Land Use Management Ordinance, there is no specific delegation to the Historic District Commission over landscape, right? It appears in the guidelines but it doesn't appear in the Land Use Management Ordinance.

And so, what I would say to you is you need to strictly decide which of the criteria from the Land Use Management Ordinance—those are your A through J—apply to this application, which guidelines in your design guidelines help inform your decision on the A through J criteria, and anything outside of A through J—whether it appears in the guidelines or not—shouldn't be considered as part of your determination. I believe that's the guidance that we've that—the best guidance I can give you to date about the review of your decision-making process.

Locke: Real quick—if I do assume that in our LUMO statutes that 6.2—or 3.6.2 historic districts—it talks about other appurtenant [ph] features. What does that actually include and could it include landscapes at that point?

Ferrell: Right, you're talking about appurtenant—A-P-P?

Locke: Yeah.

Ferrell: So, you know, I don't think that that term is, it may be—maybe Jake can tell me if it—if appurtenant features is defined in the Land Use Management Ordinance definition section. Absent that, what you do is you apply a plain-meaning [ph] definition to a word, right? So, if there's not a specific definition and you're looking at ordinance construction, right, how do you interpret—questions of interpretation.

M: Right.

Ferrell: What you would do, absent a specific definition, is look to its plain meaning.

M: Okay.

Ferrell: And my understanding of appurtenant fixtures is that it means features that are attached or otherwise go along with the property. So, for instance, you know when we talk about is something a fixture on real property in the legal sense, what we talk about is has something like—let's take a generator would be a good example, right? So, you could have a separate, you know, freestanding sort of generator, you bring it on to a site, you set it on a pad, you attach it to the house, and it becomes an appurtenant fixture, right? So, I think that would be an example of an appurtenant fixture that you would have, you know, within your purview to review, as an example.

Schwartz: I'd like to speak to the issue of congruity, which is what I take our—us to be about. And I want to read from the comments that I've prepared.

So, the state authorizes us to receive expert testimony to help inform our decisions and for this particular agenda item, we did have an expert witness. We've heard expert testimony, stating that the application is not congruent with the historic character of the district, specifically expert witness Catharine Burns [ph] has testified that the proposed work is inconsistent or provides insufficient detail to assure consistency with several of the district design guidelines, including those pertaining to district setting, site features and planting, off-street parking, accessory structures, and exterior lighting.

Now, no independent experts have come before us to offer contrary testimony, so I'm therefore inclined not to grant a certificate of appropriateness, though I'm open to be persuaded otherwise, and I'll just note that Mrs. Burns also testified, and I quote that “with some adjustments in the design and provision of

additional information, the Cumbies could submit an approvable application and that Mr. Cumbie himself has testified that he's open to working with Ms. Burns and others to address these areas of concern and to help preserve the historic cultural landscape of which his property is a part."

Murphy: Any further comments? James [ph]?

White: Yeah, I would argue that all of the discussion that we've heard for the last three months, regarding the site, has been what I would call "an argument by red herring," by which I mean you present topic A, the Cumbie-French project; you present topic B, damage to the Coker legacy; and then you generate lots and lots and lots of rhetoric and hope that no one will notice that you have never actually connected A and B. And let me tell you what I'm referring to.

Brian has just reminded us that the easement question is, for the most part, out of our purview. We've listened to a lot about easements. We've sat here and listened to it all, okay?

Second, the formal garden. The original garden that we saw in a picture from 1920 and another from 1938 shows a formal garden with three parts. The western part is a square with a cutout, the middle third is a square with cruciform paths, the right—the easternmost right-hand part of the garden is a square. Okay. What damage has been done to that formal garden was done in the 1990s. Okay? The Cumbie-Frenches aren't going to damage it further. The left-hand—the western part of the garden—there's now a house sitting on it. Nobody's—I don't recall anybody complaining about that in 1990. The middle section of the garden is no longer a square with crossed paths, it's a circle which the Cumbie-Frenches

did not put in; somebody demolished the previous square and replaced it with that.

The applicant has said that they plan to keep what's left, and here I would quote from page 16 of the most recent input from them and I quote, "No historic build site features," which I presume would mean—include a formal garden, "from the original Coker gardens layout will be removed." Unquote.

Okay, so we've listened to a lot about the formal gardens. Clearly, the formal garden has been largely obliterated and—but what's left, the Cumbies have said they're going to protect. Okay, how about the, quote, "promenade," unquote? *Webster's Unabridged* says that a promenade is anywhere you can walk. Okay, fine. But spacious? That's a quotation from an email we got on February 15th. I've measured it. It's 10 feet wide and it is clear—closely bounded on both sides by heavy bushes, and on the other side by holly trees, which the Cumbies are not going to destroy.

This is not a restoration project. I suppose you could go down there and widen it. You'd have to do violence to the hollies because they have covered it over with their shade, but most of what we've heard about a, quote, "promenade," unquote, is again, I think, irrelevant to our procedures; plus, no one has provided a single word concerning a possible threat to the, quote, "promenade," unquote. They just say it's beautiful. Okay, maybe so, but it's not threatened by this.

Walls and plantings. All of them are unthreatened. We've heard a tremendous amount of concern expressed about the horticultural legacy of the Cokers and a lot of other early Chapel Hillians. In addition, all of them, as best I

can tell, from all the evidence that we have heard, are unthreatened. In other words, all of this concern is unsupported by specific examples of how what the Cumbies are going to do is going to damage anything.

If you go past the western edge of the formal garden, there's a brick walk. You cross that, there's a grassy space and then a garage, which I believe, as best I can tell, is on the Burns's property. Between the two—between the brick walk and the garage, there are some new gardens with seven-foot deer fences. Part of the Coker legacy? Eh, I don't think rubber-coated woven wire fencing was available when the Cokers were around.

There just haven't been in all of this, any specific examples. For example, Dr. Burns submitted this last month and he states in it—there's some talk about the easements which I've already dealt with. There are pictures showing clearly that there's—you know, here's three—there used be a three-part garden here. That's gone. That's a circle. That's still a square. Let me see now. Impact of actions taken in consideration—this case on Burns property, page nine.

“I hope to sell to a future owner who treasures the historic botanical garden history and architecture [ph].” Fine. No mention whatsoever of a threat to the property. Impact of actions taken consideration, let's see, the—we have offered to the applicants a chance to correct the problems caused by the attempt to extinguish the perpetual conservation easement [ph] problems. What problems? We haven't heard one. Not a concrete one.

The applicants have declined to execute a new easement. Okay. And no COA should be considered or granted until the easement case is resolved. We're

not going to resolve it; therefore, you know, a lot of this talk about easements has been irrelevant. The application—this is page 13—would permit actions that would be detrimental to and reduce the significance of the property as a whole.

What actions? What have the Cumbie-Frenches proposed that's going to be detrimental to the significance of the property as a whole? To the extent that wholesale destruction has occurred on this property, it occurred as a result of the Peacocks [ph] building a driveway and destroying two-thirds of the formal garden. And so, this too, that part of the discussion, I think, is a red herring. It simply doesn't connect the Cumbie project—the Cumbie-French project—with concrete examples of tangible damage that's going to be done to this property.

Murphy: You finished, James?

White: Oh, I'm done.

Murphy: I wanted to make—I didn't know whether that was a pause.

White: Because of all of that, you know, I think we should be focusing on the structures. Southern entrance, eastern entrance, garage.

Murphy: I could not agree more, and I am supportive of this application. I'd just like to say one other thing to Commissioner Schwartz's comment earlier. I do agree that we've some heard some expert testimony. What I don't believe we've heard in these three months is in any impartial expert testimony.

Locke: Well, if I can say anything—yeah, there seems to be a lot of this idea of what is significant, what determines a site feature, and like what these projects and these three areas—how are they really going to affect the characteristic of the district

with which I would say that the garden, in its form currently, is part of that—is part of that characteristic of the district.

And when you say, Commissioner White, there is no effect to the garden, well, I would say that the garden, in its current state, it does have partitions, and so some of this work that I would like to talk possibly about is the effects of the eastern elevation on the interaction with one of the more his—one of the most relevant features on the site.

And so that would be the interaction of the pathways into the center of the tripartite [ph] garden, which was a—which I would consider what would cause a rehabilitation. And so even if it is post—circa the 1990s, it is still a significant part of the district, as it was meant to take into consideration the historic integrity of the—or the historic structures of the site.

Anyway, so as a professional, I would say that I can't believe they let them build the house on the left one [ph], but I do applaud the efforts that everyone has done to reconstruct this garden. And, with that being said, it's still our charge to preserve historic sites—these site features that are influential to our characteristic—the characteristic of the area.

And so I would say that the expansion—and so we can then start talking about how that's going to look on the LUMO, which is confusing in and of itself, but, under LUMO, I mean I've got pages of what we could talk about because it's just really big. But like one example—and I don't know if I want to read all this out—but like J—architectural scale or in G—general form and proportions. The general form and proportions of the eastern proposed addition is going to directly

affect the characteristic of the district by demolishing part of the container of the middle of the tripartite garden. And so that is a direct effect to the character area in my professional, non-partisan discussion [ph]. And I know, like all the whole public has gotten up here and they've said a lot of things, but now this is our time to kind of chew on this and talk about it.

And so, I don't know how we should proceed, but if I had to give a recommendation, I would suggest that we work in this in three parts and talk about each individual part as, I believe, someone said—was it you that said those three parts? So you have the eastern, the southern, and then you have the garage. And then we can talk about it from there. If not, I think it's going to devolve into what is and is not pertinent to the information that is given to us from the public. And that's a recommendation right now, so—

Murphy: I mean, I have a comment if unless—I mean, it seems to me that we continuously move the goalposts here. We—you know, last month and the month before, we were entirely focused on “Are we disrupting the original Coker gardens?” And we sent the applicant to go find out that—you know, answer those questions. They came back that they're not touching any of the site walls; they're not touching any of the original gardens.

The month before we talked about the circular gardens—the '90s gardens—and there was no conversations about whether they had any historical context or—you know, and now tonight, we're talking about now the public hearing is closed and everyone's spoken, that those are now a part of, I guess, the

historical context of the site. And so, I don't know how that leaves this application if we're continuously moving the goalposts of what is acceptable.

Schwartz: I just respond briefly to your comment about alleged impartiality of our expert witness. I don't know that it's reasonable to expect someone to be impartial. People care about the things that they care about. But we do expect our witnesses to be professional, and that the information that they provide is accurate and to make their best effort not to allow their testimony to be tainted or distorted by some personal feelings that they might have about the—or desired outcome. So, I see no reason to question the ability of our witness to act in a professional manner, even though she may not have been impartial.

Kyser: I completely concur, and I think that the comments made were law-based. I mean, the expert witness is also an attorney, has worked for the National Register, and has extensive experience in historic preservation. And this to be—to be involved in this whole area in the United States of America, you have to have some compelling reason to want to go through all this all the time, and so it's—we do—everybody does the best they can to make it unemotional but you have to care about it, it's a good point, or you wouldn't be participating in this. You have to care about your town or history, and that brings with it a certain energy that, in my opinion, can't be contrived. So that's all I want to say about that.

I have some other comments about the structure and I would like to possibly go ahead and make—

Murphy: Sure.

Kyser —a move. But, you know, in thinking about all this, thinking about the garden and the importance of the site, I have looked at the plans over and over again and I've wondered—and it's not my position to redesign a building and it's not going to really affect, I think, how I would vote tonight but if the—is it the east, the one that penetrates the garden that's the—

M: Right.

Kyser: —late addition [ph]? I wondered, looking at it—and I don't want to open any public discussion or get everybody back on this again, but I wondered if that extension could have been on the other side, the bedrooms and so forth, if that's the rationale for the addition going in that direction, is to have a large bedroom and suite and so forth. But it is what it is. So, I can make a vote on that and also the front entrance.

Locke: Yeah, I mean I don't—I have no idea what their intent was to—I mean, could they have put it along the left side?

Kyser: I don't know.

Locke: Like, if they're going to build a garage, yeah, that's a different—that's another question for another day. I would go on record and say that I am not in favor of either the garage or the eastern side of the building—or the eastern—

M: Entry.

Locke: Yeah, the eastern entry expansion. I am for the southern version—the southern expansion. And I don't know if we want to just straw-poll it and then talk about it but that's—for the sake of progress in this [ph].

Kyser: Well, I would be willing to vote for the southern and the eastern extensions, not the garage, and, if at all, the garage, a single-story garage. Their house already has a garage, so this is—I can put—you know, cite some reasons to not vote for the garage, but—or a smaller one. Single story. And it's kind of—it's heartbreaking to think for me to—not heartbreaking, but it's a compromise that I feel that would have to be made to vote for the east extension. It would create a need for a redesigning of the—what's left of part of the historic site. But if it came down to it, I would go with that.

White: I'm not sure I agree with your feelings about the eastern entrance, because as best I could tell from the drawings, the project involves picking up the circular lawn, or remnant of the middle of the formal garden, and moving the whole thing. It seems as if they're going to simply move the whole thing about three feet.

Smith: More like 10.

White: Hmm?

Smith: It looked like more like 10 feet. According to the scale.

White: Well, I could be wrong. But it's still going to be there.

Smith: Right.

White: The circle is still going to be there and the circle did not appear to be dramatically reduced in its size.

Locke: So, one of the—one of my opinions is that what we don't look at a lot at times and if there's one example of this that we should probably look at is the archeological guidelines. And so, upon reading the archeological guidelines, it is our task to look at things there like garden pathways or they call them like garbage pile pits.

And so, since this is a historic property and since this is a historic landscape, not only does the above-ground tell us something, but also the below-ground tell us something. And so, what I have—and I can read it if that's okay with y'all. So—
[OVERLAPPING]

Murphy: If you think it's pertinent to what we're doing, yes.

Locke: Yeah, so I think that—I have great concern [ph] the potential of loss of evidence for the garden's history will be damaged in the construction of the eastern side and with the entire moving of the circle and the entire site work that is there.

The applicant has not shown enough evidence that this site will be protected from an archeological standpoint. This is an area with underground resources which tells us about a very significant member of our community and the progression of a significant historic landmark in our community and the ground disturbance, as outlined by the applicant [ph], could be potentially led to a loss of evidence and that was following guide [ph]—so every single—in my opinion, every single guidelines that has to do with the archeological dig is one example. Is that's just one section why I think the east should not be allowed.

And so, then I also have under H—appurtenant features and the features such as lighting. So, for H, I qualified the container, which contains the center garden, as significant as the garden itself, because that was the intent of how it was built and that is part of the rehabilitation of the garden.

So, therefore, what I would say is that when you interact with that container—and I understand there's already a set of stairs currently there—I would say that under H, that the interaction of the pathway that are intersecting it

both from the north and south side into this center, it deteriorates the characteristic and an important character-defining feature of this site. And so then I cite myself through guidelines setting page nine, number two, number three, number four, and then I go on to cite features and plantings and how page 11, how number one, number two, both qualify for that as well.

And then if you really want to—yeah, so that's fine. And then structural conditions and soundness, let's see—yeah, I don't have anything for that one. I thought I did for a second but yeah, G—general form and proportions of buildings and the structures, I would say that the _____ so yeah, what I have is that it's too big. It's too big and it intersects with a very definitive, defining character feature of not just the site, but also the district. And I can lay that out if that is something that if we choose to vote on it, I will read it out loud in full.

White: I'm not sure how you can say that the container of the central portion of the garden has not changed. It changed from a square to a circle. The circle is not historic. The circle probably dates from 1990. And, as best I can tell from this site plan, which is 1 inch equals 10 feet, as best I can tell, the circle is going to be moved less than three feet. Maybe three [ph].

F: Look at the scale.

Murphy: Maybe five or six feet or so [ph]. But again, does it matter if it's two feet or eight feet, if it's not touching any of the historic structures from the original Coker garden? I mean that's the question, right, not really whether it's two or 10.

White: Yeah, none of the original Coker garden in this spot here is left. It's gone.

Ferrell: I just want to take one minute and reiterate what I said earlier, which is that your guidelines have information—you mentioned archeological features. And it is absolutely vital to tie your decision tonight to the A-through-J criteria. I don't see anything in there about architect—I mean, archeological [ph] features or below-ground features. And I think the state statute, that I read to you, right—if we can go back to that, but it specifically talks about buildings and structures, right? Certainly, you know, nothing underground.

It does not—and again, let me touch on the landscape features, right? The state enabling allows a municipality to give an HDC authority over significant landscape features, but the council hasn't done that, right, for the HDC. Right. So, while the guidelines talk about that, right, you know, landscape features and archeological features, there's nothing in the Land Use Management Ordinance that makes those items criteria in your decision-making process.

M: Does it forbid their use as criteria?

Ferrell: You must—I'll read to you from the Land Use Management Ordinance about what it says about how do you go about your decision-making process. The commission, using the criteria below—A through J—using the criteria below, shall make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the historic district. The following criteria shall be considered when relevant—it recognizes that, you know, not all the A through J are relevant at all times and you've seen that through a number of applications, sometimes it's not relevant. When relevant by the commission reviewing applications for a certificate of appropriateness.

So, this is your criteria, right? This is your decision-making criteria to help you put your decision in context which is, is this project as proposed, not incongruous with the special character of the historic district, right? That's the duty informed by A through J. This is what the council has said you use to make that determination, and then informed by the guidelines to the extent the guidelines have other information or materials, what I would suggest to you is that a decision based on anything other than A through J, may not stand on review, based on what we've seen in recent cases.

Murphy: Thank you for that clarification.

Smith: So, I have a question then. When we have an historic district significance report, dated October 1, 1976, and it talks about the special character of the historic district, which you just said is what we're trying to get at—

Ferrell: Right [ph].

Smith: —and make our decision based on, yet we have A through J, which you could use J as architectural scale, as it impact—one building impacting a garden—
[OVERLAPPING]

Ferrell: Okay, let's use an example—I'm going to push on you hard tonight because we've got a contested case here, right? You've heard arguments on either side. So whenever a motion comes up, I'm going to push on you pretty hard to use the A-through-J criteria, match it with whatever guidelines you think are relevant to that criteria, and then I'm going to push you to recite the facts of the specific application and the evidence and testimony that you've heard—what facts from those—from the documents, from the testimony, from whatever relevant sources

of information that you've received—what facts gained during the evidentiary hearing do you apply to the criteria and the A through J and the design guidelines that lead you to a conclusion on congruity? Okay.

So, as an example of that, let's talk, Commissioner Smith, about what you were saying. You were saying that you believe that Criterion J—architectural scale—applies to this application.

Smith: Right.

Ferrell: Okay. And in what way?

Smith: Well, besides the garage as separate [ph]—

Ferrell: Aside from the guidelines, what aspect of the guidelines for additions, for example, right?

Smith: Well, I'll talk about the garage.

Ferrell: Okay.

Smith: The garage could be an example.

Ferrell: Good, so you're going to look to the garage section of the design guidelines.

Smith: That would be one thing, but what I was mentioning because—it looks like I don't have—it looks like we cannot treat this historic landscape as having any relevance because, unless we can find something here on A through J—and I tried to find that J—the architectural scale has some relevance.

Ferrell: I don't want you to reach for it on landscape. I want to be clear about the way significant landscape features are treated. State statute allows a municipality to delegate authority to the HDC to have review—COA review authority over significant landscape features. That authority is not contained within the LUMO.

Okay? It's not here. The—you can ask the town council to provide that authority to you, but the authority to decide a certificate of appropriateness over a significant landscape feature—now I accept from that a structure. Right?

You specifically have authority over structures, like walls. And those are, you know, you could argue if, you know, a low rock wall is a landscape feature or not—I don't want to confuse the issue here—but you clearly have authority over walls. You don't have authority over plantings. Okay? You—that Town Council has not given you that authority. I'm trying to be as clear as I can be with you about that.

Murphy: You're clear. Would anybody like to make a motion?

F: [INDISCERNIBLE]

White: Based upon those criteria, would it be possible to break this into two motions—one having to do with the two entrances to the house, and a separate one having to do with the garage?

F: Yes, if the chair agrees. We've done this before.

Murphy: We have done this before. Of course, it puts a burden on the applicant, not knowing what portions of their application are going to get approved.

F: What? We're separating them.

F: The entrances.

M: Yeah, just separate.

Murphy: Right. If we totally separate the garage from the remainder of the house?

F: Yeah.

M: Yeah, we can do that.

Schwartz: Can we ask counsel? Is that _____ to have separate COAs for each different part of the application [ph]?

Ferrell: You've done that before and it's not separate COAs, is not the way I see it. The way I see it is, it's you're bifurcating your decision-making process, but ultimately all of your votes, right, will be included in one COA, right? So, say for instance, that A and B are approved and not C, that—and you take three separate votes; the COA would read, "COA is granted for A and B and denied as to this feature."

F: Yeah.

Ferrell: Right? You've done that before. I mean, it can be cumbersome, but look, if it helps you reach some decision on some aspects of the application in this case, perhaps that's a reasonable way to proceed.

[INAUDIBLE]

M: You working on one, Jim [ph]?

M: Yeah, I think so.

[INAUDIBLE]

M: Jim is working on one as well.

F: I don't understand [INDISCERNIBLE] this report has no relevance.

M: Commissioner Kyser _____.

F: You know? I don't understand how that could be.

[INAUDIBLE]

F: You know, because the town hasn't given us—

Schwartz: It's a little perplexing that we've been hearing testimony about and discussing among ourselves about, you know, cultural landscape features, to come now to be told that that's actually not relevant to the determination that we have to make. I mean that would have been something that would have been useful to know four months ago.

Ferrell: Yeah, and I—you know, to the extent that, you know, I could've short-circuited all of that testimony, this is the reality too, I want you to understand, that parties have the opportunity to present their cases to you. I mean, they have to present relevant, competent, material, substantial evidence and testimony, but there's a lot of leeway given to applicants to present their case to you—and parties to present their case to you.

And you heard that—I think Dr. Burns made a specific case that he was a party, and I believe you all voted that he was a party and part of his presentation was, in my view, the expert testimony of Catharine Burns, right? And so she had a lot of testimony about that and they have a lot of leeway to present the evidence that they deem is relevant.

But your job is to make a decision about the substantial, material, competent evidence that is—informs the criteria by which you're permitted to make your decision. So, you've got to sift through a lot of that evidence, and sometimes it's—there's a lot of it.

Smith: I don't know if it is.

Kyser: Jim is going to make a motion.

Smith: There's a question about the lighting.

Kyser: We have some conflicts with the use of some of A through J. Can we have friendly amendments? I don't know what you're about to say, but—

White: Yeah. I'm willing to listen.

Kyser: Okay, okay, because we haven't talked about lighting. That's H.

Smith: Is that described in the COA?

Kyser: It's H [ph].

Smith: I know, but is that—has that been described in the COA?

White: Okay, just—

Kyser: No [ph], but that has to be part of the motion.

White: Just for laughs, I will move that we approve a certificate of appropriateness for the two entryways to the house and the review criteria in the LUMO that I would cite are A—and I refer in that regard to page 55 of the guidelines—C [ph]—

Ferrell: Let me stop you right there. What facts from the application support your conclusion that Criterion A as supported by the guideline you cited, makes the project congruent?

White: It's not disproportionately taller than the surrounding buildings.

Kyser: Wait a minute, excuse me. The building was already there.

Ferrell: I didn't mean to open it up for argument. There'll be plenty of time for discussion.

White: No, we can cut that out if you don't—[OVERLAPPING]

Kyser: That doesn't make any sense.

White: Okay, how about C—exterior construction materials including texture and pattern? And in that regard, I would cite guideline pages 29, 38, and 39 because I would argue that the materials and the—both the texture and the material—

F: Guideline 28 and—[OVERLAPPING]

White: —are in fact compatible with the existing structure. Mostly compatible with the existing structure. With other houses in the neighborhood? Eh, the whole house is not compatible. Okay? So, I think—no, this is really a serious point. If someone had, just by chance—let's say we had a historic district in which every house but one was Georgian brick. And the other house was a shingle-style cape. If the folks with the cape wanted to build an addition, would we force them to make it Georgian brick? No, it wouldn't be—

Kyser: Oh, that's different.

White: No, no, no. I think that it's fair to say—

Murphy: Let's continue.

White: I think that it's fair to make the point that I'm making about these two entryways. The exterior materials are compatible with the house, not necessarily with other houses in the district, because this isn't a historic house.

