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MINUTES OF A PUBLIC HEARING OF THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL
PHILLIPS JR. HIGH SCHOOL, MONDAY, SEPTEMBER 17, 1984, 7:30 P.M.

Mayor Joseph L. Nassif called the meeting to order. Council members present were:

Marilyn Myers Boulton
Winston Broadfoot
Jonathan Howes
Beverly Kawalec
David Pasquini
Nancy Preston
R. Dee Smith
Bill Thorpe

Also present were Acting Town Manager Ronald A. Secrist, Assistant Town Manager Sonna Loewenthal and Town Attorney Grainger Barrett.

Cooper Square - Request for a Planned Development Office/Institutional Special Use Permit (PD-27A-D-1)

Citizens wishing to speak to Council about this proposal were sworn in by the Interim Town Clerk.

Acting Manager Secrist requested that the following documents be entered into the record of the hearing: (Please refer to the Clerk's Files.)

- Agenda #1, September 17, 1984, Cooper Square - Request for a Planned Development Office/Institutional Special Use Permit (PD--27A-D-1)
- Applicants' Project Fact Sheet
- Applicants' Statement of Justification
- Applicants' Traffic Impact Report

Assistant Manager Loewenthal introduced the request. She noted that the main issues discussed to this point during the review process have been that of access and traffic generation within University Heights and the extension of a commercial or office planned development into what is now a residential neighborhood. (Please refer to "Agenda #1, September 17, 1984, Cooper Square - Request for a Planned Development Office-Institutional Special Use Permit (PD-27A-D-1).")

Mayor Nassif stated that the colored areas on the display map are misleading. He said they seem to indicate a large piece of property when in fact they have nothing to do with the property lines for this site.

In response to a question from Council Member Preston, Assistant Manager Loewenthal stated that the petition presented at the September 10, 1984 Town Council meeting, requesting a repeal of Section 8.8.3, does not have the legal status that a protest petition for a rezoning request would have.

Mr. Joe Hakan, representing the landowners, said the landowners feel it is more compatible with surrounding properties to develop this property as proposed rather than as residential. Mr. Hakan stated that staff's analysis of traffic was far less severe than what the developers had predicted; and the developers did not think the traffic impact on Cooper Street would be viable. Mr. Hakan said he feels the access to Standish Drive is not really needed and could be eliminated. Mr. Hakan said staff recommended that the developer not provide direct access onto Old Durham Road if possible.

Mr. Joe Redfoot an associate with Hakan, Corley and Associates, said the site plan developed out of the existing conditions of the site. The property presently has two houses on it. The two major determinants of the site design were to try to retain as much of the existing vegetation as possible and to try to minimize the topography changes. Mr. Redfoot said the existing vegetation consists of flowering trees and two pine

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stands, one on the property line and one running through the center of the site. The two buildings are planned to be located in the open areas of the site. The buildings will be rectangular in shape with entrances on both of the long sides. The landscaping plan for the site is planned to supplement the existing vegetation and reinforce the building entrances.

Mr. Redfoot said materials for the buildings will most likely be brick with contrasting stucco. He stated they are trying to create a type of architecture that will span between the commercial and residential characters of adjacent property by using contrasting colors and textures for materials as well as by using varying roof lines.

Mr. Hakan said he feels the proposal is the best use of the property. He noted that he agrees with the Manager's recommendation and is willing to conform to the modifications proposed by the Appearance Commission. He said there is a problem with the Planning Board's recommendation since it eliminates access to Cooper Street; the staff does not want direct access to Old Durham Road and Standish Drive if not built.

Ms. Alice Ingram spoke for the Planning Board. The Planning Board liked the project although it favored access onto Old Durham Road rather than onto Cooper Street. The Planning Board also expressed concern about the removal of existing trees along the western boundary when Cooper Street is widened and the possibility that traffic traveling west might use Legion Road Extension. In regard to Section 8.8.3, the Planning Board questioned where the break even point between commercial or office institutional and residential would occur for the University Heights neighborhood (i.e., where does the "domino theory" stop in an area).

Ms. Ingram noted that the Planning Board favors a reconsideration of Section 8.8.3.

Acting Manager Secrist said the Manager's preliminary recommendation is that Council approve this special use permit request subject to the conditions on the attached resolution.

Mr. Jimmy Brown, a resident of University Heights, said that in March 1983 the Zoning Commission said the residents of University Heights would be protected from any future development and that any commercial development would be oriented towards Old Durham Road, a collector street. He stated that this project would be a violation of Article 8.8.1.1 because of the proposed access onto Cooper Street, which is a residential street. He said access to this project would be more in line with the requirements for planned developments and the Comprehensive Plan if the access was onto Old Durham Road. If Standish Drive is built in the future and the access from the proposed development at Standish Drive are too close, then the access to the proposed development should be oriented towards Standish Drive, a collector street.

Mr. Brown stated that if access is allowed through University Heights, residents fear that a great number of cars will use Cooper Street, Legion Road, and Legion Road Extension especially if traveling to University Mall or Ramshead Plaza. Mr. Brown said cars taking Legion Road Extension/Legion Road, rather than Old Durham Road/15-501 would have two less traffic signals and one less stop sign to travel through.

Mr. Brown said since 64 parking spaces are designed to serve this site he thinks the Manager's estimate of 14-21 vehicles/day that will use the roads through University Heights is low. Also, he said the types of offices that will be housed in the buildings and the amount of traffic that will be generated are unknown and are not regulated under special use. Mr. Brown also expressed concern about increased traffic in University Heights if the cross-connector from Cooper Street to Standish Drive goes through. He said many of the residents from Colony Lake will likely be commuting during peak hours causing both ends of Standish Drive to backup. Cars will therefore cut through the proposed parking lot and through University Heights to 15-501. In summary, Mr. Brown said if Cooper Square is approved it should not be allowed access through the University Heights neighborhood.

Ms. Margo Wilkinson, a resident of University Heights, said residents of University Heights would like to preserve their neighborhood as a

moderate income neighborhood. She noted that the provision for moderate income housing is one of the goals of the Comprehensive Plan. Residents would like for property zoned residential to be used for various types of residential housing. She noted that the request for rezoning this property to office/institutional was defeated. The R-4 zoning was designated in order to provide a transition between commercial and residential. Ms. Wilkinson noted that the special use request has the same effect as a rezoning. She said approval of the request would decrease any value the site might have as residential property, would displace the residents of the houses currently on the property, and would displace future residents who could live on the property zoned R-4.

Ms. Wilkinson also expressed concern with regard to Section 8.8.3. Since many of the residences in University Heights are rental, residents fear that property owners will want to make more profit from their properties and request commercial