Kyser: Let me stop you right there. You said you've got Guideline 28, 29, but these are pages with—so what?

White: Pages 28, 38, and 39.

Kyser: Which thing on those pages? I'm looking at 29.

White: How much time do we have?

M: Five minutes.

Kyser: I think that's what our attorney wants his to cite is—

White: Okay. Well, let me just go through this.

Ferrell: Yeah, this is going to be a little bit of a cumbersome process tonight, but we're going to—I want your decision-making process to be transparent on the record—

M: Exactly.

Ferrell: —in how you're applying the facts of this case to the standards of the ordinance. I'd like that to be as clear as it can be.

White: Okay, let me just run through the pages, and then if it is—

F: Look at the numbers [ph].

White: And then if it is your wish, I will go back and start over again on each page, and give you each number. Okay? LUMO Guideline E—roof shapes, forms and materials. On page 33 and 37 of the guidelines, there are a number of statements and recommendations, and I would argue that the shapes, forms, and materials of the roof shapes—of the two entry—new entryways to the house—conform to the guidelines and are thus congruent. LUMO Guideline F—proportion, shape, positioning, blah, blah, blah, elements of fenestration [ph]. I would argue that page 41 of the guidelines, at least some of the points on page 41, demonstrate that the windows planned for the additions are congruent with the guidelines.

G: general form and proportions of buildings and structures, page 55.

Again, I would argue that the form and proportions of the buildings and structures, they enlarge the size of the house marginally—really marginally. They extend it about 15 feet in one direction, about 10 or 15 feet in the other direction, but this is a 3-4,000 square-foot house. And LUMO Guideline H—appurtenant

fixtures and other features; lighting they don't tell us much about. And we can fight over that if we wish to.

I would include, under appurtenant fixtures, the walls. And in that, the Cumbie Frenches are not actually going to touch the existing walls at all. I would suggest that their proposal is consistent with guidelines, page 17. Okay, now, do y'all want me to go back and cite each?

Kyser: It's not for me to decide, it's for the attorney.

Murphy: Yeah, please, Jim.

White: You want me to? Okay.

M: Let's do it.

White: Height [ph] in relation to everything else, page 55—

Kyser: As it relates to which letter?

White: Four [ph]—

M: He's getting it.

Smith: Where are you, Jim?

Kyser: Page 55, which LUMO thing?

White: I'm doing—I am now doing LUMO Factor A, and I would argue that the guidelines, page 55, numbers three, four—

Kyser: Five is good.

White: And five, fit the bill.

Ferrell: Okay, and can you go through how do you think this application limits the size and scale of the addition to minimize its visual impact?

Murphy: I think he already stated that—

White: [OVERLAPPING] I didn't cite the one talking about visual impact.

Ferrell: I'm sorry, that was Guideline 3 on page 55. I thought that you mentioned that one. Perhaps I misheard. It was four?

White: No, I'm not [OVERLAPPING] introducing an addition if it will visually overpower the building. These two entryways will not. Okay? We've already got entryways there with steps down. This is going to push the entryways out, marginally.

Ferrell: Those are the facts that I'm looking to bring out of your decision-making process.

Kyser: Was that number one?

Ferrell: So, that was number three. Number four that you mentioned—design an addition so it's compatible with historic building in roof, form, massing, and overall proportion.

M: Right.

Ferrell: What are the facts that lead you to conclude that number four satisfies—

White: The roofing of the new entryways is going to be compatible. It's marginally larger than what's there now, simply because they're being extended outward.

Ferrell: So that's the—

White: I would argue that—[OVERLAPPING]

Ferrell: That's the exercise, right? So, we're going to find the criteria, apply the guidelines, and cite the facts from the testimony, the evidence, presented that supports your conclusion on those guidelines that, again, inform the overall incongruity—not incongruous determination.

White: Okay, next. LUMO Factor C—exterior construction materials, page 29; replace in kind, number seven, nine—it is not kosher to put in something brand-new and different. Also, page—that’s number nine. Page 38—

Murphy: So, for number nine, specifically to the application, that the application is not concealing or replacing any historic masonry features or surfaces or walls.

White: Okay, exterior walls, page 39. Retain and preserve the details and features in material surfaces. Or replace in kind, number five, exterior wall features and surfaces. And, let’s see, LUMO Factor E, roof shapes, forms and materials, page—

F: Which one are we on? Is it E [ph]?

White: Thirty-three. No, that’s not right. Yeah, architectural metals, I would say—

Murphy: Let’s let Jim finish [ph].

White: —because some of the roofing is going to be—I can—[OVERLAPPING]

Ferrell: I just want you to be mindful of the exercise. If you’re comfortable with your motion, I think that’s fine. Again, I think I’m—I was just trying to get you to think through what—the application of the criteria of the guidelines and facts to inform your conclusions.

White: Some of the roofing is going to be metal, and therefore I would cite page 33 of the guidelines; replace in-kind architectural metal features.

F: Is that what they’re doing?

White: And number eight: don’t introduce architectural metal features in an attempt to create a false historical impression.

And on page 37, still on roofs: protect and maintain the details, features and surfaces, that's number three. Replace in-kind roof features and surfaces, number five. Number nine, they do not plan to introduce solar collectors or skylights. Let's see, okay, F—fenestration—are we going to have to do this with every single project?

Ferrell: No, you don't. You certainly have to talk about ones that don't apply.

White: No, no, no. Actually, I'm skipping a lot of these.

Ferrell: Yes.

White: On the other hand, you're the one who's got to defend us to the Board of Adjustment [ph].

Ferrell: Right. So, what I want—what I want is for your thought process—how you're getting from A to B to be transparent to someone reviewing your decision?

White: Okay.

Ferrell: How you are using the A-through-J criteria informed by the LUMO and the facts that were presented to you, how are you using those three items to reach your conclusion on the congruity determination. That's what I think is important. Not that you read verbatim the guideline and say yea or nay, but that you're—how—the items that are specifically informing your decision, those are the ones that I think are important for you to specifically reference.

White: Right, yeah. Okay, F, fenestration, page 41: preserve windows and doors that are important, retain and preserve details, protect and maintain the details and surfaces. If you're replacing them, replace in-kind windows and doors; that's number five.

Ferrell: And they replace in kind in this application. Do you believe the facts show that?

White: Yeah, I think that they—

F: Did they?

F: I don't know.

White: if you look from both the east and the south at the new planned entryways, I think you see windows and doors that are perfectly congruent with the existing structure.

Kyser: Well, that's different than preserving.

White: Replace or preserve. They're not preserving them; they're putting in new ones. Okay. General form and proportions, page 55, number four, I would argue that the addition—these two additions are compatible with the historic building in roof form, massing, and overall proportion. Number three, an addition should not visually overpower the building. These certainly do not.

M: Can I ask a quick question?

Murphy: Just wait to let him finish.

White: And design the addition, number six, so that it's compatible with, yet discernible from the—I would say the original building, since the building itself isn't historic, if that's legitimate. And I would add Guideline 7: maintain and protect significant site features from damage during, or as a consequence of, related site work or construction. And I would say that that's factual because of what the applicant has stated, that I quoted from their application before, about how they're going to preserve every remaining piece of the original Coker property. That's it.

Kyser: Okay, I disagree with that—page 55, number five, because this is not an historic building. That’s what the language says.

White: Okay.

Kyser: So, if you wouldn’t mind omitting that.

White: I’ll tell you what, if you want me to delete it, I’ll delete.

Kyser: Or rephrase it.

White: I would say that when you’re not dealing with a historic building, we can—we have to throw out—

Kyser: But that’s where you put “original.”

White: I would say original.

Kyser: That’s accurate, yeah.

White: I don’t know if it’s legitimate to reword the guidelines when you’re not dealing with a historic building, but if you think it’s legally questionable, I—

Ferrell: Well let me give you an example—I mean, I don’t want to quibble over the words, but for instance, if you have a—let’s just talk about historic driveways; there’s a reference to the guidelines in historic driveways.

M: Yes.

Ferrell: And if you were to apply the guideline but it’s not historic, it’s not a historic driveway, I think you’re running afoul of the guidelines.

Kyser: Okay, so we can’t—[OVERLAPPING]

White: Really?

Ferrell: I think you’re running afoul. So if it says, you know, “Preserve historic driveways,” and it’s not a historic driveway and you cite the guideline from the

fact that you shouldn't move it, but it's not historic, I think you run afoul of the guidelines. But you're—

White: No, if—

Ferrell: —on a roll, you've done great. You know, I don't want to sidetrack [ph]—
[OVERLAPPING]

Schwartz: A procedural question. If this motion comes up for a vote and if it doesn't get five votes in support of that motion—

F: Six.

F: It has to have six.

Ferrell: No, the quorum is six, affirmative vote of five.

Schwartz: So if it doesn't get—

White: Quorum is six. Decision requires five.

Schwartz: —five votes, then are we required to make and vote on another motion of denying the certificate of appropriateness, or does it just stand that it failed to receive—

Ferrell: No, you have 180 days to make a decision on the application. I assume—

M: So the motion has to pass.

Ferrell: I assume what Mr. White is going to do is because of the way he's framed his comments, he's going to make a motion to approve those two elements of the application.

White: And if it doesn't get five votes?

Ferrell: There will be—if it doesn't get five votes, there will be no action taken with regard to the application to date, and it will be time for another motion—if the commission wants to make another motion.

Kyser: Well, do we vote on this thing and then go to the garage issue or—?

Ferrell: Well, you can do it any way you want. You can make the motions you want.

Murphy: That's what we typically do.

White: [OVERLAPPING] completely different motion.

Kyser: I know but—

Murphy: If someone wants to make a motion about the garage—

Ferrell: You can get a motion and a second and a vote—[OVERLAPPING]

White: Yeah, I would like to move that on the basis of the factors I have just cited, that we approve the certificate of appropriateness for the construction of the two new entrances to the house.

Murphy: Do we have a second?

Schwartz: I can't support a certificate of appropriateness for the east entrance.

Kyser: Okay, so I second.

Locke: You second him?

Kyser: I second him, yeah.

Locke: I would propose a friendly amendment and we just do that on the southern elevation.

Ferrell: Well, that's not a friendly amendment; that would actually be—
[OVERLAPPING]

Locke: Everything he just said, but just for the south.

Ferrell: Which could be, you know, in the order of priority you could vote on Jamie's motion, which is only considered the second. I mean, technically you can have a vote on a motion that's not the main motion if that's what you want to go. If

you're going to make a motion before the main motion comes to a vote to only vote on which elevation.

Locke: How about we have a discussion before I make that motion?

Ferrell: All right [ph].

Locke: Would anyone be into the idea of just approving the southern as Mr. White established it?

Murphy: I would not be. We have been talking about this application for four months now. This is the first time that approving one portion or that only one part of the addition was acceptable. I mean, there's no way the applicant or the public or anyone else could react to us changing our minds continuously on this application.

Kyser: Well, I move—okay [ph].

White: You know, if it doesn't pass, then we kick the can down the road for another month, and the first week of June, the project will be automatically approved. You know, if that's how we want to do it, we can do it that way.

Locke: You seconded right?

Kyser: I seconded [ph]. Yeah.

Locke: Okay, so discussion. I would say that I do not agree with the eastern elevation, as I've already talked about and I've mentioned, and I can put that into words, the structural condition and soundness, part I, and I would say that if you look at page 11, number seven in the guidelines, maintain and protect site features, I believe the wall containing the central partite [ph] is a site feature as it is also a structure under the LUMO code as it is—we can talk about that, but it is a structure, so that

is why structural condition and soundness is appropriate here. Number three, protect and maintain site features and plantings through appropriate preservation methods, there you go. Number one, retain and preserve site features and plantings. They're important in defining the overall historic character of sites and streetscapes within the historic district, as proven by the 1976 significance report.

So, I would suggest that a triple-partite garden is of significance and is a significant site feature, not because it's just a garden, because it is a bunch of walls, which are structures, around a couple squares.

Murphy: Any other comments?

Smith: I don't think there are walls around that garden.

White: Wait a minute. It's a circle of bricks around the central part. I was there last week.

F: Yeah.

Locke: That's a wall.

White: Oh, that one? That's not being touched.

Locke: Yeah, but what I'm saying is, is even this elevation right here—so even these right here on this plan are still going to get pushed over. So, basically what you're doing is this whole container that it's been contained in is getting penetrated. So that's what's wrong with it.

White: So, we can predict that you're going to vote against my motion, right?

Locke: Exactly.

White: Okay.

Murphy: Okay, any other comments on Jim's motion before we vote?

Smith: I'm not sure where you're talking about.

Locke: So I'm talking about the middle. Yeah. So I'm talking about the middle partite.

Smith: Yes, I know that.

M: The circle.

Locke: Yeah. So, when you look at the stairs and they come down on what is there currently, the stairs end and there on either side of them there are barriers.

Smith: Right. Those two—

Locke: Those will be removed with the addition of the stairs. So, what I'm saying is it is messing up the container within which the middle partite of the tripartite garden is in; therefore, I'm saying that it is a specific site feature and as a structure under the LUMO we should not touch it under Condition I.

F: It's my understanding that they will not be removed.

Locke: The soundness and the condition of them will be altered.

F: All right.

Locke: In my opinion.

White: I think we should vote and then if it fails—

Murphy: Yes, let's vote.

White: —then we can move on to something—[OVERLAPPING]

F: Are those out of the historic walls, though?

Murphy: No. Okay, those in favor of Jim's—Commissioner White's motion, raise your hand. Aye?

F: Aye.

Murphy: Those against? Four for the application, two against. Commissioners Schwartz and—sorry—Locke are against.

[INAUDIBLE]

Ferrell: So, then just to clarify, no action taken, right? Because it takes a minimum of five votes?

Murphy: That's correct.

Ferrell: Okay.

Murphy: Is there another motion for another part of the property?

Locke: I motion that we take the just southern elevation, as laid out earlier by all the reasonings and everything that Commissioner White had said, and insert that for just the southern and we approve that based on what Commissioner White had said. So, we divide the eastern and the southern, and we just talk about the southern. And my motion is that we vote to approve this application as stated by Mr. White.

Schwartz: Well, not the application.

Locke: No, not the application, the southern elevation portion of the application.

Smith: I second that.

Murphy: Any further discussion?

Schwartz: Will it be clear what is being circumscribed when we say “the southern elevation”?

Locke: I can elaborate if you'd like.

White: I mean, isn't it pretty clear, the elevation?

Kyser: It's the front entrance.

Locke: Yeah. So, we're talking about everything on the southern side of the house and the southern extension, and so nothing further than the eastern wall of their property is approved yet. So we're just specifically talking about everything—and I can point it out if we want to. So, would that be helpful?

M: No.

Schwartz: Well, I'm checking with counsel to see if this is something—[OVERLAPPING]

Ferrell: Is the commission clear on what it is. I mean, it's every—it's—
[INAUDIBLE]

M: The front of the house, right?

Locke: Yeah, the one that faces the road [ph]. Switch user. Great. Can someone log in?

Murphy: So, Counsel, let's say we approve just the south portion of this application—

M: We're closer [ph].

Murphy: —and then the owner of the property says, “Well, I don't want to just build, you know, basically a quarter of”—that is their recourse?

Ferrell: They're entitled to a decision on the components of the application. You can take it in parts if you want, right, like you're doing, but if you don't vote one way or another on all the components of the applications in 180 days, their application is going to be approved.

So, you must reach a conclusion if you want to do so, by the 180th day, and the secretary has the dates for you about when that runs, but if you approve a component, that's fine, but you have to make a decision, yea or nay, on the entirety of the application in the 180-day period, or by default, it will be approved.

White: Yeah. The application was dated—well, it was submitted on December 5th and it was approved as complete on December 12th. So I presume that means on June 12th the whole thing will go through?

Ferrell: Actually, no, with the stated 180 days it would be June 10th. So it's not just a six-month step out but it will be June 10th is the exact date, which is prior to the June 12th —

Murphy: We're now at 10:45 p.m., a full 15 minutes past when our meeting was supposed to be over tonight, so I want to understand from counsel if we can defer this to next month's agenda.

Ferrell: You've got 180 days. I mean, you know, you can defer it if you want to. But it's—but your next meeting will be your last meeting before the—you don't meet before—in June before the 180 days run, so you've got one more meeting and I'll remind you of the unique composition that's required for this particular application, which means if there's going to be any action taken at the next meeting, every single one of you has to be here because there's a minimum quorum requirement of six, and there are no other eligible members that can vote on this item. So you run the risk, if somebody's not able to come, you miss that meeting, and then 180 days comes and the application is approved and—by ordinance required [ph].

White: Considering how uniform the criticism of the garage was in citizen testimony, I think it behooves us to move with a little more alacrity, folks, because on June 10th the whole thing will be approved automatically if we don't get our act together.

M: Do you want to make a motion about the garage?

White: No, I've done my part. I've sucked up enough oxygen already.

Locke: I think my motion is still on the floor.

Murphy: It is. Jamie's is it still on the floor. Jamie had a motion to approve only the south portion. It was seconded. Now he's going to point to it.

Locke: What I'm going to say is all this is fine, but once you insert into the middle [ph] over here that we should not allow that _____. We'll talk about that in the next—

Murphy: Any comments before we vote on that? All those in favor of Jamie's motion to approve only the south portion, say aye.

F: Aye.

M: Aye.

Murphy: Five against, one nay.

F: Are you nay?

Murphy: I am nay.

Locke: It passes though, right?

Murphy: It still passes.

Locke: Yeah.

Smith: Oh, that's interesting.

[INAUDIBLE]

Murphy: Because I disagree with parsing out little bits and pieces of this application.

Locke: We're moving along though. We're getting stuff done.

Smith: Here comes Bob [ph].

- Locke: So now we've got to talk about the garage unless we are done for the—
- Smith: We should talk about the garage tonight while we have six people here.
- Epting: Let's take a two-minute break from this item so that I can make a suggestion as to what agenda is in process [ph]. Clearly, the commission needs to take action on this item sooner rather than later, and I'm wondering whether it would be possible to have a special meeting the third or fourth week of this month on some night of the week that would be—when the room or an appropriate room is available for us. We do have one item—other item of business to do tonight which I don't think will take more than five minutes and I'm willing to stay until you finish. But I don't think you do your best work after 10:45 at night.
- White: I agree.
- Epting: I think the applicants deserve better than to have something glued and chewing-gummed together, and so my own sense is that would be better done in a fresh two-hour session devoted only to this item later in the month. Now, so what can the staff tell us about the availability?
- Lowman: We'll have to look and see what rooms are available, meeting nights are available. If you give us just a few, we might come up with something. But unless we want a re-notice [ph], we would have to figure that out tonight, continue to a time and date certain.
- Epting: Well, let's recess it to a time and date certain; if that has to be changed down the road, we may change it. But suppose we pick the third—the fourth Tuesday at the same time as we usually meet, either in this room or in the room at the end of the hall, the big conference room.

White: Given all the recusals that reduce our numbers, it may be worth considering that I make no promises about being available during the second half of this month.

Epting: I didn't hear what you said.

White: I am not will—I'm not able to make any promises that I'm going to be available for a special meeting during the second half of this month, and with the number of recusals we have, that may make it just about impossible to reach a decision. It might, you know—it's hard to tell [ph].

Epting: The number of recusals is not going to change. The number of recusals is what it is. It will not change.

White: Right.

Epting: The question is whether you commission members who are still serving believe you will be able to make a special effort to be here to finish this for the applicant and for the public at a second meeting this month.

White: I can try.

Epting: Well, we would—that would be much appreciated.

Kyser: Could we—I mean, could we do it quickly, meet like next Tuesday?

[OVERLAPPING—INDISCERNIBLE]

Epting: You're asking me if you can do it quickly? You know, I mean, yes, it should be done—in my opinion having listened to it all, I believe it should be done—

F: Done tonight [ph].

Epting: —fairly quickly, but I don't think you'll do a very good job if you try to finish tonight. I think you're headed for disaster, but I'm not—I probably shouldn't say any more than that about—maybe not even that.

M: No, let's not.

F: Yeah, well—

Epting: I think that the question before us is, do you want to finish tonight or do you want to try to find another meeting date this month, or do you simply want to put it off until the second Tuesday in May?

Kyser: I think it deserves a special meeting to get them decided, you know? That's my position [ph].

Locke: I would like a brief discussion about the garage so we can just have—

M: Tonight?

Locke: Yeah, just a quick—are we allowed—we're allowed to get a straw poll, right? An understanding of what the garage is.

Epting: Well, let's don't talk about any of that with me sitting here.

Locke: Okay, well, we can do this.

Epting: So the question is, we have—and again, we're on pause with respect to this item—we—you have—we have circulated to you and you have all reviewed and I think each of you responded to me that you have approved of the recommendations being made to the council with respect to the revisions to the LUMO.

F: Absolutely.

Epting: I told you that I would seek a motion tonight authorizing us to—approving that and authorizing its delivery to the mayor, council [ph], and I think right now would be the appropriate time to have such a motion, provided that you don't—nobody feels like they have to have extended discussion.

Kyser: Okay, I'm ready to make a motion.

Epting: Go ahead and make your motion.

M: Second.

Kyser: Okay. The motion is that we accept or approve the—

Epting: That authorize is still good [ph].

Kyser: —changes and suggestions to the LUMO and that they—our suggestions be delivered to the mayor.

Epting: Mayor and council.

Kyser: Mayor and council.

Schwartz: I second.

Epting: Second by Mr. Schwartz. Any discussion? If not, all in favor say aye.

F: Aye.

M: Aye.

M: Aye.

Epting: If we're done with the other part of business, I'm going to retreat. I'm not going to leave, but I'm going to retreat and have you decide what you're going to do about finishing tonight, going to a second meeting in the month or going to the next agenda. Thank you for letting me interrupt. I'll be in the back.

Murphy: So, what are the comments or opinions of commissioners before I let you know mine?

Schwartz: Jamie, you wanted to talk about the garage.

Murphy: Before we talk about the garage, let's talk about whether we're going to continue this meeting at a special meeting or are we going to defer it to next month?

Kyser: I would suggest that we have a special meeting and maybe every—that would be a good—I can't say too much. Let's just do that, is what I'm suggesting [ph].

Murphy: Jamie, Jim, anyone else?

Kyser: As soon as we can schedule it.

White: I'm in favor of hewing [ph] to our normal schedule. The reason that we're in a bind is because of the filibuster that we tolerated over the last three months. We put in a lot of time and effort trying to be responsible on these matters, and yet we let ourselves be jerked around for three months and—too bad.

Murphy: Well, tonight we've done it.

Kyser: I do not agree with that. But we've already had one vote that didn't pass, so now—

Schwartz: And we had one that did pass.

Kyser: Well, yeah, so, but they need to have—

M: I mean, we can do—

Kyser: So my question to legal counsel is, that if we terminate right now, and have a special meeting as quickly as possible, do we revote on the other—

Ferrell: No, so what you would do is you would adjourn, you know, this matter to a time and date certain, right, which means you just pick up where you left off.

Kyser: But somebody else could bring up approving the two—the two changes, the south and the east, if it were slightly different?

Murphy: We could have a whole new application that approves the entire project, correct?
At the next meeting [ph].

Ferrell: No, what you have before you is fixed, so I mean, I don't see reopening anything. Right? I mean, the evidence is what it is. The evidence that you have to consider and that you will be making your decision on is in the record. All right? There is no new evidence for you—

Kyser: No, I don't mean that. I meant just the votes tonight. Are these straw votes or are they binding?

Ferrell: No, these are binding votes. You are taking binding votes.

Kyser: Okay, so we're done [ph].

M: The motions are binding.

Ferrell: I mean, when you have a motion and a second and an affirmative vote, that is binding on the commission. Now, it must meet the minimum requirements for action, right, as counsel has said, that's five. Take five votes for action of the HDC, so if you don't have five, even though you have a motion to second, you don't have action, but the votes count. I mean, they—

Kyser: But can there be a revote and get five people if somebody changes their mind?

M: I don't know—[OVERLAPPING]

Kyser: At a future meeting or even now?

Murphy: Okay, so from staff, let's try and get a meeting scheduled, but I thought there were requirements for public notice even if we're going to have—

M: [INDISCERNIBLE]

Ferrell: If you recess a meeting to a time and date certain, right, you don't—you're not adjourning this meeting, you're recessing it. You're continuing it to a time and date certain and the statutes allow you—the public meeting laws allow you to do

that without going through—they recognize that you may need to continue discussion on an item.

Murphy: Okay, so let's see if we can get that scheduled as quickly as possible.

Ferrell: But that's—sorry, but the trick is you have to—in your adjournment motion—in your recess motion—you have to recess to a time and date certain in a location. So, that's what staff is looking at now. Yeah.

Murphy: Okay. And then we all have to confirm we can be there.

Ferrell: If you're not all here, you don't have a quorum and you might as well—you don't have a meeting.

Murphy: Right. So let's see if we can get a date that works; otherwise, we're going to have to adjourn and push this item to next month's agenda.

Lowman: So, I'm going to throw out three dates to start with. First, is next Monday, the 15th in this chamber, any time after 5 o'clock basically.

Ferrell: And I have a Board of Commissioners meeting in Caswell County on the 15th, the first and third Monday of every month, so I won't be able to be here; whether or not that impacts your decision or not, I don't know, but I can't be here for that.

Murphy: All right. You said the 15th after 5:00?

Ferrell: Correct.

Murphy: Show of hands, who can be here?

F: Fifteenth?

M: Fifteenth after five.

M: Next Monday.

F: Let me just see.

M: I don't carry a calendar.

F: I don't carry a calendar either.

M: No, I can't be there at 5:00.

F: I have a paper calendar [ph].

M: So, Jamie can't be.

M: Okay.

F: Our attorney can't be there, so that's not a good thing [ph].

Ferrell: But I don't get a vote and we can look to find you another—you know, somebody to sit in my seat.

Murphy: Well, it doesn't anyway for the commissioner, so Jake, is there another day?

Lowman: So, the 22nd—any time after 5:00

F: That's Monday—another Monday?

Lowman: That's unfortunately another Monday and it's the Monday after Easter, if anybody is going to be out of town. But we can do it at 6:00, 6:30. anything in there, and that would have to—and that would be—

M: Are Mondays the only day that are available to us?

Lowman: No, I'm going through what we have available to be able to have space either in the chambers or in the first-floor conference room. We may end up having to be in the first-floor conference room depending on what you pick. Also, Tuesday, April 30th is available.

Murphy: Is anybody not available on the 22nd?

[INAUDIBLE]

M: I can make it after 6:30 on Mondays, but 5:00 no.

Kyser: The 22nd I can do, so that's everybody?

White: I can tell you tomorrow.

Murphy: 6:30 on the 22nd, Jim? He needs to look for his calendar, but—

F: Yes, no?

White: I don't know. I don't carry a calendar.

Kyser: Okay, raise hands, who can be here on the 22nd?

Murphy: Jim doesn't have his calendar; he'll have to go home and check. But assuming that he can make it, let's set it for 6:30—I don't know, what did we say—
Monday, the 22nd.

Lowman: Monday, the 22nd, and we can do it in the chambers. We can occupy this room.

Murphy: Hopefully, there's a time limit on us using this room.

Lowman: We can set one.

M: 6:30 did you say?

M: Correct.

Kyser: Here, in this chamber.

Ferrell: So, your motion would be to adjourn to Monday, April 22nd at 6:30 p.m. in this room.

Murphy: Somebody want to make that motion?

Ferrell: I'm sorry, not to adjourn, to recess. Sorry, to recess this meeting until Monday, April 22nd, 6:30 in this room.

Kyser: I make a motion that we recess until Monday, the 22nd of April at 6:30 in this chamber.

Murphy: Can I have a second?

M: Discussion?

Murphy: Yeah. All those in favor?

F: Somebody second?

M: Who was the second?

M: I second it, I guess.

M: Okay.

F: Everybody in favor?

Murphy: All those in favor? Five in favor?

F: Does that mean you're not coming? Okay.

Murphy: Six. All in favor?

White: I'm not in favor but I didn't say I couldn't come. I said I'm not in favor of it.

Murphy: Sorry for the clarification. Commissioner White was against.

F: I'm exhausted. I can't think [ph].

M: Okay, perfect.

[INAUDIBLE]

Murphy: All right, we're adjourned until the 22nd.

Ferrell: Will you recess that item? Are you done for all purposes?

Smith: Not adjourned, we're recessed.

Kyser: But now he's adjourning the meeting [ph].

Murphy: Yeah, I'm adjourning.

M: I second and third it.

Murphy: Our commissioner has left.

[END RECORDING]

EXHIBIT H

**Brown & Bunch
Town of Chapel Hill Historic District Commission
306 North Boundary Street
April 22, 2019**

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
Ferrell: Brian Ferrell, Counsel to HDC
Mehlman: Erik Van Mehlman, Architect for Applicant
Swanson: David Swanson, Landscape Architect for Applicant
Cumbie: Stephen Cumbie, Applicant
M/F: Male/Female Speaker

Murphy: Good evening. Okay, we are working. Good evening. I'd like to open the April 22nd meeting of the Historic District Commission. We're here tonight at this special meeting to review 306 North Boundary Street application. So I guess we've got to take role call first, so.

Schwartz: David Schwartz, present.

Smith: Susan Smith, present.

Kyser: Kimberly Kyser, present.

Murphy: Sean Murphy, present.

White: Jim White, present.

Locke: Jamie Locke, present.

Epting: Bob Epting, present [ph].

M: Bob Epting.

Murphy: Bob Epting present but abstaining.

So we have a bit of new information that Jake handed me tonight. There is a request from the applicant to reopen the public hearing to present a bit of information, not necessarily new information, but information to clarify some of the comments and questions that have been raised, specifically the—at last month’s meeting after the public-hearing portion was closed. Maybe a nod if I got that accurately? We still have to vote to open the public hearing. So I’d like to see if there’s any discussion amongst the commissioners, how everyone feels about that.

Schwartz: Will it—if we reopen the public hearing, does that mean that we’re also opening it up for other people besides the applicant who may have something that they want to contribute?

Murphy: We would be, although I don’t believe anyone else has signed up to speak on behalf of the public tonight. Is that correct?

M: That’s correct, I believe.

Schwartz: As long as they’re given an opportunity to do so. They may not have signed up because they didn’t think that it was going to be open. So as long as we make that opportunity available, then it’s fine.

White: Yeah, how—if this information was brought to you tonight, why wouldn’t some of the people who were at our last regular meeting say, “Wait a minute, if I’d known you were going to reopen the public hearing, I would have come”?

Murphy: That could be the case.

White: And I don’t think we’d look good.

Murphy: Counsel, would it be appropriate—am I permitted to share this memo with our commissioners here to review it and make a more informed decision?

Ferrell: Well, what I think is the applicant has made the request to open the public hearing. If the commission would like to hear the justification for the request, it—and if it would help the commission make its decision, I think that would be appropriate, to hear the justification for the request to open the public hearing.

Murphy: Then I would like to hear from the applicant. Anyone—is any—

Kyser: But we're going to get that—is—[OVERLAPPING]

Murphy: Well, I think it will be entered into evidence if we allow him to speak.

Ferrell: Well, you would allow—you—the test—it's not testimony. The information would—is on the—be recorded and part of the verbatim minutes, right? But for purpose, if any new evidence of course is included in the justification, which it shouldn't be, that should not be considered. It should be disregarded for the purposes of making your ultimate decision, unless, of course, the public hearing is open and additional evidence is submitted at that time.

But just the justification for why they want to make the request is something you could certainly hear and about—if it's going to help you evaluate the request.

Murphy: Do we have any reservations from the commission?

White: About just hearing—

Murphy: About just hearing the justification for the request from the applicant.

M: That's okay.

Murphy: Mr. Mehlman, have you been sworn?

White: As long—

Murphy: We have to—

White: —as long as we are keeping our tails covered vis-à-vis the open meetings law, and prior publicization, and all that kind of thing.

Ferrell: So just to clarify, the this meeting was—is essentially a recessed version of your prior meeting, right? So in that—to that extent, it's a continuation of your prior meeting. It's as if you're still sitting here and the clock was still running on the initial meeting is how the open meetings laws, if you will, interplay with what the proceedings are tonight.

White: Okay.

Murphy: Has he been sworn—

Smith: Did that answer your question?

Murphy: —or does he need to be sworn again?

Smith: Jim?

White: Yeah, no, no as long—

Murphy: I just—no? Sorry. Okay.

White: —as Brian thinks we're staying clean, you know.

M: And right now what you have is a request to reopen the public hearing, and this is the reason for the request, and then you'll have an opportunity to evaluate, you know, that request.

White: Right.

Murphy: Thank you. Mr. Mehlman, please.

Mehlman: Thank you. Thank you for hearing us. We did vet this out with staff, and procedurally, and have no new information in here. It's a short one-page memo from our clients to the commissioners. Dear commissioners, Commissioner Schwartz opened the 04/09/19 review on this application, asking if there was anyone who desired the public hearing to be opened. We did not realize there was a need at that time. However, during commission discussion that evening, our team observed confusion by members of the commission concerning features of the proposed work, as well as overlooked or forgotten factual evidence provided in the application and supportive materials.

We understand that this process is taking a long time and the materials submitted from many different sources for your review are voluminous. We know the commission desires to make the right decision based on competent evidence. As such, we strongly urge you to open the public hearing in order to allow us to clarify information that may have been interpreted in error. Some examples of erroneous information are listed here without introducing new evidence in this letter.

One, discussion of the eastward movement of the circular garden path was stated to be as much as 10 feet and as little as three feet. The proposed plan shows the move to be four feet. This information is scalable and in site plans provided, and unchanged since presented in February 12th, 2019.

Two, it was claimed by the commission that the project exterior lighting has not been addressed. This is also a statement made by the public in opposition

to the project. Exterior lighting is addressed with pertinent fixtures in Section F, 3, h in the original application submitted December 7th, 2018.

Three, concern was expressed regarding public opinion about the size of the garage. Amber Stimpson, Preservation Commission Coordinator at SHPO notes the following from *Quasi-Judicial Handbook*: “Public opinion is irrelevant for quasi-judicial decisions.” That is a quote. “Public opinion is irrelevant for quasi-judicial decisions.” At the end of the March 12th meeting, Mr. Cumbie provided photo examples to the HDC staff of a detached garage with second floor ADUs in the historic district which he referenced during his testimony. HDC asked for addresses which have since been gathered, but have not been able to be submitted.

We further suggest that it would be appropriate to open the public hearing for the applicant to make submittals of new information, if necessary, for design changes. The applicant was asked to address specific items of architecture in the site in the January 8th meeting and asked to address only items of the site at the February 12th meeting. No architectural comments were received in the February 12th or March 12th application reviews. The commission circled back to the architecture in the April 9th review, with potentially drastic consequences to the current design, but did not issue any official request for design consideration or changes by the applicant. The normal review process allows the applicant to work with the commissioners to attempt to address their comments and resubmit supplemental design and information. For instance, if the public hearing is

reopened, the applicant can submit a modification to the east addition to avoid moving the circle at all per number one above.

After the loss of almost three months of opportunity for the commission—for commission comments and the applicant design responses, it appears the commission may feel rushed to issue a decision prior to the 180-day review window closing on the application. The timing of this process has been unfair to the applicant and we urge that the COA should not be denied without the opportunity to address further comments from the commission. Thank you.

Murphy: Thank you.

Schwartz: Can I ask a question?

Murphy: Absolutely.

Schwartz: If we were to open the public hearing, would we receive any more information beyond what we just heard in the justification, or was that pretty much the information that we would receive if we were to reopen the public hearing? I'm just wondering is there, in fact, a need to open it. Is there more information to be received beyond what we just heard?

Murphy: I don't know the answer to that, but I don't believe there's going to be additional information. So the question is, do we want to see updated—potentially updated information?

Smith: Well, what I heard is that there were elements related to the architecture itself that were in the December application. And I just noted myself, the listing that was a—was in the January hearing, that there was a request from us for January to provide a landscape plan for the entire property, clarify if the additions can be

stucco instead of brick, how the screen porch operates, original approvals for the property from the 1990s, and be prepared to discuss the legality of the quick claim. I'm not sure all of those things were covered. I know we haven't covered lighting. I don't think we've discussed lighting. So—

Murphy: Well—

Smith: —from that point of view, I would be interested in having that presented.

Murphy: Anyone else have an opinion on opening—reopening the public hearing?

Kyser: Well, if I—

White: If we—

Kyser: Go ahead. No, go ahead.

White: If we reopen the public hearing, can you set a time limit on how long anybody can talk?

Murphy: I would welcome the red light if I can do that as chair.

Ferrell: Yeah.

White: I don't want to—[OVERLAPPING]

Ferrell: The chair has the discretion to move the proceedings along, you know, in an orderly fashion. I mean generally speaking, firm timelines are frowned on because an applicant has an ability—or an opponent—party opponent, to present their case as they think is best. But in this case, you know, you've heard quite a bit of information. Sounds like there's some relatively limited information they want to present and—you know, illegally speaking, I don't know that you'd have a problem if you made sure that things moved quickly.

Murphy: I would—my preference would be to give the applicant an opportunity to clarify some items that they have not been given an opportunity to clarify, that we have spoken about, specifically the architecture. I know we—I think I was the only commissioner that made a comment regarding the architecture and that was in the very first meeting and it was related to—a material question rather than a scale, proportion, complexity question. So we haven't addressed that at all directly with the applicant.

Nor have we asked them to make any modifications to it. Yet at the last meeting, we were talking about denying certain portions of the architecture, which we never requested any information on. So I'd like to give them the opportunity to at least speak to some of the comments that were made.

Kyser: Well, it's my understanding that two aspects of the—we voted on two things and they're—we can't—we're not going back on those.

Ferrell: My understanding is that—and I conferred with staff just before the meeting—that what you have done is approved one aspect of the application as submitted.

Murphy: The south addition.

Ferrell: The south addition has been approved.

Murphy: Mm-hmm.

Ferrell: I think that's the only formal action—

Murphy: The east addition and the garage are not approved yet.

Ferrell: And the garage remain—yeah, you know, open, if you will.

Murphy: Are open.

Ferrell: You haven't voted on those yet.

Kyser: Well, how can—we voted on the east addition.

M: No.

Kyser: Yes, we voted on them together and that motion failed.

Ferrell: No. My recollection is that the only item that was—that received the requisite five votes—

Kyser: Well, yeah, that's my—

Ferrell: —for action—

Kyser: —that's what I'm asking now—[OVERLAPPING]

M: Was the east.

Schwartz: But Kimberly is correct, that we initially voted on—there was a motion to approve both the south and the east. That failed to get five voted.

Ferrell: That failed. Right.

Schwartz: Then there was a second motion restricted to the south entrance, and that was approved.

Ferrell: That—I think that's right.

Kyser: So the question—I asked in that last meeting, is it a done deal then on the east addition? And I understood you to say that we're—we can't vote on that again.

Ferrell: No—

Kyser: That's not correct.

Ferrell: Then I—yeah.

M: No.

Ferrell: Then I'm sorry if I—

Murphy: No, the south we cannot.

Ferrell: Yes, the [ph]—[OVERLAPPING]

Kyser: No, the south we approved [ph].

M: The south—

White: The south was approved.

Ferrell: The south was approved.

M: Right.

Ferrell: The east—

White: The east—

Ferrell: —the east—I'm sorry if—

White: —received—

Ferrell: —I gave the impression that—in fact, you must, I mean unless you just want the
180 days to expire, you must either have an affirmative vote to approve that
aspect of the application—

Kyser: Okay. I got it.

Ferrell: —or to deny that—

M: Okay.

Kyser: Okay. I guess I understood [ph]—

Murphy: Would somebody like to make a motion to open the public hearing?

Schwartz: Before we do that, I just want to make sure—I thought I heard the applicant say
that they were possibly going to present some information suggesting a
modification to the east—[OVERLAPPING]

Murphy: That's correct, it does not—

F: That's what I heard, too.

Murphy: —move the circular garden.

Kyser: So is that—

Schwartz: So I would be very interested in hearing that.

Kyser: —is that—but so is—is that permitted?

Ferrell: Yes, I think so. So there are two aspects of the application, and I'm using that aspect generally, right? There are two significant components as the commission has broken them down, the garage and then the east elevation, right? So those items are unresolved.

F: Okay.

Ferrell: If the commission wants to, you know, grant the request to open the public hearing to receive more information about those components, I think, legally speaking, you're fine to do that.

Kyser: Okay.

Schwartz: I move that we reopen the public hearing.

Kyser: I second.

Murphy: Okay.

White: Any discussion?

Murphy: All those in favor?

White: Any discussion?

Murphy: Oh, any discussion? Sorry.

Kyser: Oh, discussion.

White: I'm just—I'm going to vote for it. I think it's a good thing to do. But I cannot put out of mind what happens at our regularly scheduled May meeting, when people

who have heard about this, who still have a lot to say, come in and demand that we reopen the public hearing yet again so they can put in their two bits. How do we say—

Ferrell: Well, with—

White: —no [ph]?

Ferrell: If you're asking—if you're addressing me, the—you may hear from people that are frustrated with this process. My guess is you're likely to hear about that. You ask me, you know, if sort of from a legal perspective, do I think you can do it in that—open—reopen and that's legally defensible, yes, I do. Do I think that there's a counterargument and another side to that question? I certainly do. And as to the reopening in May, what I'd say is, with any luck, you'll have made a decision by then.

Smith: But I think what you're saying Jim, is that you would want the people who, if they knew that this was going to open tonight, to be able to—

White: Well, if we—

Smith: —testify further.

White: —if we reopen the public hearing, we're going to—

Smith: So let me just finish. So if we do open this, there's a possibility we could continue till—in two weeks and make the decision in two weeks with—and that drags it out further. But when I reviewed what we've done, I mean every step of the way, we have made, I believe, reasonable decisions based on the information that we had and what we lacked, and that's why we extended it and extended it

and extended it. And I can cite the reasons for that if people want to—

[OVERLAPPING]

White: Oh, no, no, no. I agree completely.

M: [INDISCERNIBLE]

Schwartz: I mean, I—you know, I understand Jim's concern and share it to an extent because although we never explicitly said that we were not going to reopen the public hearing, I think we kind of gave the impression that we were done—

F: Yeah.

Schwartz: —with the public hearing.

M: I think so.

F: [INDISCERNIBLE]

Schwartz: And so I think people had a reasonable expect—the public, you know, had a reasonable expectation that there was not going to be another opportunity. That being said, I think that, you know, it behooves us to hear the information, especially if it may lead us to an outcome that, you know, the public may find, you know, more acceptable than where things are at the end of the last meeting, so.

Murphy: I would agree.

White: Okay.

Locke: Yeah. I—so I have concerns about the introduction of a possible amendment to their application, of whether they're not going—whether they're going to want to move this circle in the middle. I don't think the public has had enough time to even think about it. Like, it's just now getting introduced.

Murphy: All we have to do is listen to the applicant.

Locke: Okay.

Murphy: We don't have to make a decision on it.

Locke: All right. And I'm just saying that I think—

Murphy: If [ph]—what he said was—

Locke: —that we're doing the public—

Murphy: —he's going to present an option which doesn't move the circle. I can't imagine that there's somebody from the public that would be upset about that.

Locke: Okay. I'm just saying.

F: Right.

Locke: That, like—just thinking about the public. I just want to say it.

F: Okay.

Murphy: So, okay. Do we want to—

F: Vote, mm-hmm.

M: Sure.

Murphy: —are we—any further discussion? All those in favor say “aye.”

M/F: Aye.

M: Nay.

Murphy: All right. That's five—

M: Get the vote—

Murphy: —five yeas and one nay.

Kyser: What does that do?

Smith: It passes.

Murphy: Public hearing is open. Mr. Mehlman, please step forward. Do you have a PowerPoint or—

Mehlman: I have some information I just need to get loaded.

Murphy: Yeah.

Mehlman: And Ms. Swanson [ph] may a little bit, and then you probably need to swear—were you listening to the case [ph] _____?

Ferrell: So just—if you will, I know you were sworn at some point in the recent past. If you will just affirm that you've been sworn in this matter previously. Again, this is a recessed version of the meeting so if you were sworn previously, I just remind you of that oath. And if you will when you come forward and state your name, just affirm that you have been, in fact, sworn in this case.

Mehlman: Okay. Sorry for the pause. You don't need any _____ do you?

M: I'll let you run with whichever one you need here.

F: [INDISCERNIBLE]

Mehlman: Okay. I'll just pull them up as I need _____. Okay. Of course, they could put the PowerPoint _____.

[INAUDIBLE]

Mehlman: Commissioners, I have formerly been sworn and still am under oath. Thank you for agreeing to hear some information. You'll be happy to hear that per the request—most of this is strictly clarification for some of the things that you guys had discussed last time and throughout the process of the submittal.

F: Is his microphone on?

F: I can't hear either.

Mehlman: Is that better? I'm sorry. This—it's is my fault. Let me—

M: [INDISCERNIBLE]

Mehlman: There we go. Let me find—I am simply—want to—we heard points stressed from Mr. Ferrell last time about the importance of A through J. We were commended when we submitted our original application on the thoroughness and completeness of the application by staff.

In the first meeting, we did present—scroll through here, and I'm going to get right to it. Sorry, I'm just going to blast through. I didn't put these into a formal PowerPoint. This is all information that's been presented to you previously. I just wanted to point out, if you go back to the original application in H—Section A through J, part H was an example of that, that in that section we talked about lighting. And there's recessed lighting on the current porches and we proposed that recessed lighting would remain on the new porches. And a lot of discussion happened about what type of lighting was going to be used, and it's in the application.

So in interest of not belaboring and taking more of your time, I just simply would like to request that you all go back and look at the original application, Sections A through J. And in the first meeting, I bored you with my knowledge of presenting to historic district commissions. And I've not been in front of this Historic District Commission before, but I worked for the chairman of the Raleigh Historic District Commission [ph] for six years and have presented before many. And it's boring, but you go through A through J. And I presented all of these in the first meeting and they're here. And I request that you go back and look at

them, but I'm not going to go through them letter by letter unless it's requested of me.

The second item that I want to hit on is the site plans that we presented in March. We were asked to—we were asked—and you guys just reminded me that we were asked for architectural questions. We had five questions, I think, from the January meeting, and then we had three. We thoroughly covered those. That was the task of my presentation at each one. I believe in this one, here it is right here, here's the slide, this is the questions that were asked of me in the second month, and then we went through and answered them. What I do want to go to though is—are these slides right here. This—nothing's changed. This is the proposal that's under review right now. And we were requested twice to provide historic accuracy about the site. We tried as best we could, and I think achieved it in two simple slides.

Once again, all the red walls and walkways in this slide are original Coker historic items. All the blue shaded items are Peacock, 1991, non-historic, non-contributing features. The proposed addition is here. The light blue are the additions. And you can notice the four-foot move—movement of the central circle. David Swanson, the landscape architect who designed the gardens that were built in 1990 is the landscape architect on this job. And I think his influence in reinterpreting the Coker gardens in 1990 was valid, and I think his choice to shift that by four feet is also valid now.

I want to direct a question to Mister—to Commissioner Locke. I'm curious as—you unfortunately pointed at the walls you claimed were part of a

container and you were only able to show your fellow Commissioner White. And I was wondering if you could show us on this site plan which ones you were referring to. And that as a wall built in 1990 has value to the current plan?

Locke: Yes.

Mehlman: May I ask why?

Locke: Because when we talked about this idea of “is it a renovation versus a rehabilitation.” So the idea is that Mr. Swanson put his time and effort into doing a garden that had met some type of aesthetic, structural, and layout that was appropriate of the time of the Coker garden. So what I’m saying—but is it okay for me just to go on at this point or do just want to hear—so basically what I’m saying is that that’s a structure, right? So walls are a structure and they’re considered a structure in the LUMO. So what I’m saying is, is that you’re going to be piercing it. And so you’re changing how that face is interacted [ph] with the garden. And so that’s my concern.

Mehlman: And that’s based on I, structural soundness, of the A through J’s?

Locke: Yeah.

Mehlman: So in my experience of working in historic preservation over the past 20-some-odd years, that usually the structural soundness argument is an argument by someone like me, an applicant, that’s saying, “This building is falling down and I am trying my best to save it, to reconstruct, to renovate, to preserve, whichever section of the four areas of preservation we’re choosing to follow.” In this case, everything built in 1990 is structurally sound.

I'd suppose that 95% of all historic preservation applications that come in here for additions, most of the time the building's not falling down. And the small portion of wall that's elected to be removed in order to add an addition is usually structurally sound. So I—I'm lobbying that the structural soundness of a 16-foot wall that's serving as—and I just went back out there today—it's about—it's two treads, it's about 16 inches lower. So it's retaining in order to keep that stair up.

I would just lobby that that wall is not historic, and it does—though it does have structural soundness, that that's not applicable here. I'm hoping I'm able to convince you because then we can speed forth without showing you any other changes of new evidence. Because if you thought that that was—potentially could change your mind, then we may be able to get to an east addition acceptance. I don't know where else to go with that. If there's—

Smith: Could I add something then?

Mehlman: Yes.

Smith: Because I looked up in a legal dictionary online what is called—how do you pronounce it?

M: Appurtenance.

Smith: Appurtenant.

M: Appurtenant, right, is that—

Smith: Appurtenance?

M: He's going to—[OVERLAPPING]

Smith: Which is H. Appurtenant features—fixtures and other features such as lighting. And in that—on that definition, it says, generally speaking, anything that has been installed and therefore has become part of the property is considered to be appurtenant. Examples include in-ground swimming pool, in-ground or otherwise installed hot tub, shed or other outbuilding, fences, trees, shrubs, sod, landscaping improvements. So if I were considering that wall, I would use H from LUMO.

Mehlman: And that would be a way to—

Smith: Would that be reasonable _____?

Mehlman: It would be a way to search for it, but I'm just here to stress that none of the components in blue are historic features. And if you're going to do an addition, you're going to move some material. That's all. It's—

Murphy: Anything else?

Mehlman: I will continue.

Murphy: Okay [ph].

Mehlman: I have—I only have two more points. Commissioner Schwartz had referenced items related to the district setting, all from the guidelines, district setting, site features and planting, garage and accessory structures, lighting, and off-street parking. All in wondering whether they were justified and speaking of some of the testimony that had been there. And once again, I do want to refer back to the importance of A through J's as the overlying importance in determination of whether something is congruent or not congruent.

And also, just look at some—a few of the things. Off-street parking involved in there, there's just—there's no relevance to the off-street parking

section here. There's an existing driveway and it's going to be extended a little bit. It's not affecting walls; it's not affecting anything else. I'm not sure how that's relevant. The lighting we've already addressed. And garages and accessory structures, yes, we'd like to get there. And I know that there's—I sense there's an overwhelming opinion about garages and accessory structures from folks, and that's one of the reasons that we felt it important to include in that letter.

And I will repeat, matter of fact, I heard it in this chamber at the special meeting called in December when Amber Stimpson presented. I came to that meeting and she flashed a slide that had that information from the *Quasi-Judicial Handbook* that said that public opinion is irrelevant. And it puts a great burden on the commissioners, but it says—it further says in there and I'm—now I'm paraphrasing, that it's not a popularity contest. It says it's—these are hard decisions and they're not based on public opinion. So if a—there's public outcry that something is too large, it's really about determining whether it's congruent or not congruent, not whether it's too large or not.

I will add we had the direct neighbors that surround that back portion of the property—let me flash [ph] over here. I hope I'm not getting lost here. Here. And the neighbors showed up—this is where the garage [ph] is proposed—the neighbors here, here, and here voiced concern in one of the meetings, and Mr. Cumbie went through great efforts to talk with them. We relocated the garage, reduced it in scale and height, and they did not come to voice anymore concern at the following meetings.

So the people that are right there, that are living with that garage, they can see it. It's worth repeating, one of the first meeting items was going around the house. None of the additions, none of the garage can be seen from the street. They're very private. It's a very wooded site.

The last thing that I'll show does regard—is regarding the garage, and I will tell you right now, these—this is new material that I referenced in the letter. I only referenced it because we had tried to submit this information. These are six examples taken rather quickly of garages with second floor habitable space in the Franklin-Rosemary Historic District. Number one is at 204 Glenburnie. It's a three-car garage with a second-floor accessory dwelling unit. Number two, 115 Battle Lane. It's a two-story garage with a second-floor habitable space. Number three at 619 East Franklin Street, another example. Another example at 704 East Franklin Street. Here we have 524 East Franklin Street, and here we have 500 East Rosemary Street.

We went through some efforts to show—to pop in the to-scale elevation of the garage that's proposed. You can see here's the existing house, the peak of the house is off the page. Here's the garage down the end of the driveway. I believe that this is very consistent with images that we see of six examples that we were able to gather rather quickly.

If you are interested, and David Swanson has some information that he's put together. I'll tell you what we don't have is fully developed plans of anything because we didn't know if we were going to be able to be seen or heard today.

But we wanted to show you, and it was in regard to the back-and-forth that can

happen between the commission [ph] and the applicant, that we feel has been slightly absent since the questions were asked at January and we responded, and in February and we responded. And in February it was only site. So David, do you have a few words, I believe, and sharing information [ph].

Murphy: Do we have any—do commissioners have any other questions or comments for Mr. Mehlman and please—

F: Oh yeah.

Murphy: —keep the questions to the information that he just showed us.

Kyser: Yes. Could you repeat—I've got 204 Glenburnie, 619 East Franklin, you said Battle Lane.

Mehlman: Here, I'm going to just make this easy for all of you. How's this?

Kyser: Mm-hmm. Good.

Mehlman: I have—

M: Battle Lane's right in front of the one that we just approved.

Mehlman: If you—it might be a short one [ph]. You guys can share?

M: Yeah, yeah.

Kyser: 115.

Mehlman: I have an extra one here. Do you need one?

[INAUDIBLE]

M: I'm sorry.

Kyser: That's all right.

M: [INDISCERNIBLE]

M: Did you have something else you wanted to ask him?

Kyser: 704 I thought he said.

Mehlman: And here's this.

Kyser: I would like to see it more—[OVERLAPPING]

Schwartz: You made reference to a letter. Is that a letter that we're all able to see?

Mehlman: I'm sorry, I referenced the letter I just read.

M: Yeah, do you have a copy of that, too? Yeah, you got some in the back [ph].

M: I do.

Mehlman: And Jake has that, as well.

M: Perfect.

M: [INDISCERNIBLE]

M: Did I understand you to say that—

Kyser: Do you want to see these?

Murphy: Now this letter is the one you just read.

Kyser: No.

Mehlman: Right.

Murphy: Correct. Yeah. So he just read this.

Mehlman: _____ this is not evidence _____ request for the hearing [ph].

M: I have one. Thank you [ph].

Schwartz: That Mr. Cumbie spoke to the neighbors on the north side and made some changes based upon conversations that he had with them about their concerns.

Murphy: Yeah. There was no letters, they just didn't come back to the public hearing to voice any concerns after that meeting is what the applicant said.

Schwartz: But did you say that Mister—that he actually had conversations with them and—

M: _____ you're still under oath. Okay.

Cumbie: So yeah, I spoke with three of the neighbors, the three that he pointed out, that are directly adjacent to the property. And I've forgotten their names but—do you have them written down? Okay. But anyway, it was—one was a widow who—can you go back to the site plan here Erik?

F: [INDISCERNIBLE]

Cumbie: I'm sorry?

F: [INDISCERNIBLE]

Smith: Is one Jessica Hensley [ph]?

Cumbie: So the—yes, that one right there is a widow, and I've forgotten her name but I—

Smith: Jessica Hensley? Is that Jessica Hensley?

Cumbie: Hensley. Yes, Jessica Hensley. Thank you. Helmsley. Was it Helmsley or—

Smith: I thought it was Hensley but I—

Cumbie: Maybe it is Hensley.

Smith: —I just heard what you said, I just guessed.

Cumbie: That's right. And I actually met with her on site and showed her what we were talking about in terms of the garage and the fact that we're willing to reduce it to a two-car garage, which you've seen and actually I think Erik did a good job of sort of sketching it in, how it would fit into the site relative to the house. And moving the location so that we kept the large pine trees that I think we all thought were valuable. So I spoke with her.

Then the one behind us, this one and this one here, I didn't meet with—I offered to meet with both of them, but I did not meet with them. But I had phone

conversations and email conversations with them. And they—you know, I can't say they were satisfied, but they did not come to the meeting again, and seemed to think that, you know, we'd gone a long way to address the concerns that they had.

One was this one right here was—I don't know if you've been back there but they—they're down a slope from us, and it's a pretty severe slope. And they're doing some work in the backyard to try to make their backyard more usable. And so part of her—mostly her concern was about appearance from the second floor of their house since they're lower, and would they be looking into the garage. So as you recall, and Erik can review that, we put in screen planting in that area next to the—to our fence back there, that would be evergreen and large to begin with, and get larger over time to obscure the view from that area.

We also wrapped it around to help Ms. Hensley, as well. So, you know, I believe that—I mean, I went to a lot of trouble to reach out, find their names, their email address, and talk to them because we want to be good neighbors. I mean—and we would expect people moving in next to us to want to try to be respectful too of us. So I understand that, and I think that we have satisfied those three folks.

Schwartz: I appreciate that.

Cumbie: Sure.

Schwartz: Did you also offer to meet with any of the other adjoining property owners to—

Cumbie: Those were the only ones I had their names and con—and actually we had to search their contact information. I was more than willing to do that, but I didn't know of any other ones.

Schwartz: What about Dr. Burns and Catharine Burns on the southern side of you?

Cumbie: Oh, yes. We've met with them several times. And, you know, I think that a lot of what we're trying to do with the remains of what would have been the Coker gardens, those tripartite gardens, which there are only two left, was influenced by, you know, what they would like to see. And, you know, I can't—I mean Catharine Burns obviously speaks for herself and I certainly wouldn't attempt to do that. But hopefully we've made real progress. And I'm concerned about what Commissioner White said, too.

I mean, we couldn't really get before you the idea of opening the public hearing, and I don't want to exclude anybody. I mean, if people would like to come in at your May meeting, you know, I would urge you to open the meeting for them if you close it tonight. Because, you know—and maybe you take action, I don't know. But I'm not trying to exclude anybody from having their say, and we've done our best. We've met with the Burns probably three or four times, at least twice in person and a couple times on—the telephone. So they're our neighbors too, and we want to see if we can't be good neighbors to them, too.

Schwartz: One of the things that's particularly important to your neighbors to the south is to put back, enforce [ph] the easement. And the information that we have from them is that up until now you've—

Murphy: Please, Mr. Schwartz, we have been instructed month after month that the easement is not part of our purview. And I don't think it's appropriate to ask the applicant about the easement again tonight at this meeting. The applicant, the public, our counsel has all spoken about the easement. So I think in the sake of

time and fairness to the applicant, I don't think we should ask the applicant any questions about the easement.

Schwartz: Okay.

Mehlman: I actually would be willing to answer, but again, that's up to your council.

Ferrell: And you know, I'll defer to the chair and the members of the commission about—you've heard what I had to say about the easement. I'm happy to speak to whatever you'd like me to speak to.

Murphy: You've addressed it three times, at three separate meetings. I think that's enough.

M: Okay.

Murphy: Thank you, Mr. Cumbie.

White: Wait a second. I've got a question. Brian, tell me immediately if you think I'm out of order because I don't know if I am or not. And if you think I'm going in a—in an inappropriate direction, stop me so I don't give people the equivalent of having to unring a bell.

This whole process has mystified me deeply. And it's been unable—it's been impossible for me to put utterly out of mind the question of whether it has ever been intimated to you in any way that your unwillingness to sign new easements has had an impact on the extent of opposition to your project.

Ferrell: Let do this. If we're not going to talk about the easement across the board—

White: Okay.

Ferrell: —let's not talk about it.

White: Okay.

Ferrell: You've heard me say it—

Murphy: And that's speculation and it really doesn't matter for this hearing.

White: Okay.

[INAUDIBLE]

Murphy: Let's focus. Does anybody have any more questions specifically related to the information presented tonight?

Smith: Yes, I do. But you go ahead.

M: You go ahead.

Smith: Okay. Well, I just want to make, first of all, a clarification that the garage was moved from the back of the property to preserve the historic rock wall. That was discovered in the January meeting. So it wasn't just in response to your neighbors, it was because we just—we needed information about what was historic rock walls, and that came to us, we saw that in the February meeting, and that's when the garage was moved, correct?

Mehlman: We indeed moved the garage between January and February's meeting. I don't think it was told to us to move the garage. But we did come to conclusions that the idea of removing that wall in the back, though there's a lot of rock wall on that site, was not something that the commission looked favorably upon, so we took it upon ourselves to move it. And that move worked for everybody. I mean it was a better move. We reduced the size of that garage at that time and weren't asked to do that, and moved it forward, saved that wall, got better drainage, better—which isn't part of HDC purview, and screened it, and made the neighbors happy. It was a great move.

Cumbie: And maybe I don't need to add anything, but I will. Yes, and that was one of the points that caused us to rethink the garage. We knew that the historic walls were important to the commission, and so—but it wasn't the only reason, really because between—I don't know exactly the dates, but I met with all three—or not met in person—I met in person with Ms. Hensley, but then spoke to the other two. And they were concerned about the garage against the back wall too. And so it was a combination of those factors.

And we—and the scale was concerning to the neighbors and we heard it from the commission. So we—that's why we reduced it from a three-car garage to a two-car garage. And so anyway, we were trying to be responsive to all of those things is the point.

Smith: Okay. Secondly, let's see, where should I start? Well, I just have a quick question. There's a large, round concrete circle back there where it looks like you're going to put the garage.

M: [INDISCERNIBLE]

Smith: And is that something that somehow ties in or will have an effect on other property owners? What is that thing?

Cumbie: Yeah, I think it'll actually be helpful. So you may not know this, but there was no sewer along Boundary Street when the Peacock's house was built. And so there is a pump station that pumps the sewage into—and that's part of that.

Smith: Okay.

Cumbie: We're going to replace that with a gravity sewer, which will be much better for—it's not going to be cheap because we got to go about 60, 70 feet, but it will be

better for I think the water sewer authority, as well as for us over time because it'll have much less maintenance than having that electric pump station as part of the property.

Smith: Okay.

M: Yeah.

Smith: Okay. You made the point that as far as people coming in to testify whether they like a project or not shouldn't be—we should not take their opinions into account. That's the impression I got. And you said this came from the state—

Mehlman: I was—

Smith: You were quoting someone?

Mehlman: Yeah, this is the—I simply—there was a slide presentation made here, as I said, and one of the slides, the content of the following slide is based on guidance offered in the *Quasi-Judicial Handbook* by Professors Adam Lovelady and David Owens. It is critical that the commission limit itself to application of standards set by law. Public opinion is irrelevant for quasi-judicial decisions. The question is whether the evidence supports a conclusion that the standards in the ordinance are or are not met. The quasi-judicial decision is not a popularity contest. The commission must fairly apply the standards in the ordinance regardless of popular opinion. It struck me and I know we all—

Smith: Right. I—

Mehlman: We just, you know, we talked with the neighbors. It's important to do that but it's actually—I hate saying it, it's not necessary.

Schwartz: But you're aware that we heard not only sort of public opinion, but we've also received expert testimony, which is relevant according to the quasi-judicial policies and procedures.

Mehlman: That's somewhere I didn't want to get into but we—that meeting was rather lengthy, and we never got an opportunity to rebut any of that expert testimony. And I don't want to get into there—that. But I—simply, I would ask the HDC to look at this through their eyes and use the information that's in front of you. Look at the plans. And try to for—I mean—and just make a decision based on that. I—in the interest of time—I mean, if you want to open it up to rebuttal, we can do that but it—the presentation was an hour long and I'd have to rebut every point in there. And I have exception with some of the information presented in that. And I could also provide my resume of my work, which you aren't aware of, which is rather extensive in the world of historic preservation.

Smith: Well, I just want to come back to the point that even though people testify and this isn't a popularity contest, oftentimes, people bring points that are helpful for us to refer—that help us refer to the guidelines, help us refer to A through J. They see things from other perspectives.

For example, the elevation, the difference in elevation. So seeing that front view of the garage is one thing. Seeing it from below, and how that would appear to the people who are concerned about that, would give us information about the visual impact. And therefore, whatever—let's see. The number is the scale. What is that? Setback and placement? No, the architectural scale, the—and that's J.

So that's how information like that is used. And I can tell you, we have been on this commission and made decisions exactly, you know, with the guidelines, and A through J, and they've been rebutted because not enough people—that's a board—that's another mess. But from the Board of Adjustment, who consider when people speak up or—for or against a COA, they consider that important information.

So I am just here to say, they should hear that too, as well, because we have made decisions based on the guidelines and those have been reversed. And anyway, and the other thing—and I'll stop—is that when you use examples of garages, just like it's not a popularity decision for us, this commission changes, and the people on it change. And our design guidelines are changed, are—you know, or being relied on more than they were in the past, when I was here a while ago, for example. And if we don't have a standard to go by, then we're just going to use—I mean, there are lots of reasons why some of those garages passed.

There is one, for example, on Battle Lane, that huge garage on 115 Battle Lane. The reason that passed was because the owner was doing a total renovation of a dilapidated building that was very important to the town, and kind of as a compromise, you know, that didn't get voted down even though it destroyed the whole driveway in the front and the whole _____ not sharing [ph]. There are all these details that happen with different COAs. And so it's hard for us unless we can look at all of the reasons why they passed and why they didn't pass for us to use just—here are six examples.

Murphy: Okay, I—thank you. I believe we specifically asked the applicant for examples of garages in the neighborhood. Is that correct?

Mehlman: That is correct.

Murphy: We asked the applicant for specific examples in the neighborhood. They provided them, and now we're explaining all of the nuances of maybe those particular applications. So I'm just—do we have a specific question regarding the garage or—as submitted here [ph]?

Kyser: I would like to be able to say—to make one comment and that is, in my opinion, the legitimacy of expert testimony is not based on whether there's been [ph] a moment when it can be rebutted. I mean, I think the expert testimony stands alone.

Mehlman: I back up, Ms. Smith, to just two—two sentence answers. One, I would never want to squash the idea of the public being able to speak. I was just the messenger [ph] of information that I found that seemed pertinent, and, yes, important for the public here. And second, regardless of when and why those garages came into being, I suggest that they supply important information towards congruity in the district.

Murphy: Thank you. Any further questions?

Schwartz: Before we open the public hearing, in your statement of justification, you—if I recall, you talked about a modification to the plan that would obviate the need for moving the circle. We didn't hear anything about that once we opened the public hearing.

Mehlman: Yes, when I was wrapping up my statements, I suggested that David Swanson could present that information if it was desired and he has—I think he has some other—a little bit of other information, but I know he's got a short—some short information.

Murphy: Perfect. For the sake of time, let's hear from Mr. Swanson, please.

Locke: Hold on. I have one question. Could you just revisit the idea when—in one of your plans, I believe it was the supplemental, you added that—an orange dotted line to show where you're going to be disrupting certain things. Can you tell us how you're going to preserve the rock wall with the garage so close during the construction of the garage?

M: The rock wall will likely—and written into our statements—will likely incur damage during construction, will be rebuilt with the same rocks back to the way that it was, which is very common in the district. Whenever anybody is digging a sewer under an existing wall or ever—you know, the wall needs to be rebuilt. And we—there are some components I think from 1990 that used some of the existing rock and rebuilt it. If you go out there, you can see some concrete mortar rather than some stack, and that seems to indicate that to me, but I can't say it positively.

Murphy: Cool, thank you. Mr. Swanson?

Swanson: So I didn't speak last time and I don't know if I was sworn in last time.

M: Well, let's just—

Swanson: But I was sworn in a meeting before, but.

Murphy: Well, let's just swear you in. We'll take any—it'll take two seconds, and it will take any question away.

[OATH ADMINISTERED]

[INAUDIBLE]

Swanson: All right, so I can be brief and make my comments focused primarily on the center garden. But at the same time, I've got some other remarks I'd like to make and it's really more of a conversation with you all. So I'll do that afterward. So I first want to make—address the very points that were—that you all are focused in on. So the same slide that Erik showed a moment ago, this is the existing conditions map that we put together. This is the current site plan, at 1-inch-equals-10 scale. Whoops. This is a sensitive mouse.

And this is that same map that shows the same [ph] information that Erik pointed out, the red indicating that Dr. Coker's original garden walls, in the blue is all the work that I was involved with in 1991 with the Peacocks. I'll pause here for a minute. This is getting into my second remarks, but I want to put into the record, if you will, not new information, but this was originally two lots. When the university originally sold this property, it was two lots. This parcel that you see here.

So my client—our client, the Peacocks, Jim and Florence, they purchased both lots.

F: [INDISCERNIBLE]

Swanson: If it was two lots, I could promise you, we wouldn't even be having this conversation right now. Because both [ph]—the garden would be obliterated if

you had two houses in there. So they in themselves went through an extra step. And I don't think that's been brought up per se, so I don't know if that's new. But it's—it was documented in some of the survey information, that there were two lots.

And they did a further recombination to get—with Dr. Burns and Mary Jane Burns [ph] at the time—to get the property line that is on the lower—this property line right here was adjusted to make sure that that [INDISCERNIBLE] to make sure that that wall that was in Dr. Coker's garden is part of this garden. So prior to that, the line—the property line sliced through that wall. So just pointing that out.

Okay, so existing. This was—okay, so this is the plan. It's a little different than the one you just saw, the one you just saw that Erik shared with you.

Schwartz: What is that we're looking—this is something new that we haven't seen before? Or this something that we—

Swanson: Well, it's a clarification, if you will. Technically, I guess it's new. The circle stays in the same place. And the addition, as proposed, is just the same as it was proposed earlier. So this plan shows not moving the circle at all.

Okay, I'm going to show you—we can make it a little bit better, still not move the circle, not shift the circle, and this is—that's this drawing. You can't see this very well at this 10-scale so I'm going to zoom in. Same information, but you're going to zoom in so you can see everything a little bit better. This happens to be at quarter scale [ph]. Okay, so this is—go back up again. This is a drawing

that shows the proposed additions, that's in the hatched rendition. Everybody can see that? The hatched markings on the site plan.

M: [INDISCERNIBLE]

Swanson: Vanna White [ph], uh-huh. So that's the proposed sunroom and the additions to the south.

Schwartz: Can I ask a question?

Swanson: And then—yeah, go ahead.

Schwartz: [OVERLAPPING] more helpful if you would point to this one here, because it's hard for me to see all the way over there.

Swanson: And I don't know why. But there's my mouse. I couldn't even do this there.

M: Yeah.

Swanson: So again, sunroom, this is a little balcony. And I just want to point out to you, has it drawn to scale, that balcony is allowed five feet, and then some steps down to get to the lower level. This next—sensitive mouse.

The next drawing—what we had tried to do in an earlier rendition was shift the circle. As others have pointed out, because I am the one that designed it in 1991, I didn't feel like it was technically historic. I said, "Well, okay. Well, we'll just shift the circle." I think we've heard conversations that that doesn't quite work so well in the symmetry. So this is an option to consider. This, reducing the circle by a foot or two feet. Two feet. I drew this last week. And that allows this balcony on the upper level to be six feet—which is a little bit more gracious than five feet—without hitting your head as you're making the walk around the circle. And that's what's drawn in the orange line.

So the circle is essentially—and then let me just describe what the circle is, just to be clear about it. It's granite curbing. It's not a wall. It's a curbing edge and that's, of course, a lawn in the middle. This is Chapel Hill gravel or grit, however people—some people call it. And it's a board edging. The board edging, it's a pressure-treated board and it's shot.

If you've seen it, it's past its—it's past its lifespan. So the outside edges, no matter what, has to be redone. And as I've pointed out in my March, February—March remarks, is the drainage in this area never has worked right. And I think as we get to this next level, however this process works out, one of the goals is to get the drainage corrected and this is an opportunity to do that. So what I'm offering you here, as an objective perspective, is that if the circle gets smaller—a little bit smaller, it makes the balcony a little bit larger and I think that's a—to me, it's a good compromise. So that's really all I have in regards to that conversation. I do have some other remarks. If you'd like, I can make this—it will be about three minutes.

Murphy: Go ahead. We'll let you finish and then we'll see if anybody has questions.

Swanson: Defer—defer to you? Okay, and I typed this one because this is something I've been thinking about. Like I said, I didn't speak last time, and, you know, I've been hearing a lot of the conversations going, and I know that this has been a lot of angst on everybody's part.

So what I want to do is give [ph] just a little bit larger perspective about the garden, and how gardens are dynamic and they're not static. I know some of the conversation has been that we can't disturb the garden. So I won't get—oops,

already talked about that. So for some of you, many of you know me, but some of you don't know me—that I've had over 35 years of experience as a landscape architect, working on many, many properties in the historic district, and in properties and gardens.

One, it's not in the historic district, but I think is very notable—so bear with me as I have this conversation—is about the Coker Arboretum. The Coker Arboretum. Again, Dr. Coker's work when he first came on campus. So I've actually had the—I'll say honor to have worked on five projects in the Coker Arboretum over the past 35 years. In 1995, I worked on the south entrance along the historic arbor and the gathering circle. And I designed that entire—the gathering circle and it's a memorial to the five students that were killed on that Mother's Day in the graduation day at the fraternity fire. So I've designed that.

I designed the Tom Kenan's [ph] gift of the water feature. There's the—like, the little spring, reference to the spring, and the sitting area there, and designed the DeBerry Overlook [ph], which redesigned pathways at the northwest entrance for the Morehead Planetarium. And just the past couple years, I've been working on a security and accessibility study for the arboretum.

So I'm mentioning it [ph] primarily because we all recognize the importance of the legacy left by Dr. Coker, referencing to here. And I'd say the Coker Arboretum is probably one of the most revered places on campus. And this has to do with the preservation of the place left as a naturalized and informal garden.

Let's see. This is a well-documented garden. But it also changes because as older trees have—and shrubs have—are lost to age, disease, storms, and so on, new ones are placed—are planted in to take their place. And then if Catharine were here, I would just make the comment—the historic documents, included—including notes in the photographs, added to the legacy of Dr. Coker, and so we're grateful for the works that—or material that Catharine has—and Dr. Burns have provided regarding Dr. Coker's legacy, regarding this garden. And I think it would make a good project for somebody to continue that.

When I worked on this [ph] in 1991, we went to—I went to Wilson Library and got a lot of the photographs, but they were very poor quality. So at some point in time, they'd be nice to get in all digital form.

So the Coker Arboretum, of course, is a public garden. I'm almost done. And as part of the university, and over the years, after Dr. Coker passed away, it suffered from neglect. So remembering that the university took care of the Coker Arboretum, but about 30 years ago, the arboretum picked up management from the botanical garden, and they have limited resources to manage and maintain it, but they have an excellent curator, team, interns, and extensive volunteer efforts to keep that garden looking the way it does. And then so on and so forth.

Within the past year—just within the past year, over a dozen trees have come down and had to be removed. And then I described about the projects that I was involved with in the past 35—25 years. So the garden has changed, and it was continued to evolve [ph]. But I think—and this is the point I'm making is in reference to this garden—is that it's retained itself. It's a sacred place on the

campus and it retains Dr. Coker's legacy. People were very careful with the Coker Arboretum. I think Dr. Peacock and Florence Peacock were very careful in the siting of the house to retain the—essentially the character of the Coker gardens.

But I think the point I want to make is gardens are not static. They do change, so just [ph]—I'm emphasizing that because I heard a lot of conversation that, "You can't move this, you can't do that." Things do move and things do change. So that's my few bits.

Murphy: Thank you. Do we have any commissioner comments or questions?

F: No.

Locke: I have one quick question.

Swanson: Sure.

Locke: You know, I see you've presented an alternative tonight to shifting the circle four feet.

Swanson: Right, right.

Locke: Instead, reducing it by one foot. So I guess my question is—given your statements about needing to improve the drainage in the area, as well as replacing the wood perimeter of the existing garden—in your professional opinion, do you think it would be more beneficial to the future of the gardens to shift the circle by four feet, or to reduce it by one foot, or is it a negligible impact?

Swanson: I think I was—you don't have your name tags on, sir. I don't have your name, but—

M: Mr. Locke.

Swanson: Okay, so your conversation is about the space and the envelope is the way I'd interpret that. I think you had a different word. I take that to heart, so I think shrinking it works better than shifting it. I think—and this may get to his points about the wall that was on the—what would that be—the western side. I do take—you know, I won't dispute. I'm just—I'm taking—I'm challenging, I guess you might say, that those walls are walls that I worked on in 1991 and they really are—the intent of those walls was to hold up a brick landing; that was it. And they're—as Erik pointed out, they're about 18 inches high, 16 inches high. They do encompass the envelope of what we recognize on the drawings of those earlier sketches.

When I went on there [ph] in 1991, there weren't any walls there. It's a good place for a wall because that was a square. So that—keeping the circle where it is, even if it shrinks a little bit.

I also want to point out—is there—I think somewhere along the way in this—in your documentation, the testimony or whatever. I'm not a lawyer. [LAUGHS] But we shared some of the photograph—the historic photographs and there's one photograph that I found dear to my heart. It's one I found in 1991 and Catharine hadn't seen it. And it's about seven or so ladies dressed in these beautiful, white, elegant, long dresses, and they're all standing around a circle and that's actually the inspiration of why I went with a circle. So there was a circle there and it had what looked like pampas grass in the middle. It may have been Miscanthus, but it was probably pampas grass. It was a grass. But it was a small circle.

When I say small, it was—I'll say eight feet around. The Peacocks are not gardeners. They were not—they couldn't begin to—begin with the—at the level that Dr. Coker was a gardener. So we had to simplify. And this was the manner of simplifying it. It was abstracting the circle. So did that answer your question?

Locke: It did, thank you.

Schwartz: As I understand it—the aesthetic value or cultural value that Catharine Burns and other [ph] want to see preserved is sort of the geometric relationship among the three parts: the square, the circle, and then the house where there used to be a third part there [ph].

Swanson: Right.

Schwartz: And is there a way to show us how what you're proposing, this new idea of shrinking the circle, how that does, or does not, or to what extent it preserves those—you know, those geometric relationships, that—the symmetry there? Well, it's not symmetry, but.

Swanson: I'm going to have to quiz you a little bit [ph].

Schwartz: Well, because all I see here is just the circle. I don't see it in the context of the three parts.

Swanson: Oh, well, let me do this, then.

M: It's on the plan backwards [ph].

Swanson: Let me back up.

M: There you go.

Swanson: That may help. I added this last slide. This looks at it in the large, large perspective, or if that's too large, I'll go back to my very first slide, which was—I'm sorry—this one. That's—that may be the one you're describing.

Schwartz: So the distance from the center of the square to the center of the circle will remain the same?

Swanson: Yeah.

F: Yeah.

Swanson: Yeah, this does not shift it. And I will tell you, this is a compromise that the Burns—the companies [ph] are making, because it makes for a rather small balcony. And this—you know, we worked [ph]—they—we, the collective we, worked on the steps going down. It's complicated to get down, but I think that that was the compromise that they felt comfortable with.

And that's really the essence, what we're here—why we're here is we wanted—we heard discussions in the last meeting about encroaching into the east garden and we couldn't say anything. So I think the client—our client and Erik—our client asked Erik and myself and Tom French [ph], the architect, to look—take another look at it, and this is the way we came to this proposal, so.

Murphy: Thanks.

Mehlman: Can I make just one statement [ph]?

Murphy: One closing statement, please.

Mehlman: Yeah, it's only to say that either of the options that David has developed would be acceptable to us. That is, shrinking the circle by—I guess it's two feet? A foot on either side, so two feet in diameter, I guess, or actually shrinking the balcony to

five feet, which is acceptable from an architectural standpoint and not changing the circle at all. Either of those would be acceptable to us.

Murphy: Thank you.

Mehlman: Just grabbing my stuff.

Murphy: Yeah. Well, I think we need a motion to close the public hearing if commission—

White: I'm not—wait, wait, wait, wait—

Murphy: Sorry.

White: I've got another question or two for David.

[INAUDIBLE]

M: Okay.

White: Okay. Either of the options that you just proposed would leave the circle essentially where it is.

Swanson: Yes.

White: Now, given that, I have heard comments about the envelope or the container of the central part of the garden, and will admit that I'm somewhat mystified by them. The wall on the east side of the circle is not historic. It's not in any of the earlier drawings, and it's not colored as original in that one site plan.

Swanson: Right.

White: Okay, and there's absolutely nothing on the north side of the circle that couldn't be—could be construed as the edge of a container. Or—

Swanson: On the north side? I beg to differ on that.

White: Where is it?

Swanson: The hollies.

M: Yeah.

Swanson: The hollies are—[OVERLAPPING]

White: Okay, okay. No, no, no, no, no. That's fine. That's fine. But the—by the scale on your site plan, the circle, regardless of what you do to it, is going to remain about 15 feet from the hollies.

Swanson: Right, well, we—

White: So none of the options that you're describing right now—

Swanson: Right.

White: —are going to have anything to do with any punitive container or envelope around that circle. Correct?

Swanson: Yeah.

White: So, if someone says, "I'm going to vote against this proposal because of what it's doing to such a container or envelope," and we deny the—a certificate of appropriateness for—with some of the votes based on a premise that I think no longer has any basis of fact, then were our decision to be appealed, how do you think we would fare [ph]—no, I'm not going to ask you your opinion. That's not fair. [LAUGHTER]

M: Please don't.

[INAUDIBLE]

White: My own opinion is that we would not fare well at the hands of the Board of Adjustment, that they would think that there were votes against that COA approve—application that were simply not rooted in reality.

M: Okay.

Murphy: This is—

F: [INDISCERNIBLE]

Murphy: —this is more speculation that I don't want the applicant to answer. Please. I do have a question, though.

M: Okay, _____.

Murphy: Jim, did you have another question?

White: No. [LAUGHTER]

Murphy: _____. I just I want to clarify because I do not want to close the public hearing with confusion on this side of the table, and you have to sit there and listen to us—

Swanson: Got it.

Murphy: —be confused. There are three proposals for this circular garden before us.

Swanson: Okay.

Murphy: One is to move the circle four feet, which was in the previous application.

Swanson: That's correct.

Murphy: The second is to do nothing with it, which would require architecturally a five-foot-deep balcony. Is that correct?

Swanson: I'll qualify that. To build the additions—just to be clear about that part, there's going to be some encroachment on the circle no matter what. You just can't build an addition.

Murphy: Okay, so we have two choices then.

Swanson: [OVERLAPPING] but essentially, you rebuild it [ph].

Murphy: There's a four-foot shift or there's a one-foot reduction in the circle?

Swanson: Yeah, right.

Murphy: Is that correct?

Swanson: Right. I just want to make sure I'm clear about the construction.

M: Was there not also an option where there was no change to it? Because that's what I thought I heard.

F: For the _____.

M: Well, that's what—yeah.

Mehlman: I just want—I'm trying to help clarify. I believe what David is saying that no matter—what David is saying that no matter which option leaving the circle inherently in the same place with the same center point—during construction, there will be some damage to the circle, and then it will be put back to where it's planned. That's what he's saying. So yes, that it would be option one, original—or most recent application—

Murphy: Four-foot shift—

Mehlman: —four feet. Option two, maintain the circle as it is, approximately five-foot balcony, or shrink it by a foot—David, by a foot—and a six-foot balcony.

Murphy: Thank you. I just want to make sure if we have a—

Mehlman: Sorry about all—

[OVERLAPPING—INDISCERNIBLE]

M: —two-foot diameter.

Mehlman: It reduces the circle in that last option by two feet in diameter, one foot in radius.

I'm sorry [ph].

Murphy: Okay. I just want to make sure our motion, whatever it is, accurately captures one of the options.

Mehlman: Thank you for your patience.

Murphy: Thank you. Any other comments before we close the public hearing?

Kyser: No, I make a motion we close the public hearing.

Murphy: Do we have a second?

White: Second.

Locke: Maybe we should ask if anyone else wants to say anything just to be polite?

Would anyone like to say anything?

Murphy: We can ask. Do we have any other further comments from the applicant? Thank you for the information you presented tonight.

Kyser: I made a motion.

Murphy: All in favor?

[OVERLAPPING—INDISCERNIBLE]

Murphy: Jim second. All right, all in favor?

M/F: Aye.

Murphy: Unanimous, all in favor of closing the public hearing. All right, any further discussion by commissioners?

Schwartz: Can we have a two-minute pause while I just run and get a swig of water?

Murphy: Sure. Let's have a two-minute recess.

[RECESS]

[AUDIO BREAK]

[TECHNICAL COMMENTS]

M: I would like to call back the meeting to order. We've closed the public hearing so we're in commissioner comments. Would like to hear some comments or a motion.

Kyser: I'm prepared to make a motion for approval of the east wing of the addition. So if anybody else—am I stopping [ph] _____?

Murphy: Would you like to clarify which—the east addition. Would that—

Kyser: It's the addition that is facing the—

Smith: Gardens.

Kyser: —the gardens, the 1991 gardens. And—

Murphy: And would that motion include the circular garden?

Kyser: Yes, I—and I guess that is—

Murphy: And which option?

Kyser: Is that—adding the two feet, the—shrinking one foot on each side. Is that option two or three? I can't remember what—

Murphy: I don't know. I think we could just describe it as—

Kyser: Three.

Murphy: Okay, option three.

Kyser: Okay, all right, so—and I will base my motion on the following. I will use—let's see. Hold on just a second.

M: Page 55, maybe? Additions?

Ferrell: Just for the exercise this evening, if you'd cite—

Kyser: I will.

Ferrell: —the A-through-J criteria you think is relevant, and then the—

Kyser: And then the other, okay.

Ferrell: —guideline [OVERLAPPING] on that.

Kyser: Now I—that’s where I was going.

Ferrell: Thank you.

Kyser: And I would like to site in the A-through-J LUMO requirements—okay, let’s see.
J for architectural scale, and G for general form and proportions of buildings and structures.

Schwartz: Before we get too long in articulating the motion—

Kyser: Let me finish and then you can do a friendly amendment. How about that?

Schwartz: Okay.

Kyser: I’ll make a stab at this _____.

M: Thank you.

Smith: Appurtenant [ph].

Kyser: Appurtenant, H.

Smith: Appurtenant—[OVERLAPPING]

Kyser: Yeah, I can use that, the fixtures and other features such as lighting, but that’s among many things. Also, for the guidelines, it—I would use number—page 55, I would use number five. Although this is not a historic structure, I think that it says—number five says, “Design an addition and its features so they are compatible in scale, materials, proportions, and details with the historic building,” and I would substitute that wording to say “existing building.” As, “select exterior surface materials that are compatible with those of the historic building in terms of module composition, texture, pattern, color, and detail.”

And seven, “Maintain and protect significant features from damage during or as a consequence of related site work or construction.” And—you could also use number one, “Introduce additions and locations that are not visible from the street,” although I don’t think that’s pertinent.

M: So—

Kyser: That’s not part of my argument. I retract number one.

Ferrell: There you go. And if you will, just back up to item seven. It says, “Maintain and protect significant site features.” Can you just cite briefly the facts that you believe support the fact that this application maintains and protects significant site features? What have they—what does this application—[OVERLAPPING]

Kyser: Well, I think they’ve given the significant substantial information about the damage done to the existing landscape, the—and have come up with a good solution that—that’s a compromise and it’s probably an improvement on the original plan. So I think there’s been particular—a lot of discussion about preserving walls and existing features. So, I think that’s sufficient evidence—

Ferrell: Those are the facts that we were looking for.

Kyser: —that has been produced to substantiate this. So—and that’s my motion. I would—if anybody would like to add to that as a friendly amendment?

Murphy: Further discussion?

Schwartz: Well, what I would have preferred to do, and which we could do, instead of going right to a motion was to go—what we—you know, we have this expert testimony and I would have liked to go through the five or six points that Catharine Burns made, and discuss them amongst ourselves the ways in which the plan that we

have before us including these [ph] new options presented do or do not address those concerns. And I think that in some cases, they certainly do address those concerns, but it seems a little ad hoc to just—without systematically going through those concerns that have been presented to us.

But if everybody else feels ready to move ahead, I will—I guess that's what we'll do, but I would like to be—[OVERLAPPING]

Smith: I think we—we've been instructed many times by our attorney that some of those concerns are—

Murphy: But we've heard those—

Smith: They've been dealt with.

Murphy: I know personally I have read that statement at least twice, and I heard the testimony regarding that statement, so I don't need further discussion about any of the items on there.

Smith: Yeah, I—

Murphy: And I don't know if any other commissioners do.

M: Uh-uh.

F: Uh-uh.

Murphy: So do we have a second to the resolution?

White: Second.

Murphy: Okay.

Schwartz: So this is the option with the circle remaining where it is?

Murphy: Reduced by two feet.

Smith: Two feet.

Schwartz: I thought it was one foot.

Kyser: On each side. So it's a total of—

Murphy: Cumulatively two feet.

Kyser: Yeah, two feet.

Murphy: Right?

Kyser: And that's the landscape designer's preferred—

Schwartz: The whole circle is brought in, right?

[OVERLAPPING—INDISCERNIBLE]

Murphy: A foot on each side.

F: Okay.

Schwartz: A circle doesn't have a side. [LAUGHTER]

Murphy: The diameter is reduced by two feet.

[OVERLAPPING—INDISCERNIBLE]

Kyser: It's a reduction of the—in the size of the 1991 design.

Locke: So if this is like—[OVERLAPPING]

Schwartz: Along with the east edition.

Locke: Yeah, this is the discussion time, right? So it's been seconded, discussion [ph].

F: Yeah.

Locke: Yeah, so I still have reservations about the stairwell piercing through into this middle partite [ph]. I think that it changes the elevation of the partite. If you look at it so if—if this partite has a specific design intent behind it, that both Coker did and also both the Peacocks did in this '91 renovation. And so as the landscape architect so finely put it [ph], he said they took very good reverence in that '91

addition to set—to keep the main—to keep the vertical building out of the middle partite.

So I just want to let you all know that what's happening is, is they are adding stairs that are going to be going over the wall that is containing this. And this is what I'm saying. It's containing it and so what they're doing is they're going in and piercing the circle, which has always been kind of just standing on its own. So what I'm saying is this house, if you want to, like, for lack of better words, it's going out and reaching into this middle section. So that is the reservations that I have with this plan.

So we can argue if it's appurtenant feature under LUMO H. We can argue if it's I or J, if those are the kind of things that we want to do. But those are the reservations that I have. But once again, there's a motion on the floor so that's my discussion and my concerns. And if we want to—if it gets approved, because it can be approved without me voting yes or no, correct?

Ferrell: Well, everybody has to vote one way or the other.

Kyser: Everybody has to vote [ph].

Locke: So it needs to be unanimous.

M: No—[OVERLAPPING]

M: It needs five.

[OVERLAPPING—INDISCERNIBLE]

Ferrell: And let me just remind you again. Your job this evening is to determine whether or not the proposal is not incongruous with the special character of the district.

M: Right.

Ferrell: Okay, that's your job. It's an incongruity standard derived from the district as a whole. It's a contextual standard, right? So to the extent that you're voting in favor of the motion, that is, to find that the proposed addition in this area of the project is not incongruous with the special character of the district for the reasons cited. Okay? I just want to bring you back to the larger picture of what you're doing this evening.

F: Okay, well—

Murphy: So if I could just comment. The applicant brought forward the landscape architect that developed the character of this particular site that we are talking about tonight. The applicant's landscape architect, in my opinion, testified—I don't know whether it's expert testimony—but I think three times now before this commission that the intent is to preserve the character and design of these gardens. We even—they even presented three different options. And I don't see that this stair is—I don't see that it's piercing the circle. It is abutting the circle, but it's not piercing the circle. It is not at all disrupting the integrity of that circular garden there. It is shrinking slightly but it is not piercing the integrity of the garden, so I guess that would be my comment.

Locke: Yeah, I'm just saying it's adding a vertical element like into the middle partite that was not been there [ph]. So that's what I'm saying. So it's—even if it just touches it, there are stairs that are leading out of it into a deck. So that is—that's my—

White: But until 1991, there was nothing there, either vertical or horizontal. The entire house and everything moving to the east from it are contemporary additions. To

the extent that the historic nature of this site is affected at all, it is affected then by considerations of the surroundings of the circle, the circle itself being non-historic. And whether or not there is a new vertical feature I think is irrelevant to us because it is merely a newer or perhaps the newest vertical feature, adding to whatever was created when the house was built.

Kyser: Okay, may I ask a question of the attorney, please? In my opinion, this is a new house and its lot [ph]—much about it from 1991 does not reflect the historic character of the district. It's a new contemporary house. It blends in well enough to—so I—you've added an element there that is—

Ferrell: Yeah, so for instance, you are going through the guidelines and I thought, you know, your keying on specific language in the guidelines was—I think is very important. So for instance, for the guideline for addition, on item two, it says, “Minimize damage to the historic building.” Well, that's not going to apply in this case. Why?

Kyser: It's not a historic building.

Ferrell: Because we don't have a historic building, right?

M: [INDISCERNIBLE]

Kyser: Yeah, exactly.

Ferrell: So that's—those are the kind of things that you are pointing out, and I think that's to your point, yeah. I mean, if—you can't rely on Guideline 2, in this case, talking about a 1991 home, right, because it's not a historic building. So, you know, those are the type of consider—like for instance, you know, and you even

mentioned this in Guideline 4, “Design an addition so it’s compatible with the historic building.” Well, there is no—

Kyser: Well—

Schwartz: But by the same token, we can’t deny an application because of something that doesn’t exist in the guidelines.

Kyser: That’s true. No, I—you—

M: So—

Kyser: I could argue the—how this—the new house does blend in if you go point-by-point by shapes of roofs, fenestration, and so forth. There are enough elements that do refer to the historic character to—

Ferrell: What I’m saying is that you have to look at the historic district. That’s why I sort of talked about the macro picture, right? Your job is to decide whether or not the project is not incongruous with the special character of the district. You look at A through J and you apply the guidelines that apply. Like, you reference the guidelines that apply.

F: Yeah.

Ferrell: And the guidelines that deal with historic structures, right? Specifically when it says the word “historic,” those aren’t going to apply here, right?

F: Yeah.

Ferrell: Why not? Because we don’t have a historic—[OVERLAPPING]

Kyser: That’s what I was just going to say—[OVERLAPPING]

Ferrell: So I think we’re on the same page [ph]. I think we’re saying the same thing.

Kyser: Yeah. So may I add to—one other number of the—to the guidelines to my motion?

Murphy: Yes.

Kyser: Because we—we’ve—

Ferrell: Well, you have a motion if you wanted to add something, and technically, you’d need a second again and—

Kyser: Can you second this again? Because—

Ferrell: So say—

Kyser: —I would like to add [ph] as a positive—[OVERLAPPING]

Murphy: Let’s see what you’re going to add.

Kyser: It’s number three. It’s on page 55. It’s, “Limit the size and scale of an addition to minimize its visual impact. It’s not appropriate to introduce an addition if it will visually overpower”—that is not a subjective word, it’s a word that it’s in the guidelines—“the building or site, or substantially alter the proportion of constructed area to the unbuilt area.” And I think that—an unbuilt area on the site—and I think they’ve met that standard.

Ferrell: So you think the evidence shows they’re not substantially altering the unbuilt area?

Kyser: I think they’ve tried very hard not to negatively, in this wing of this building.

Ferrell: Okay.

Kyser: So that’s—

White: I’ll accept that.

Murphy: We have a cite [ph]—

Kyser: Okay.

Murphy: —from Commissioner White. Any further discussion?

Schwartz: Yes. So I think that the special character of the district, as it applies to this site and what we are considering, is, in large part, the geometric relationship among these three elements. And that, although there wasn't a house there before 1991, the placement of the house, as I understand it, was deliberately sited in such a way as to preserve that geometric relationship, and to retain that aspect of Coker's original garden. And if I understand what Jamie has been telling us is that what they're proposing to do does compromise that—you know, that aspect. And so—and that will be, you know, a loss. Maybe a loss that we're willing to incur. But I think—am I stating correctly what you're talking about?

Locke: Yeah, you're—you nailed it.

Kyser: A loss of what?

Locke: Yeah, so once again, this is a pattern [ph] that is based off a historic garden by Mr. Coker. It was redone, though the house was put in the far left one specifically to keep the three intact. It was—if you want to say it's a rehabilitation or renovation of this, like, formatting of the garden, that is still significant, in my opinion, to the character of the district to maintain. So when you're going to introduce these stairs that are going from the porch down to the circle, you're including a vertical and horizontal stairwells in a place where there was never—where there wasn't a structure.

So you're basically, like, going over and spilling over into a place that has been vacant. So you're adding—so it was this void that was very[ph]—in that

ratio, and these three partites were very—are very significant to the character area. So what I'm saying is, is by eliminating that, by going into that, it is causing irreparable damage to our district.

M: Forgive me, but there are steps down to that circle today.

M: Yeah.

Locke: Yes, but the thing is, is how they actually have it. So it's a wall right now, okay? The stairs go and just go right up to it. They don't actually go over the wall. What they're planning to do is put a porch all the way up against it and have stairs going over this area. So what you're having is you're having two stairwells that are over the historic container, going into the middle, and then abutting the circle. That is what I understand it to be so, that is what I'm saying, is I'm saying is that these ratios, these geometric patterns are—this is an important feature and that's what I will argue in this case, so.

Murphy: What I'm having trouble understanding is the—it'll just be—it's repetitive at this point. The licensed landscape architect that designed the gardens in 1991 testified before us that he designed those gardens based upon [ph] historical features and that there was a small garden there that was about eight feet, I think is what he testified. It was increased by him, when he designed it in the '90s, but to still be respectful of that existing proportionality and symmetry. And he testified that—we heard what he testified. So I'm just not sure. I'm at a loss, frankly. So I—unless there are any other comments, I think we go for a vote.

Commissioner Kyser's motion that was seconded by Jim. Unless anybody has any further comment?

Schwartz: Well, I'm going to vote for it because I think that if we don't get five to move forward, then I guess the original plan, which, you know, encroaches even more, or may shift the circle. I think that would be an even worse outcome from the point of view of the, you know, aspects of the site that I'm—that I see worthy of protection. And although what they're proposing to build—I totally, you know, understand what Jamie is saying—at least it creates the possibility that, in the future, someone who wants to more truly restore what was there will have—I think, you know, they could take down that deck. And so it doesn't harm the geometry or those geometric relationships as much as it could be harmed if we don't pass this particular option.

So it's not my ideal but I think it's—it does less damage to the—those, you know, geometric relationships, and leaves open the possibility in the future of a restoration then if we don't pass it. But I'd like to hear Jamie's response to that.

Locke: Yeah, I mean, that's definitely fair. It seems like the votes are not quite seeing this the same way I am, and that's fine. That's why we vote. And I do agree that I think that this option is probably going to be the least damaging compared to actually rooting up the whole circle and moving it over just for future preservation purposes. Yeah, but once again, I just can't stress enough by introducing verticality [ph] and horizontally into a place where it wasn't, I think that it's damaging our historic districts.

White: But before 1991, it wasn't either.

Murphy: All right, let's take a vote rather than going back and forth any further.

F: Okay.

Murphy: So we have Commissioner Kyser's motion. It's been seconded by Commissioner White. The motion is to approve the east elevate—east addition as submitted, as well as the—

M: Not as submitted.

Murphy: Yeah, the addition. The addition is approved as submitted, but the circle is reduced by two feet, which was option three.

M: So how—

Murphy: And she—and Commissioner Kyser cited all the pertinent areas.

Schwartz: So we don't have any formal application with this particular option.

[OVERLAPPING—INDISCERNIBLE]

Murphy: It's submitted into evidence so it will be.

Kyser: Yeah, it's—

Ferrell: I believe David Swanson presented you, right, the revised option?

Murphy: That is correct.

Ferrell: A drawing with the revised option, so _____.

Kyser: And that is his preferred revision and it's in the record, right? So we—
everybody's agreed on that.

[OVERLAPPING—INDISCERNIBLE]

Murphy: Okay, all those in favor of Commissioner Kyser's motion?

M/F: Aye.

Murphy: Five yeas [ph].

M: One nay.

Murphy: Nay. One nay, Commissioner Locke. It passes.

Okay, there is one remaining portion of this application that still remains outstanding. It is the garage portion and I think we've heard some—well, some clarification on that tonight. We've seen a clarification from the applicant regarding—he provided an elevation looking down the driveway, an image of the garage. So I guess if anybody would like to make a motion or have further discussion.

Schwartz: Further discussion, please.

Murphy: [INDISCERNIBLE]

Schwartz: Last—at our last meeting, we addressed this issue with the applicant for 408 and—or 410 or 412 North Street, who was also requesting a two-story garage. And I said at that time, that my understanding of what our task is, is to preserve the character of the district as it existed or was known to exist at the time the district was established in 1976, which is not necessarily what it looks like in all parts today. And so, to me, and you know—and you all have been at this longer than I have, so I'm—you know, I welcome your corrections or comments.

But so to that extent, the fact that some two-story garages have been built since 1976 is not really relevant to the decision that we have to make. Because if we are—if we're judging congruity based upon things that, say, slip through or that were allowed for other reasons, then we're not really preserving the historic character; we're preserving something that in itself is a moving target because it keeps getting changed. So that's my sense of what we're supposed to be doing.

But do you have a different understanding of how we're supposed to be making this decision?

Kyser: No, you're correct on that.

Ferrell: Let me just refer you to—I think that's a—it's a fair question and a fair point to take up. Let me read to you what the Land Use Management Ordinance says about your responsibilities. It may inform your—a response to your question. So this is from Section 8.4.5 and its general responsibilities of the commission. “The commission shall seek to promote, enhance, and preserve the character of the Chapel Hill Historic District, provided the commission shall not require the reconstruction or restoration of individual or original buildings, structures, or portions thereof. In considering new construction, the commission shall encourage design which is harmonious with the character of the district, but shall not discourage either contemporary or traditional design.”

Schwartz: Say that last part again, please?

Ferrell: “But shall not discourage either contemporary or traditional design.” So I think if it's—if your question is, are we supposed to make decisions to create a district that looks like it did when the district was created, I think your responsibilities in 8.4.5 would say “no.” That's—you're not—because if—that would be discouraging contemporary design, right, if you were to do that. So that's what the Land Use Management Ordinance says about your responsibilities in that context.

Smith: Well, I think there are other considerations in judgments made, like on the two-story garage issue, which is the footprint. The—you disturb the ratio of built to unbuilt on a lot to consider height, to—you know, and—

Ferrell: Oh, you definitely apply—the land use. That doesn't take—that doesn't diminish—

Smith: Yeah.

Ferrell: —in my mind, the importance of the application of the criteria in A through J. And in this case, you have a relatively brief section in the guidelines specifically on garages and accessory structures.

M: Yeah.

Schwartz: Guideline 7 says—

M: To refer to.

Schwartz: —and I quote, “Maintain the traditional height, proportion, and orientation of garages and accessory structures in the district.” So to the extent that the traditional height of garages in the district were one story, that seems to, you know, preclude two-story garages unless there are some extenuating circumstances.

Kyser: And when you get three bays and two stories, I mean, you've really built basically another house in terms of the—

M: So—

Smith: But it's only two-bay now.

Kyser: I know, I know.

M: So a question for—

Kyser: I'm looking at these examples, though. Some of—[OVERLAPPING]

- Murphy: What counsel just read was from the Land Use Management Ordinance that said, “New construction must be harmonious with the character of the district.” That’s the current character of the district, correct? I mean, that was your point, right?
- Kyser: No, the historic area.
- Ferrell: Yeah. Well, but my point is, you have heard, and in the record, there’s evidence of two-bay, two-story garages. You are presented with six of them tonight. I believe if this commission feels like that this garage is incongruous with the special character of the district, applying A through J and its guidelines, it needs to also address that contrary evidence, those other structures in the district that are of similar size to the one proposed and explain how this proposal is incongruous with the other evidence presented, the contrary evidence presented.
- Kyser: Now, when you say “contrary,” and—you’re not talking about these examples?
- Ferrell: Yeah.
- M: Yes.
- Ferrell: What I’m saying is there are clearly—
- Kyser: These?
- Ferrell: —two—I mean, the evidence is, right, that there are at least six two-story, two-bay garages in the district.
- Kyser: Well, some of these look like—this one in—on Glenburnie, which I think is— they built—
- Ferrell: I’m not saying that—
- Kyser: There’s three bays [ph].

Ferrell: —that evidence, that it's relevant or it should direct your decision. What I'm saying is just like you—it sounds like you have reasons why those—that those—that other evidence isn't persuasive to you. I think it's just important for the commission to treat that, that evidence in its decision.

Kyser: Well, I don't feel that the evidence of two and three bays and two stories—or garages [ph] is what is—contributes in a positive way to—the maintenance of the historic character of this district, which is Franklin-Rosemary. And some of these, if you look at the aerial view, are so large they—they're like another house added on. It's expansive. But—and these have all been built probably in the last 20 years. And so we don't know individually, you know, what happened that they slipped into the vernacular, but they have, and I don't know if it sets—are we bound to say that this is the precedent and then—

Ferrell: You know, I think that's a really interesting question, and I don't know the answer to that. What I'll say is that there are—I have heard the commission, in a number of applications, concerned with the size of garages, right? I mean, that's a common—

Kyser: Yeah.

Ferrell: That's a common issue this commission is dealing with.

Kyser: Yes.

Ferrell: It is—in evaluating a two-story garage, I believe it's important to recognize that, for one reason or another, there are a number of these similarly sized structures existing, right, in the district. And to the extent that the commission believes that a two-story garage is incongruous with the special character of the district, even

despite the fact that there are other ones located, I think it's important to go through your analysis about A—which criteria in A through J apply, what guidelines you think guide your decision, and then distinguish, to the extent that you can, these other garages that were submitted into evidence, and say why you think that despite these, this proposal incongruous with the special character of the district.

Kyser: I would like to add to my comments that it is my educated judgment—not my personal whimsical opinion—that in many cases, these garages have slipped into what's now supposedly acceptable as in height, in scale, and so forth, and they have—and I can tell you one that's next door to me that has seriously damaged the property and its historic character just by the virtue of two-bay, two-story garage entering—being put in that property. It's—and so I think it's legitimate to analyze this.

Ferrell: I think—no doubt about it, and the fact you have to. I mean, that's the exercise that you find yourself in, is you're going to have to analyze this proposal in light of the criteria, and the Land Use Management Ordinance, and the design guidelines that have formed those criteria specifically about garages.

And one further step of the analysis, I think, is you're going to need to address these other garages that have been provided to you in evidence as some argument for congruity. Now, I—you know—I'll just stop.

Murphy: So, if I could, maybe. Before we address the other garages, maybe we could just go one-by-one regarding this application and state whether we—if we have issues with the garage, whether it's the existence of the garage, the size of the garage,

the height of the garage, the location of the garage, whatever it is. Let's just go one-by-one and state whether we have any issues with it. Let's get through that for this application of this garage, and then we can address—

F: Okay.

Murphy: —any other garages that were submitted as evidence.

Schwartz: Okay. I'll start. I feel that a two-story garage is not congruent with the character of the district that we're supposed to be trying to conserve.

Kyser: Okay. It's your turn

Smith: I—due to the elevation change between the neighboring properties and this property, I'm concerned about the height of this building in relation to the average height of other structures there, and the impact that will have on the neighboring properties. I also wonder whether—because—and I know this is a zoning question, and I know we don't—can't say something about zoning, but, if this was a—if someone asked to build a—if this was just a one-story apartment, could that be built in a R-1? It could be. Okay. Thank you for that. So, mostly I'm—

Kyser: I thought R-1—excuse me, you're nodding—R-1 is the most expansive. It's generous size lots, correct?

M: Yeah, the largest—the minimum density.

Kyser: Yeah, minimum density.

M: Yeah. I don't—

Kyser: But I don't think you can—it's like Hillsborough Street, it's R-2 or R-3. You can have duplexes.

Ferrell: I don't—[OVERLAPPING]

Kyser: So this is a very different standard.

Ferrell: —sidetracked by a zoning discussion.

Kyser: Yeah.

Ferrell: I mean, the congruity standard stands on its own—

Kyser: That's true. You're absolutely right.

Ferrell: —independent of—

Kyser: Yeah.

Ferrell: —the historic district is an overlay zoning district.

Kyser: It is.

Ferrell: Is the way it works. And so—

Smith: Right

Kyser: Yeah.

Ferrell: —the applicant still must comply with the other components of the zoning ordinance in doing its work—you know, setbacks and things like heights and—that exist in the underlying, actually—yeah, the underlying zoning, I guess, is the way to put it. So, this overlay, this historic district, this certificate of appropriateness approval is an overlay on the—all the other requirements that still apply in the underlying district.

Kyser: Absolutely.

Smith: I guess—so that has to do with this being a single-family—

Kyser: We—you're not talking about zoning [ph].

Smith: It doesn't. Okay.

Kyser: Yeah.

Smith: Well, besides the height, I would say the scale, the size, the architectural scale, J. I—because—well, we haven't gone through each one of these examples, but my understanding is, is that majority of garages, if there are garages, are single-bay garages in this district.

Kyser: I appreciate that they moved the garage forward on the lot, but it concerns me that there's already a garage in this—included with this property, whether or not it meets the standard to accommodate giant SUVs or whatever the change in scale in these last decades have been with the size of cars, but it's a two-bay garage.

But more importantly, I do believe that the historic character of this district is preserved better by single- or double-bay garages, which are very traditional, but one-story in height. And I can tell you which LUMO details I can quote to support that opinion [ph]—that educated evaluation. And I say that because everybody that's on this commission is here because of special training, or interest, or education that makes us different from just volunteers on other commissions, and that's what makes it a quasi-legal commission.

So, it's just not a fly-by-night opinion, it's something we know how to evaluate. So, I would cite page 21, number seven, and all that language as supporting [ph] evidence to recommend a single-story garage. And number seven, and I don't need—do you want me read it now, or—

Murphy: No, let's go through the details in a—

Kyser: In a motion.

M: If there's a motion.

M: When there's a motion [ph].

Kyser: Okay. All right. I'll move on then. You—

Murphy: Jim, let's hear from you and skip me [ph].

White: I guess in a perfect world it would be a one-story garage. I'm not sure that would kill the proposal for me. If the applicant really wanted to be more historically authentic, they would go to the zoning commission and ask for a variance so they could build a garage right on the property line, because historically, that's where freestanding garages went. I suspect that's not going to happen.

And so, I guess I'm still making up my mind about a two-story, two-bay garage.

Murphy: Mr. Locke?

Locke: I have to agree with Commissioner Kyser. I'm also concerned about the structural integrity of the wall they're going to be demolishing—the construction of it [ph].

Murphy: Well, I don't have a—I don't have an issue with the two-bay garage, per se. I think that's fairly consistent in the historic district. There were one- and two-bay garages. You know, to me, we've talked a lot about, you know, that the house is not historic, right? It's in a historic neighborhood, but you know, trying to apply historic standards to a non-historic house is difficult. You know, so I was reading through garages and exterior structures considerations, and it says, "The massing and overall size of new garages or accessory structures should never compete with or diminish the prominence of the principle structure."

So, that's—in my opinion, this garage is not competing with the principle structure, which is the non-historic house. Then if I read further it says, "Their

form, height, scale, location, orientation should be consistent with that of historic garages and accessory structures in the district.” Well—

M: What is he reading from [ph]?

Murphy: Well, you know, that’s difficult. That’s a difficult standard to apply when you’re applying a historic district standard [ph] to a non-historic district property. And so, this is where I question, you know, where do we draw the line for what we apply and what we don’t apply? I don’t per se have an issue with the two-story garage, you know, so I—that’s my honest opinion on it.

Kyser: Well, here’s what—how I think these things unfold when you have—there was a historic commission in place in 1991, and I wasn’t here to—I didn’t—I don’t know anything about what the procedure was to get this house built in the first place. But there must have been there—and there clearly are, enough characteristics of the style of the building that refer to—even though they do not absolutely, literally mimic—the architectural style of old houses, which there are very few, really, and I, you know, grew up in one that was built in 1814 on Franklin Street.

But, you know, it’s not required in historic districts that you mimic. In fact, in some cases, discourage that [ph]; you just make a fake version of something, if there are enough elements of it. But if there—but if one of the prominent issues in a garage is the scale—I mean, the scale becomes the negative, the deterrent from using, because that’s not the traditional.

So, you get what I’m saying? The roof, the shape of the roof, the fenestration, the things that on the main house, you know, have a conversation

with the past. In fact, the architect, in fact, said he based his design on—told me directly, so it's not hearsay—that he was inspired by Palladio's Villa Rotunda, which it's—you have to squint to see what that [ph]—the similarity, but that's not Chapel Hill history, for sure. Palladio.

Murphy: So, I think we have sort of a broad spectrum of everybody's opinion. I guess my question for the commission is, are we going to try and set a precedent tonight that one story—that two-story garages are not acceptable to this commission. Because, essentially, that's sort of what I hear being said here, and counsel has already informed us that we have six examples before us, that we requested of the applicant, provide evidence of multi-story garages in the district that we still have to speak to.

M: Yeah, if—

Kyser: So, do you want us to go one-by-one through these?

Murphy: I am not asking anyone to do that. I'm stating what the attorney has—our counsel has stated to us before and stated on a previous application, that we have to address the information as submitted if it is contrary to what we are talking about approving. I don't know whether I stated that too clearly, but I hope I did.

Schwartz: I mean, one could argue that those were wrongly approved.

Kyser: Yeah.

Locke: Yeah. I would—so, I would say one thing. We just went over the idea of a garden. What is historic? What is accessible? And it was found that the garden may not have had value [ph] because it was featured [ph]. But number seven of our guidelines, when we are also allowed to talk about scale, in the LUMO, the

last sentence says, “Maintain the traditional height, proportion, and orientation of garages and accessory structures in the district.” So, if these are not historic, if they’re not traditional heights, then should we even take them into consideration?

Should we take—if two-story garages are a phenomenon of the new, and they have been wrongly approved, according to our—what we’re tasked to do, then these, we can [ph] debate if they’re historic and if this is traditional. If this is not traditional, then we have the right to throw them out.

Schwartz: The right? I would say the obligation.

Murphy: Does anybody—would anybody like to put forward a motion? I don’t think we’re solving anything by continuing the discussion. Let’s get a motion on the floor about the garage.

Schwartz: I’ll make a motion that the—help me out with the wording—that the proposed garage addition is not congruent with the character of the district based upon Guideline 7, page 21, which advises “to maintain the traditional height, proportion and orientation of garages and accessory structures of the district,” and that the commission understands or interprets that guideline to mean the height and proportion and orientation of garages in the district as they existed or were known to exist at the time that the district was established.

Ferrell: Can you—would you mind citing to the relevant Land Use Management criteria that gets you to the guideline that you just cited?

[INAUDIBLE]

F: That’s E, G and J [ph].

Schwartz: J.

Ferrell: Architectural scale.

F: [INDISCERNIBLE]

Schwartz: Yes.

Ferrell: Are there any others?

Kyser: You might look at G—[OVERLAPPING]

Schwartz: G?

Kyser: G.

Schwartz: General form and proportion of buildings and structures.

Ferrell: Okay. So, you're saying that G is relevant because we're talking about the size, right, the general form of—and proportions of the building and structures.

Schwartz: Yes.

Ferrell: And that leads you to consider Guideline 7?

F: [INDISCERNIBLE]

Schwartz: Yes, of garages and accessory structures.

Ferrell: And I'm just going to read that. "Introduce compatible new garages and accessory structures as needed in ways that don't compromise the historic character of the site or district." Right?

Schwartz: Yes.

Ferrell: And so, do you have a—is your motion based on that first sentence in any way?

Schwartz: Based on that entire section, with emphasis on the final sentence, "Maintain the traditional height, portion, and orientation of garages and accessory structures in the district."

Ferrell: Okay. And specifically, you find that the two-story—

- Schwartz: That the traditional height of accessory garages in the district is one-story.
- Ferrell: And this is a two-story garage.
- Schwartz: And what is being proposed is a two story—
- M: Right.
- Schwartz: —accessory garage structure.
- Kyser: Is it necessary to go through these, to comment on these examples that we've been shown? Is that—
- Ferrell: I think we'll need to treat that. I mean, his motion is based on the Land Use Management criteria he cited and the Guideline 7, which really—what I understood that to mean is the height, you know, focused in on the fact that it's a two-story garage and it doesn't maintain the traditional height as per the narrative in the guidelines. Yeah. And how do you distinguish or not find persuasive the evidence about existing two-story garages in the district?
- Schwartz: I find that they were wrongly approved because they failed to adhere to these guidelines that we've just cited.
- Ferrell: So, I do agree the chair made a good point. I mean, essentially, what we're doing is we're setting up the question, right? We're setting up the question of whether or not two-story garages in and of themselves, right, are inconsistent with, or incongruous with the special character of the district. Right? That's—
- Murphy: Right. Essentially, if we approve a two-story garage moving forward, we're inconsistent with our application of the guidelines.
- Ferrell: Right. What I understand the motion to be is this one is inconsistent because it's two stories. That's it's got nothing [ph] to do with where it is or anything like

that, it's really the size, right? Is that fair, Mr. Schwartz? I want to make sure I understand.

Schwartz: Yes, but other concerns have been raised, and if others—

M: Sure. Okay.

Schwartz: —want to add additional criteria or arguments—[OVERLAPPING]

Ferrell: Sure. I just wanted to make sure I understood what—[OVERLAPPING]

Murphy: Do we have a second to Commissioner Schwartz's?

Kyser: I second.

Murphy: Okay. Any further discussion?

White: Yeah.

Murphy: Jim?

White: Yeah. To argue that a two-story garage is incongruous, don't we have to go through all the testimony presented to us and date the construction of each garage? When does something be—how old does something have to be to be historic? Prior to the establishment of the historic district, 19—

M: '76.

White: Seventy, 60, 50, 40?

Kyser: We're talking about character, not the buildings.

M: Built in 1990 [ph].

Ferrell: I just thought it was important to treat the—

Kyser: Yeah.

Ferrell: —the evidence that was submitted, showing that there are two-story garages. And what I understood Commissioner Schwartz to say was he believes those were just

wrongly decided, is—and that two-story garages, in and of themselves, are incongruous with the special character of the district.

Kyser: Yeah.

Ferrell: That's what I understood him to say.

Kyser: I would be happy to add a conversation about these. And I would say as a whole, these—the examples they've given, these six examples, are a good argument why two-story garages are not congruent with the historic character. Many of—several of them—this is on Glenburnie, there's a three-bay, two-story [ph] garage with dormers that's as big as some of our houses. And the one on 115 Battle Lane had—there was a single-bay, single-story garage there, because I grew up playing in that house. And so what—that's what's beginning to happen also, you tear down the historic one or—like 111 Battle Lane, which is not in this example—there already was the existing reconstructed single-bay, single-story garage that was put in in 1922, and then a double-bay, second story—two-story garage was hooked onto that old one to make an inexplicable addition to a property, a historic property.

You can see from aerial views how massive many of these garages are that are shown as examples of why this should be approved, and it seems to me it's a pretty good argument why it should not be approved.

Schwartz: And I think if we do set this precedent, it's going to make our work going forward easier, that we will set a clear signal of what we consider to be congruous and what not. Otherwise, we're going to continue to get proposals for two-story garages that we're going to, you know, have the same, you know, struggles.

Smith: Well, in order to do that, it seems to me we have to be able to have the evidence contrary to what's proposed, as you said, right, Brian?

Kyser: What [ph]?

Smith: But we cannot bring new evidence. We just have to look at the evidence that was presented.

Kyser: Are you talking about the lack of dates on these constructions, or—

Smith: Well, I was talking about what is the evidence that these are anomalies and not characteristic.

Schwartz: I don't think the applicant has claimed or would claim that those examples—

F: Are typical?

Schwartz: —are typical of the traditional height, proportion, and orientation of garages and accessory structures in the district.

Kyser: I might add, the—what is typical in this Franklin-Rosemary District is that many properties have no garage at all.

Smith: That's what I understand.

Locke: Scale, zero.

M: Yeah. And you can look at the Sanborn Map [ph].

Kyser: So typically [ph], you just leave your car in the driveway, for—in many cases.

M: [INDISCERNIBLE]

Kyser: So, anyway.

Locke: So, I'm just—I'm—this—we're getting into precedent setting, and so I would just like to be sure that if we are going to do this, that we ourselves provide ample

evidence, either through Kimberly Kyser's expertise, someone else's expertise, and it is—and possibly some other form, that's all I'm saying.

Schwartz: The Sanborn Map is a source of information [ph].

Locke: Right. But, like, we haven't really introduced the fire Sanborn Maps of the entire district to make a collective decision right here, right now to say that, "Oh, this is tradition [ph]." So, we're deducing.

Murphy: Just remember, please, our task is to make a decision based upon the guidelines and the evidence submitted to us with this application.

F: Okay.

Locke: Right. And it's up to us to define the guidelines. And one of those guidelines is what is the traditional size, scale, and X, Y, Z of a garage. So, that is not laid out for us. If it's going to be laid out, it's going to be laid out in the significance report, and I believe that we need to find something concrete in there that will support us in making this decision.

Murphy: To—I'm not clear what you're proposing. Do we postpone this meeting and go look at Sanborn Maps?

Locke: No. I'm not saying that. You have access right now to look at the significance report on your computer, so possibly we should take one second to think about this, to figure out if the significance report supports what we're about to do. So, I'm asking that we do some due diligence, which we can have some time to do. We don't need to make a decision in the next five minutes. That's all I'm trying to say.

So, we need to think about whether or not this is going to be an appropriate measure to set for future decisions.

F: Well.

Murphy: So, go ahead. Let's hear the significance report.

Locke: Yeah. I mean, I'm not going to read it all out right now. I'm looking through it. So, I just started looking through it to see if there is some evidence. Because remember, this isn't—we also—we can deny this evidence that they gave us. We can say that this is not ample evidence, that we say that they did not prove, the proof of burden was not [ph] on the applicant, that this information was sufficient. We can do that as well.

Murphy: I listened to the recordings of the meeting a couple of months ago. I don't think the applicant was necessarily trying to prove anything to us. We simple asked—someone on the commission asked the applicant the question about other examples, to provide other examples of two-story garages in the district. That's all they did. I don't think they're making any proclamation with those examples, but the public hearing's closed, so I guess we can't find that out.

F: [INDISCERNIBLE]

Schwartz: In the last meeting, when we were talking to the—talking to Ricky May, the applicant for 410 and 412, and he said, "What more information, you know, evidence do I need to provide," and I was specific. I said, "I would like to see evidence that there existed, or it is known that there did exist, two-story garages in the district at the time, or were known to have existed prior to the time that the district was established." So, I—

Ferrell: And just as you're going through and making your decision, the applicant provided what they thought was the evidence on—of congruity in relation to G and J in the narrative in their application materials.

M: Correct.

Ferrell: So, you can see from at least the narrative, how the applicant is viewing—and then they specifically referenced the garage in Item G, general form and proportion, so you can see the applicant's perspective there as to why they are asserting that—

M: Can you tell me what page that is so we can go to it [ph]?

Ferrell: Yeah, let's see, if my pages are numbered here.

M: I'm looking at 15, 16—

Ferrell: Original application—the secretary is telling me that's page 17.

Kyser: I didn't see that.

M: [INDISCERNIBLE]

Kyser: I don't have that.

Schwartz: “The proposed garage is designed as a simple structure, which defers to the main home. As such, it is a simple gabled carriage house with a front cross [ph] gable to break the flatness of the front south elevation and to provide livable space and natural light to the guest space on the second floor.” And then it simply asserts, “The forms and proportions are congruous with the district, the neighborhood, and the existing home.” Obviously, I disagree with that statement.

Murphy: Okay. We have a motion on the floor. Mr. Locke, did you find anything in those that you'd like to share with the commission?

Locke: I don't think I can deduce the entire historic character right this second, doing this [ph]. If you give me more time, then possibly, yes. But I think—

Murphy: Well, let's vote on the motion that's on the floor and then—so I don't think that we have time to wait for us to review the entire thing tonight, so.

Smith: No, I did find in the statement by Catharine Burns, formally submitted on 03/12/19, number five, of the great importance [ph] is the extremely large garage with living quarters above, as detailed in the guidelines, pages 20, 21, “The location, scale, height, and proportions of the structure proposed in the application does not meet the requirement that new garages maintain the traditional height, proportion, and orientation of garages and accessory structures in the district.” The next sentence is the important one. “One-story garages are what are traditional in this neighborhood.”

The fact that the HDC has made a mistake in the past does not justify approving a stand-alone garage with a residence above.

Murphy: Okay. Unless there's further discussion, I'd like to just call for a vote on this. So, all those in favor—

White: So the motion is to deny?

Murphy: There's a motion currently to deny the two-story garage—

Schwartz: To deny a certificate of appropriateness for the two-story garage—

Murphy: For the two-story garage.

Schwartz: —for all of the reasons that were enunciated.

Murphy: Okay. All those in favor of Commissioner Schwartz's application—or motion to deny the application for the garage, say “aye” please.

M/F: Aye.

Murphy: One, two, three. That's four ayes. And any—those opposed? Two. Two nays.

Ferrell: So, it takes five votes.

Murphy: Correct.

F: Yeah.

Ferrell: On a certificate of appropriateness decision, to make a decision.

Murphy: Right. So, do we have another motion on the floor? Would you like further discussion of this item?

Schwartz: I would like to hear from those who voted nay, what—why they are not convinced by the arguments that have been put forth, why the COA should be denied for the garage.

Murphy: I don't know about Jim, but I'm not going to spend everybody's time here restating this tonight. I've just given my opinion on the garage.

White: Can you tolerate about a minute from me?

M: Yeah.

Murphy: Yeah, absolutely. I'm willing to hear from you. I just don't to—

M: Okay.

White: I said in a perfect world it would be one story. This isn't a perfect world, and I think that in our guidelines, where it talks about garages, there are more characteristics that the application fulfills than that do not. Looking at pages 20 and 21, first page 20, "Typically, garages are one or two bays wide." Okay.

"Located behind the principle structure and oriented with the doors facing the

street,” which in this case would be silly, because that’s not the way the driveway goes.

Farther down, “Attention should be given to the compatibility of the proposed design with the roof form, exterior materials, and details of the principal structure.” Okay. “The form, height, scale, location, orientation should be consistent with that of historic garages and accessory structures in the district.” Form, yes. Location, yes. Orientation, yes. Height, arguably no. Scale, arguable no.

Over on page 21, number seven: “Site new garages and accessory structures in traditional locations.” As I said, all the way against the parking—against the property line would be more traditional, but that ain’t going to happen. “Design them to be compatible with the main house in material, form, scale, and detail.” Yes, yes, yes, yes. “Maintain the traditional height, proportion, and orientation of garages and accessory structures in the district.” Orientation, yes. Height and proportion, arguable, in my opinion.

Locke: So, you guys were satisfied with the evidence provided that it’s questionable?

White: Say what?

Locke: So, they provided evidence.

White: Right.

Locke: And so, they left a doubt in your mind on whether or not this building is a traditional height, scale, and style, or what—however point seven goes with the last sentence? If that’s the case, then you don’t have to approve or deny. So, if there’s a doubt, then that’s understandable. But they have to prove, I believe,

without a doubt that that is the case. So, if you're saying, "Oh, it could be. It could. It couldn't. Maybe. Maybe." Like, I don't know if that's going to—like, I just don't know if that's the appropriate measure that we should be setting, to say, like, "Okay, like, from here on out if it's so-so, then we should just approve everything."

White: No, I don't agree with you at all. If we have 19 different considerations—for example, we have A through J—what if we get an application that fits on all but two of those? You going to shoot it down because of the other two? I wouldn't.

Locke: Yeah, because it's incongruous. It's not congruous with the historic district.

White: It's got to be congruous on 100% of those considerations.

M: [INDISCERNIBLE]

White: I disagree with you.

Murphy: We haven't had an application yet that it's congruous with the entire guidelines.

White: Never, doesn't happen.

M: [INDISCERNIBLE]

Murphy: I've never seen one.

Schwartz: But it seems to me that you're—I don't know if you were assuming, but supposing that if we were to deny this we wouldn't—they couldn't come back with a new application that actually is consistent—

M: [INDISCERNIBLE]

Schwartz: —with all of the guidelines, that this is the best we can get.

White: We can't hypothesize [ph]. We're not—that's hypothetical. We can't deal with that.

Murphy: Counsel, rather than us debating this for the rest of the night, can you tell us what are our options moving forward presently?

Ferrell: Sure. So, you had a motion to deny the COA that failed, on the garage. So, everything—just to recap—the entire application, save and except the garage and the associated improvements, has been approved. All right? You had a motion to deny the COA for the garage on the basis that we heard and we talked about, that failed. If the commission takes no app—no action on the garage, one way or the other, which is where you find yourselves now, then in 180 days, which is June 10th, the application will be approved as submitted.

I have not heard a motion this evening to approve the plan. That would be an option, taking no action with the eventual consequence that you've heard is an option.

Schwartz: Can I make a motion to approve a one-story garage, even though that hasn't been applied for?

Ferrell: I think that the guideline—excuse me—the Land Use Management Ordinance allows you go approve a certificate of appropriateness subject to conditions that bring the application within the ambit of the Land Use Management Ordinance and the guidelines. So, they allow you to impose reasonable conditions. Ideally, the applicant would agree to the conditions, you know—I think you can impose conditions as long as they're related to bringing the application within conformity of the Land Use Management Ordinance.

M: Okay.

Murphy: So, I have a question. Correct me if I'm wrong. And maybe our chair will know this, or maybe the commissioner—maybe Kyser or Smith will know this, having served on the commission for a long period of time. I know that garages, specifically two-story garages, have been an issue for this commission for years. And this commission has approved two-story garages for years. As I understood it when I started on this commission, part of that was because our guidelines do not specifically exclude or state that a garage that is specifically two-stories is therefore incongruous with the guidelines, as much as it might not mimic the historic character of some, not all, historic garages. There is nothing in the guidelines that specifically says that we cannot approve two-story garages, or by nature of it simply being two-story, that is it not consistent with the guidelines. That's sort of a question more than a statement, but is—do we know that?

Kyser: Well, we do know several things, which is that previous commissions, depending on who's the chair, really, the leadership—I've served under several chairs that completely ignored those guidelines, and all they did was flip through A through J, and it didn't seem to matter. So, mistakes have been made over the years about how to apply the secretary of the interior's standards for historic preservation. And so, it's like—I'm not a lawyer, but we've got a—we've got several good ones in the room, and it would seem to me that, you know, making mistakes of—in interpreting the law sets precedence, and it's—you know, it's just a dangerous situation.

It's—and it's—there are probably situations in which, depending on the size of the lot and the character of the lot, that—depends on the height of the two-story. They're—aren't they different heights?

M: [INDISCERNIBLE]

Kyser: And how many dormers do you have? And how massive is the footprint of the garage? There are other—all kinds of things combined that determine the appropriateness of the scale and how much it damages the historic property [ph]. I can tell you a whole list of ones that do damage.

Murphy: So, the question is, then—my question would be, does the two-story garage in this application damage the historic nature of the property. I mean, that is different than setting a precedent that we're only approving one-story garages, or two—yeah, one story garages, which I don't think is defensible, given the information that we have to follow. I'm throwing my opinion out here to sort of spur some conversation, to hopefully move this along, and I don't know whether counsel has any input on this.

Ferrell: What I'll say is, you asked, I think, what I think is a legal question about is there anything in the Land Use Management Ordinance or the guidelines that specifically says a two-story garage is incongruous, is a matter of guideline or ordinance, right? I don't read anything that specifically says any—in the Land Use Management Ordinance or the guidelines explicitly that two stories is incongruous with the special character of the district.

I think you did just hit on a very important point, though. So, rather than look at—think about, you know, whatever precedent the decision had, think about

the application that's before you, right? Is this project incongruous with the special character of the district? And what makes a two-story garage on this lot, in this area, in this spot incongruous with the special character of the district?

If that's articulated and receives a vote of—you know, to deny, I understand that. And contrary, I think it's—if you were to look at it from the other side and you want—and move to vote for—to approve, I think that's the analysis. What is it about this garage that is either congruous or incongruous with the special character of the district as applied to, you know, the contextual standard of the district as a whole? You know, some guidelines are going to apply.

I also agree with the statements that were made earlier about not all A through J is going to apply every time. And in fact, the ordinance contemplates that. The following criteria [ph]—this is what the intro, if you will, to the A through J criteria, “The following criteria shall be considered, when relevant, by the commission in reviewing applications.” So, I think that speaks to the question that each criteria is not going to apply, just like each guideline's not going to apply in every case.

Schwartz: Though it does seem clear in this instance that Guideline 7 on page 21 directly applies.

Ferrell: And I heard that in your motion.

M: Well.

Murphy: Yes, with scale and proportion. I think what we've heard in earlier applications is that scale and proportions are somewhat subjective.

Schwartz: Height. To maintain the traditional height.

M: Yeah. That's less subjective, obviously.

Kyser: Now, I would—I'm going to protest the use of the word "subjective" because as somebody who had a lot of experience in historic preservation and planning has described, judges in the court make subjective decisions based on their experience, and their education, and their understanding of the law. Now, wouldn't that be the same argument here? It's—

Murphy: Yeah. So, maybe "subjective" is not the right word.

Kyser: And so I think we should stop using that word.

Murphy: But what I've said—I guess my point is that we have debated scale and proportion on several different projects where there's differing opinions regarding whether something is in scale or proportionate or not.

Kyser: Well, that's because that's supposed to happen. We're supposed to have a conversation [ph]. You know through your training as an architect what that means—scale, height. You know how to see plans and evaluate that sort of thing, so.

Murphy: I guess what I'm trying to do is what counsel has asked us to do, which is have our approvals or denials linked to something that is—

Kyser: Well.

Murphy: —I don't want to use that word again [ph].

Schwartz: With your agreement, I'd like to propose another motion.

Kyser: It's an evaluation, it's not—you know, it's—

M: Yeah.

Kyser: It's not subjective [ph].

Schwartz: Shall we try another motion? I would like to make a motion that we approve a certificate of appropriateness for the garage subject to the condition that it be a one-story structure. And I probably need to—

Locke: I second that motion.

Schwartz: —probably need to specify what—the height.

Murphy: We asked counsel if we could, the question about modifying an application dramatically within the motion.

Ferrell: Well, let me—the first thing I would say is, would the applicant agree to that condition?

M: Can we answer?

Ferrell: Yes.

M: No.

Ferrell: Okay. All right. So, given that, let me find—give me a second—let me find the—

Smith: What about the one-story apartment?

Kyser: You mean if the—

Murphy: No, I don't think—

Kyser: And not a garage.

Smith: And not a garage.

Ferrell: So, you heard that they're—that reducing the height to one story is not a condition they're willing to agree to, so it would be—the approval with the condition that it be one story is what's on offer, and—I know there's a provision in the ordinance.

Smith: I mean, the reason that they want—part of the reason they want the garage is to have the apartment above so they can have a live-in person help them when they age [ph], which is—

Kyser: We can't talk about use like that.

Murphy: No, but that's what the applicant—

Smith: No, but the point—

Murphy: —the applicant told us that a few months ago, as I remember. This is—

Smith: Well, no, but my question is—

Kyser: No—[OVERLAPPING]

Smith: —can we—

Kyser: Include that _____.

Smith: —say that—can we make a proposal for a one-story apartment?

M: So, the—

Schwartz: We're proposing a one-story structure. They can use that structure however they want.

Ferrell: So the—what your ordinance says is the commission may approve the application with conditions if it impose—and it may impose reasonable conditions on the approval of an application as it will ensure the spirit/intent [ph] of the article are achieved. So, the way I would review—view it is [ph] similar to a denial based on the height, right, with the condition that it be one story, is a very similar motion to the deny [ph]—the denial, except it allows a one-story garage.

Is that a reasonable condition? I think it's a significant, very significant, condition. I think it goes beyond, you know, a—well, I don't know. I don't know

whether or not that that is a—such a significant change that it would, you know, sort of eviscerate the original application, or if it would be determined to be a reasonable condition. I think that's an open question. It's a significant condition.

Murphy: Okay. Well, thank you for the clarification. But I think the applicant is not open to that type of modification.

M: [INDISCERNIBLE]

Ferrell: And again, just to be clear, yeah, you can impose the condition without agreement. If they agree, then it takes away the question of whether or not it's an unreasonable condition, right?

Murphy: Yeah.

Ferrell: That's the point I was getting at. If the applicant were to agree to the condition, great, you don't have to worry about the reasonableness question. If you were to approve this motion subject to the condition that it be one story, there'd be an argument at least that that's an unreasonable condition.

Locke: And do you take the entire application into account, or this specific thing we're trying to talk about? So, just the garage, or are we saying that in the significance of the entire application, a two-story to one-story—is that what you're saying? Is that the two—you see how those are two different things?

Ferrell: It would have to be a reasonable condition to bring [ph] the application within the spirit and intent of the Land Use Management Ordinance, that's how it's written.

Locke: Okay, so the application.

Ferrell: So, that's—

M: Got you.

Murphy: Any other motions before we close this item?

Kyser: Okay.

Schwartz: So, the motion was proposed, it was seconded. Is it going to be voted on?

Murphy: Did anybody—wait—your motion was seconded?

Locke: Yeah, I seconded it.

Murphy: Oh, my apologies.

Locke: Oh, you're good.

Murphy: My apologies. So, there's a motion on the floor that was seconded. The motion is to approve a one-story garage.

Schwartz: A one-story structure. It doesn't have to be a garage.

[INAUDIBLE]

Murphy: Is there any note in here that we ask the app—does it matter that we asked the applicant that they—

Ferrell: I think you can note it.

Murphy: We note that the applicant said that they would not be in favor of this. So, all those in favor of the application to approve a one-story garage—

Schwartz: One-story structure.

Locke: I think the proper—the way to look at it would be, yeah, approve the garage subject to a condition that it be only one story.

Murphy: All those in favor of this?

M/F: Aye.

Murphy: Two ayes. All those opposed.

M: Commissioner Kyser.

Murphy: Four opposed. Motion fails. Are there any other motions before we close this item?

White: No. Actually, we're not closing it at all, I think. It's still on the table.

Murphy: So, we leave it open?

White: Right? We haven't made a decision, correct?

Ferrell: You have not made a decision by vote on the garage at this point.

White: Right. Which is to say that if we simply leave it at this point, it's in limbo until the first week of June, in which case it is—

M: Approved by default.

White: —approved by default.

M: That's right.

Murphy: Is it on the agenda in May?

M: June _____ and it stays on the agenda, right?

M: As of right now, it's not on the agenda, but you can choose to continue it.

M: You can put it on there [ph].

Murphy: I'm sorry, no. Is there not a May meeting?

F: Yeah.

M: There is a May meeting.

F: Yeah.

M: —but it was not continued to the May meeting, it was continued to tonight. So, yeah.

Murphy: Okay. _____ for a clarification, thank you.

M: Yeah.

F: Should we continue to the May meeting? Just leave it?

Murphy: I don't want to continue it, but that's.

Locke: Is there any more motions and discussion that anyone have to say [ph]? Does anyone want to talk about the brick or the stone walls? Probably not tonight?

White: What stone walls?

Murphy: We've already talked about them three times.

White: Another stone wall?

M: Yeah—[OVERLAPPING]

Smith: Well, what if I just see if this fails or not? I make a motion that we approve the two-story garage.

Murphy: Do we have a second?

White: I'm sorry, what? [INDISCERNIBLE]

Smith: That we approve the two-story garage.

White: I'll second that.

Murphy: We have a second from—

Ferrell: And just for the record, can you cite the relevant Land Use Management Ordinance criteria, A through J, and then mention the design guidelines that support your motion?

Smith: Well, the height. The setback and placement on the lot. The exterior construction materials. The roof shapes, forms.

Ferrell: So, is it essentially that you're accepting the applicant's argument in the narrative there, in dealing with item G in the applicant's materials? I mean, it sounds like what's you're citing.

Smith: Yes.

M: Okay. Okay. The motion has been proposed and seconded.

M: Are you finished, Susan? Yeah?

Smith: The guidelines that would relate—well, like you said, it's not historic, so it's just the—on number seven, "Design them to be compatible with the main house in material, form, scale, and detail." That's the only guideline that I can see that applies.

M: Okay.

M: Okay.

White: Well—

M: It was seconded—[OVERLAPPING]

White: —I would add, if this is acceptable, that if [ph]—and you may have actually mentioned some of these already—I would say G, the form and proportion of the structure relying on guideline number seven, page 21, compatible with the main house in material, form, scale, and detail, yes. L—no, I, I'm sorry—structural condition and soundness. I am persuaded by the drawings and elevations submitted by the applicant that the condition and soundness is compatible with the district also.

Murphy: Thank you. Commissioner Smith, do you accept those additions to your motion?

Smith: Yes, I do.

Murphy: Okay. It was seconded by Commissioner White. Do we have any further discussion before we bring it to a vote?

Locke: I do not think it is congruous.

Schwartz: I also don't.

Murphy: Anyone else?

Kyser: I don't either.

Murphy: Okay. Well, we need to close this out, so let's have a vote on it.

F: Yeah, this is [ph]—

Murphy: All those in favor of Commissioner Smith's application to approve the two-story garage with the—as designed and submitted, say “aye.”

M/F: Aye.

Murphy: Three.

M: Okay.

M: All those opposed? Three. The motion does not pass.

Schwartz: Any permutations that we haven't got to yet?

Murphy: So, I think we are going to close this meeting at this point.

F: Yeah.

Murphy: We're taking no action on the garage.

Ferrell: _____ I would say, if you are going to consider this at your next meeting, what you need to do is recess this meeting until your meeting in May. Otherwise, you've got to go through the—if you want to bring it back up, you've got to go through the notice provisions again. And you're—

Murphy: I don't want to bring this back up.

Ferrell: And you're you run out of time. So, I just want everybody to be clear about what that means if you don't _____.

Kyser: It may be worth bringing it back up again, just to further the discussion of this
_____.

Locke: Do we need five votes for that?

M: If somebody—

F: Yeah.

M: —feels like you [ph] want to change their vote on any of these motions at future meetings, then they should ask to have it brought up. But if nobody feels that they want to change their vote on any of the motions, I don't know that we need to—or if somebody has some information that they think will persuade someone to change their vote, they can ask _____. I don't know that we need to spend time on it [ph].

Kyser: Well, I would like—I think it would be worth looking at again. With more information.

White: But the public hearing has been closed, right?

Kyser: Yeah.

Murphy: I would agree with you.

Locke: So, we have two that want to look at it again. I do not want to look at it again.

Smith: And, would we be within the timing for noticing?

Kyser: Yeah, we would.

M: [INDISCERNIBLE]

Ferrell: Yeah, so what I'm saying is if you recess this meeting until your meeting—your first—your only, scheduled meeting in May, essentially you would just be continuing it just like as you did as your last meeting, and it would give you the

opportunity to bring it up again without having to go through the formal notice provisions.

If you take no action to continue this meeting or recess this item, it would require you to notice the item again before you could consider it, and, you know, it would take that option away, essentially, because I think you're running out of time.

M: So—

Ferrell: So, if you want the flexibility to consider it again, my recommendation is that you recess this meeting till May. If you're content with the fact that this is going to be approved in June, then you don't have to do anything.

Schwartz: Okay. I would say let's maintain the flexibility in case that we decide to—

Murphy: Do we need to vote on this?

Ferrell: It—yes. I think you can do that, just to be clear, and unlike approvals and denials of certificates of appropriateness that require five votes, essentially a procedural matter like this, under the Land Use Management Ordinances, a majority of the quorum is required to make a decision.

Kyser: And further—I have no memory of—I've been on this commission on and off for 20 years, and I don't know of any application that we just threw up our hands and said, "We're just going to let it slide on through and automatically get approved without"—because we just—

White: Well, it is true that when this decision is made by default, the second week of June, that we are going to look like the British House of Commons, you know?

Kyser: Yeah. I just think—

White: You know, the gang that couldn't shoot straight, and the Keystone Kops [ph].
And that's unfortunate, but if no one can foresee changing their vote—

Kyser: Well, maybe we can.

White: —maybe that's what's going to happen.

Kyser: Maybe someone can, but I think it's important to keep it open.

White: Well, I have no problem with continuing to May, although—

Kyser: You know, with discipline [ph] we cannot spend hours talking about it, but come back _____.

Murphy: That has proven difficult to date, but maybe May will be a different one.

F: Well, it's _____.

Murphy: Well, if we—if somebody wants to make a motion to continue this item until the May agenda and we'll vote on it.

Kyser: I make a motion to continue this item till the May—

M: Second.

Murphy: All right. Any discussion?

White: Second.

Murphy: We've got a second.

M: Oh, you did.

F: Yeah.

Murphy: Yeah, _____. All right. All those in favor of continuing this item until the next month.

F: Five [ph].

Murphy: Well, looks like five, one opposed.

[INAUDIBLE]

M: Consistency.

F: [INDISCERNIBLE]

Murphy: All right. We'll continue it to next month.

Kyser: Okay.

Ferrell: So, this meeting's recessed—[OVERLAPPING]

Murphy: That adjourns the meeting. Recess [ph].

M: Sean, you just want to maximize the amount of time that you get to chair the
meeting. [LAUGHTER]

Murphy: I'm trying to do just the opposite.

[END RECORDING]

EXHIBIT I

**Brown & Bunch
Town of Chapel Hill Historic District Commission
306 North Boundary Street
May 14, 2019**

Murphy: Vice Chair Sean Murphy
Kyser: Kimberly Kyser, Board Member
Locke: James Locke, Board Member
Smith: Susan Smith, Board Member
White: James White, Board Member
Ferrell: Brian Ferrell, Counsel to HDC
Burns: Katherine Burns, Witness
M/F: Male/Female Speaker

[BEGIN TRANSCRIPT 02:32:27]

Murphy: If we could—excuse me. I'd like to call the meeting back to order, please. The next item on the agenda is old business, 306 North Boundary Street. This item will be—this'll be the sixth meeting that this item is on the agenda. We had a special meeting on the 22nd of April to discuss it. We were at a—bit of an impasse with commission discussion and out of time at that meeting. So we postponed that further discussion till this meeting.

So I'd like to open it up to any further commissioner's comments. And just to clarify, the only remaining item of the application that remains outstanding is the two-story garage. So do we have any comments or does someone like to make a—would someone like—

Smith: I just have a—

Murphy: —to make a motion?

Smith: I have a question about whether we should—because no one expected us to reopen public hearing last time, whether we should not give that opportunity if

there are people here who have read the supplemental materials that were given in that meeting on the 22nd, if there are people here who need to respond to that.

M: I don't think your microphone's—

Smith: Oh, I'm so sorry. I just—I'm just concerned that because unexpectedly we opened the public hearing at that meeting on the—was it the 22nd? And—

Murphy: Well, we can—we can answer that if—

Smith: —I'm sure that people—

Murphy: —anyone has—from the public has signed in to speak on this item.

Smith: So there is—

White: Would they have—

Smith: There is—

White: —signed in? There's no public hearing.

Smith: There was none—no public hearing on the agenda last time either, and we decided to open it to hear new evidence or new proposals. And I just think it's only fair if there are people to speak to—that we allow the same courtesy to them.

White: Well, you could just—if you wanted to, you could make a motion that we reopen the public hearing. And then if—once we do that, then you could ask if there are any people who want to speak. And if they aren't, we could close it again.

Murphy: So I can clarify that Katherine Burns [ph] has signed up to speak. Now, if I could just ask council, as I remember from the last time we did this, it is at the commission's discretion via a motion and a vote if we would like—

Burns: Was the public hearing closed at the end of your last meeting?

M: Yes, it was.

Kyser: Yes.

Smith: Yes.

Burns: That was not clear from the materials available. I will withdraw my request to speak.

F: What—no—

Burns: Unless you [ph]—

Murphy: No, we're—

F: We—[OVERLAPPING]

Murphy: —right now we're discussing whether to reopen it.

M: Yeah, I think it's—I think it's—

Burns: I'm not requesting that you reopen it. I signed up because you have a sheet there because my understanding was that you left the public hearing open. That was my _____.

[INAUDIBLE]

Murphy: So yeah—

M: It was in the news.

Murphy: Our apologies for that confusion but the public hearing was closed at the last—it was—

Smith: Well, then I would like to make a motion that we reopen it so we could the comments.

M: Second.

Murphy: Is there any further discussion?

Locke: Yeah. I mean, I would like to hear—if she—if Ms. Burns is confused about it—if there was possibly, for some reason, why she would think that it was left open, I think that is at least important. But I'd have to agree that I kind of want to hear this.

Smith: Do we have to take a vote?

Murphy: Yes.

Smith: Okay.

Murphy: We have to take a vote. All those in favor of reopening the public hearing?

M/F: Aye.

Murphy: Five. All those against? One, that'd be me. Nay. So, the public hearing is officially reopened. Mrs. Burns, have you been sworn?

Burns: I've been sworn repeatedly in this application.

Murphy: This evening? This—

Burns: I've been—

Murphy: Okay.

Burns: —sworn this evening—

Murphy: Thank you.

Burns: —although last month, last hearing you did not require that. I'm going to be brief. My husband and I have standing, which means that we have due process rights and the right to appeal in this case. We request that the application be voted on tonight and finally decided. Our due process [ph] rights have been violated repeatedly throughout the consideration of this application. At the last

meeting, one of you said that you thought you would look very bad if you proceeded as you had planned to and as you ultimately did.

F: Could you pull the microphone down? Yes, thank you.

Burns: You wouldn't just look bad, you were violating the law, but you proceeded to do so. Those violations of our due process rights cannot be remedied by argument tonight. We will address those issues in the forums that are available to us. Consideration of this application repeatedly—which was repeatedly modified and changed in a rolling process, violated the state-enabling legislation, North Carolina case law, Chapel Hill's ordinance, your rules of procedure and professional standards and practice.

You will recall that I coincidentally at the beginning of the January hearing presented a petition to this commission. I have repeatedly over the last three years—as someone who's spotted very serious errors and understood the implications, the ripple effect, the problems that cause [ph] for applicants, for the public, for the council, not the least for all of you, because the Town of Chapel Hill for a very long time, more than three years, has failed to provide the very clear requirements of North Carolina law for presentation and consideration in the administration of Historic District Commission.

There were particularly in the April 22nd hearing, which was supposed to be closed [ph] meeting—it was supposed to be a meeting at which you resolved and deliberated based on what had been presented until you closed the public hearing. You were given legal advice that was so totally contrary to what state and your own ordinance require. And we have no option but to exercise our

rights and protect our due process rights, not only to protect our rights, but to try as citizens to get this situation back on track so that you efficiently, effectively, fairly, professionally administer applications that come before this commission. But in this case, it affects us, it affects our property values, it affects our rights, and we will do so.

I regret the tone and the tenor of the conduct of the HDC. I have tried so hard and perhaps naively to constructively assist and contribute to this civic life. I have been particularly in the community and in these chairs here, been treated rudely. I've been threatened, I think I was treated extremely rudely at the March hearing.

So when you read that statement of decorum, remember, and I was glad to hear Mr. Epting say that it applies to the commissioners as well. And I want to conclude by saying that those who have tried diligently, and so many of you have such knowledge and such concern and such caring, and you have tried against the circumstances, the almost impossible circumstances, where the Town of Chapel Hill does not even present any evidence of a preservation case, the evidence you need to make your decisions.

You've done the very best you can. We did the best we could to compensate for their lack of evidence. A staff report is not a list of possible guidelines. I want to thank you and I appreciate all that you do and the time that you spend. Thank you.

Murphy: Thank you, Mrs. Burns. Any of the commissioners have questions or comments for Mrs. Burns if she would like to address them?

M: No.

Kyser: I'm sorry that you feel that the commission has treated you rudely because I'm not aware of anyone doing that, but.

Burns: I'm not going to specify, but it was particularly in the March hearing, both my husband and I were treated with—in a way that I thought was unacceptable [ph].

Kyser: Oh, oh yes. Now I know what you're referring to. Sorry. Yes.

Smith: Well, I have an issue that maybe you can comment on. I don't know that this is the time to bring it up. But there was a statement made about—and I needed to clarify it myself—a statement made from Amber Stimpson [ph] that public opinion is irrelevant for quasi-judicial decisions.

It's my understanding in a public hearing that people come before this commission to offer information that's relevant to the historic guidelines, and therefore, given in that circumstance, it's not just an opinion. Would you comment on that, please?

Ferrell: Your decision must be made on substantial, material, and competent evidence in the record. You, as a matter of course, have a public hearing process on each application. During the public hearing process, it's often the case that you receive various information and testimony, some of which is relevant to your congruity standard, and the ultimate determination you must make on each certificate of appropriateness. And because of the nature of the public hearing where testimony is not prescribed as it would be if you are just accepting relevant testimony, sometimes you receive information that's not relevant to your determination. And opinion testimony, irrelevant to your determination—

Smith: I agree.

Ferrell: —should not be considered in any way as you make your congruity determination. Because that determination, again, must be based solely on substantial, material, and competent evidence, testimony—from testimony and other records in the record. Does that—

Smith: Yes, that's helpful.

Ferrell: Oh, okay.

Smith: Thank you.

Murphy: Do we have a motion to close the public hearing?

Kyser: So move. I make a motion to close the public hearing.

M: Second.

Locke: We should ask anyone else if they want to speak—

Murphy: No one else is signed up to speak tonight, so.

Locke: Okay.

Murphy: So we have a motion. Do we have a second?

M: Second.

F: Yep.

M: All those in favor?

M/F: Aye.

Murphy: Unanimous.

F: Okay.

Murphy: Any further discussion?

Kyser: Yes. So the thing remaining for us to decide on tonight is the garage.

Murphy: That's correct.

Kyser: And I have been thinking a lot about this application and this house. I've been thinking a lot about the fact that the architect, Dail Dixon [ph], has told me on many occasions that he based this house on the Villa Rotunda, which is a Palladian villa in—outside of Vicenza in the Veneto. And if I could have found my book on Palladian villas in the Veneto, I would have photocopied them, but I could not find this book. At any rate, this is—just stay with me. This is a little bit of a longshot—

Murphy: No, I just—for the sake of time and clarity and as council—

Kyser: I'm not going off on a—

Murphy: —and as council has—

Kyser: —fairytale [ph].

Murphy: —stated numerous times to us through this particular application, we should stick to what evidence was submitted.

Kyser: Let me just—

Murphy: We have volumes of evidence—

Kyser: —let me just—

Murphy: —to look through.

Kyser: —I'm looking at the plan—

Murphy: Okay.

Kyser: —here. And let me just finish this thought, as intuitive as it may end up being. But so the fact—it is very bold for this contemporary architect to base the design on the Villa Rotunda. But what's—seems to apply to this so much—but the fact

that he would use that plan or be inspired by that plan, the villa sits in a very large empty landscape on a ridge in Italy.

So—but the fact that this was a very big, spacious lot could accommodate a house based on a very famous—I mean it’s like putting a small Monticello on the thought that—so there was space for that. So the historic character of this landscape has been a prominent thing in our discussion. And so one of the things that characterizes this setting and built structure is the space that’s around it.

So I think my point is that adding outbuildings erode the character of this particular lot, and also as we talked about it at length tonight about the space—the built versus empty space, landscape in the district as a whole is significant. I would like to point out as a fact that there is already a two-car garage very discreetly planned and it’s part of the house. It’s underneath the house. So I think the argument that it’s no fair that they don’t have a garage falls short because there is already a garage. And if you have two big SUVs and you can’t get them in there, I—that’s—they could—maybe you need a different car. But I personally am—would vote against the addition of this two-car, two-story garage that—on this lot.

White: I’ve been just as frustrated about tonight as I have been for the last four months over this matter because of the absence of substantiated arguments to one point or another. For example, we opened—we reopened the public hearing, which I thought was absolutely appropriate. And we heard not a word about the garage.

I personally—as I mentioned during our last application discussion—I think that the neighbors matter. The people who have to live with the structures

that we approve, matter. And again, I brought that up in a way that, you know, that I think does not reflect the majority opinion on that particular application. But I would like to think the commission shares my concern for the feelings of the people who live in a neighborhood. And I was—and I fully expected that a whole bunch of neighbors, since it's been made clear that they don't like this application, would have shown up tonight and gone to bat against the garage. And we have heard zip. And what are we supposed to do? This isn't—Vicenza, this is Chapel Hill.

Kyser: It's our decision to make. We don't need to have the—a cheerleading squad from neighbors.

White: Oh, I think a cheerleading squad from neighbors is absolutely crucial to a lot of what we do. It's the people who have to live next to it [ph]—if you want to add some legalese, you can say that the—it's the people who live right next door who, quote, “have standing,” unquote, whatever that may consist of. But yeah, call them a—we have had, in fact, a cheerleading—a negative cheerleading squad that we've been listening to for four months.

Locke: Didn't we—I mean didn't some of the public come out against the garage publicly?

F: Mm-hmm.

White: In January.

Locke: Yeah, I mean—

White: A couple of people.

Locke: —so it's in the record. So theoretically, we're supposed to be going and tapping into that.

Murphy: So let me just—just—

Locke: But I—but I think—

Murphy: —bring you back to your—

Locke: —to clarify the scale and—

M: [INDISCERNIBLE]

Locke: —size of the garage and the location have all been moved since—revised since January and we've heard no public opposition to the garage since it has been moved and reduced in scale.

Smith: Oh, I think—

M: I don't think that's true.

Smith: That's not true because I have notes from the February 12th meeting and people who spoke, that I looked back on the video, and some of the—like you said, some of the comments aren't pertinent and don't fit, they're more opinion. But there were at least eight people who spoke and for various reasons were against the garage. And like I said, some of them don't—but, like, I counted three people, who are neighbors, who even though this garage is at the back of the property, to me, it's in scale with the house because the house is large, so the garage could be large and two stories. And it's somewhat protected by trees, but tree—vegetation is going to be taken down and presumably replaced.

Nevertheless, three people with neighboring properties look out their front door and they're going to see a large structure. So to your point, Jim, I'm

concerned about that because that, to me, reflects on the historic character of this property and this neighborhood, which being part of the previous Coker Estate [ph] has some special significance.

Schwartz: I would also point out that your statement seems to put the burden on the neighbors to come out and to repeatedly indicate their—you know, their opposition. We haven't heard any neighbors come out and enthusiastically support the application, which is a contrast with the application for the sister's house [ph], where we heard several neighbors, including yourself, actually come out and speak favorably about the application. I haven't heard a single member of the public, neighbor or otherwise, come out and speak in support of this application.

Murphy: So I think we've discussed this numerous times and I—you know, I would like to see if someone has a motion either for or against the proposed garage that specifically sites the guidelines in the LUMO.

M: You have A through J, or A through H?

M: There. There it is [ph].

Kyser: I'd just like to remind everybody that there is already a garage at this house. So what we're adding is another building that's—that—

Murphy: I do understand that and just for the sake of clarification, that was discussed at one of the earlier meetings. And I believe, I don't know whether it's in the record, but I believe the applicant, if my memory is correct, said that the size of the garage is fairly small. You can't fit two cars in it. I'm not arguing for or against. What I'm just—

Kyser: I know. I heard that.

Murphy: —I'm just being clear about what was—

Kyser: I heard that, and that's what's—

Murphy: —recorded—

Kyser: You know, what kind of cars don't fit?

Murphy: I don't know.

Kyser: So as you know, everybody's [ph]—

Murphy: I don't know, but there was never a reference to an SUV before tonight. I mean,
for the sake of clarity and the record—

Kyser: Oh no, there's not. But it—

Murphy: It's—

Kyser: —you know, it's a two-car garage and it was built in the '90s, so—

Murphy: I don't think that's the issue before us. I think—

M: Okay. I'm ready to make a motion.

Smith: Well, there were several garages that they brought forward as examples and we
were—it was suggested [ph] that we respond to each one of those.

Murphy: Right. I mean those garages were brought forward at our request, as I remember.

F: Right.

White: Susan, are those comments of yours, that are in your notes—because I didn't date
all of mine that much—were they made before or after the design of the garage
was changed?

Smith: I believe it was after.

White: Okay.

Smith: Mm-hmm. At the February meeting.

Schwartz: So I'd like to make a motion and I'd like to preface it by saying that I have no—you know, no principled objections to two-story garages. I can enumerate all sorts of good things that they do for a neighborhood. However, I don't think that that's my or our job is to decide whether we particularly like a particular structure or think that it's beneficial. It's to ensure coherence with the rest of the, you know, the district character based upon the guidelines that we have.

And with that in mind, I move that we deny the COA for the garage based upon LUMO Criterion G, general form and proportions of building and structures, and specifically the guidelines on page 21 for garages and accessory structures, suggest that the _____ application is inconsistent with the guideline that garages should maintain the traditional height, proportion, and orientation [ph] of garages and accessory structures in the district.

Locke: I'll second that motion.

Murphy: _____ sorry. Is that the end?

Schwartz: That was the end. Sorry.

Murphy: Okay. My apologies. I thought you were pausing to read.

Locke: I second that motion.

Schwartz: Did you say "I second that emotion [ph]"?

M: [INDISCERNIBLE]

Murphy: Any other discussion before we take a vote?

Smith: Just that I think when people did speak, it was about the two-story more than the size that it was three reduced to two. And I believe that it was moved off the

property—or off the wall line. But it’s mostly the height that we heard complaints about.

Murphy: Anything else? All those in favor of Commissioner Schwartz’s motion say “aye.”

M/F: Aye.

Murphy: All those—that’s four. All those against?

M: Nay.

Murphy: Two. The motion does not pass. Further discussion?

Locke: Is anyone concerned with the wall safety during construction of the garage?

Murphy: It’s been discussed at three previous meetings, so I—if anybody has any new objections to it, we could talk about it. If not, I would not think so. I know the applicant answered that question for us at least twice previously, as well.

Kyser: So I do have a question for the attorney. When—the 180 days run out since the application was presented in the first place? Or how about the changes that occurred?

Ferrell: My view is that there has been a single application presented with multiple iterations. I don’t know that—I don’t believe there was a new or a second or a third application presented. So the date of the application I believe the secretary has that.

I believe the date of the application was December 12th, so the 180-day window would expire June 10th is—if that’s the window that you’re looking for. And no—yeah, no new application date was filed after the original one.

Murphy: When is our next meeting scheduled?

Smith: The 12th of—

Ferrell: It's after that.

Smith: The 11th or—[OVERLAPPING]

Schwartz: But what—the current application is different from the one that was filed in December; right?

M: No.

Ferrell: I think the application you're considering tonight for the garage is the latest iteration of the application. And presumably, if no—if additional—

Schwartz: If no action [ph] is taken, is that the one that is by default approved or—

Ferrell: In my view, yes. In my view, yes. And we can—perhaps if you want—

Kyser: Which one gets approved? The most recent?

Ferrell: The—yes.

Kyser: Yeah [ph].

Ferrell: The—because in my view they have changed, amended, modified, call it what you want, the application. So if you were to say we're going to approve the COA tonight, clearly what you would be approving is the most recent iteration. So therefore, I believe it follows by extension what would be approved at 180 days is the most recent iteration of the application. I don't think—I think the prior version that sat further back into the wall—is no longer, in my view, part of the application.

Schwartz: So unless somebody feels like they are likely to change their view on this, I don't know that we need to do any kind of continuation, I think. Can we somehow consider the matter closed?

- Murphy: So how do we close the matter, or do we have to continue it, and then it just expires on June 10th?
- F: [INDISCERNIBLE]
- Ferrell: Well, if there's no further action to be taken, I think you declare there's no further action to be taken on the application. You move on to the next item. And then by default, on the 180th day, the certificate of appropriateness will issue.
- Murphy: I'd just like to take a consensus of the commissioners. Is there—are we all in agreement that there is no further action to take on this item?
- Kyser: I think the clock runs out.
- Murphy: We can let the clock run out if we don't believe—if everybody concurs that we don't believe there's further action.
- Schwartz: Are we in agreement that we are not in agreement on this issue? [LAUGHTER]
- Kyser: Further action? What would that be?
- Murphy: Well, discussion or additional motions or—I'm not proposing it, I'm just confirming what our council has asked us to—
- Smith: I'm just curious, Jim. If you are concerned about the neighbors, and three of them who have properties that border this, whose front doors will look out on this new structure, I'm just wondering why you voted the way you did, or perhaps you might change your vote.
- White: Well, I haven't had a really perfect perspective on this building because I haven't gone into the neighbor's property to see what it's going to be like. We're not supposed—I don't think we're supposed to be traipsing around the neighbor's

properties. I covered every square inch of that particular property, but that's not what the neighbors are going to see.

And you know, there's been enough concern over the last year or two about us doing investigations and research on our—and data gathering on our own, that I wasn't about to go into the neighbor's property. So exactly what they can see, I do not know. I know there are a lot of trees there, I know there are a lot of plantings. I know there is a big—probably—I don't know how tall it is, a wooden fence along much of the corner of that lot. And I was unaware that anybody's front door pointed at that garage.

The only one I can think of, possibly, although it's farther away, is the glass house, you know, for which the garage—the driveway comes up and goes in like that and so they look south. But even there, I'm—you know, I'm not going to go into their dooryard and look at it.

F: No, I—

White: And so I don't know.

F: [INDISCERNIBLE]

White: And that's why it would have been nice and—or at least helpful to me if somebody could have addressed that, if not tonight, at least maybe last month or the month before that.

M: Okay.

Smith: Well, I didn't go on people's property. I simply walked on the road that—the driveway—

Kyser: Yeah, you can see it—[OVERLAPPING]

Smith: You can see from the driveway.

Kyser: You can see [OVERLAPPING] from the driveway.

White: Which driveway? The Peacocks' driveway?

Smith: No, the one that goes right beside it. And—

White: That's somebody's property.

Smith: Not that—well, the driveway, I don't—I'm not walking on their property, but I can see the orientation of the house.

White: Wait, wait, wait.

Murphy: I'm not sure this continued debate is really—

White: —the driveway isn't—

Murphy: —is moving anything forward.

White: —the driveway is not a public right-of-way—

F: [INDISCERNIBLE]

White: —you're going on somebody's property.

F: Yeah.

Murphy: We are going to take no action on this item and—

M: Hold on.

Murphy: —continue on to the—

Locke: Can I recommend one thing? Can we approve it, but I want to see documentation of how they repaired the wall?

Murphy: No, no, no.

F: No.

Murphy: I mean no, we're not going to do this.

M: Why not?

M: This—

White: Well, make a motion.

Locke: I make a motion that I would approve this application as is, if there is evidence of—[OVERLAPPING]

Murphy: Commissioner Schwartz had to run out and take a phone call, so we're going to have to wait for him to come back.

Locke: All I'm saying is this is an original structure, remember, and they're going—it's going to—it's within the orange area of disruption.

F: Right.

Locke: And so when he said that they were going to do—what I recollect—my recollection was that they are—and it's more or less going to get destroyed and they're going to rebuild it. So if that is the case, and there is no action, then it's automatic that this is going to go through. But I still want to see some type of documentation on the back end that they didn't—that they have repaired it in kind. And I don't know if we actually—I mean can we request that after the fact, even if this time runs out, counsel?

Murphy: I believe that's recorded in public recorded that the applicant said that—

Smith: Right.

Murphy: —if the wall was damaged in any way, that they would repair it, as is. So it's in public record.

White: Under oath.

Murphy: I—under oath. I don't know—

F: Right.

Murphy: —maybe counsel could clarify that but—

Locke: Well, the wall's rebuilt on the plan, right? So the wall is shown either not disturbed or remaining, right? Remaining post construction. So that would be—that's part of the plan, would be that the wall remains or is reconstructed—
[OVERLAPPING]

Murphy: And the applicant testified that they were going to do their best not to disrupt the wall at all, but if they did, they would repair it in kind.

Locke: Right. So but what does—since we can't really do anything until he gets back anyways, what assurances do we have as a commission that when things like this go on a plan, that they're actually carried out?

Ferrell: That's a staff level—building inspector. I'll let the staff—

M: It would be required for CO, for certificate of occupancy, inspected by the planning department, building inspection department, dependent on what part of the application they're looking at.

M: Right. Thanks.

M: _____ no action [ph].

Murphy: Okay. So we don't need another motion. We are going to take no action on this item and move on to the next item on the agenda, the new business. And I'll turn it back over to our acting chair who recused himself.

[END TRANSCRIPT 03:07:10]

[END RECORDING]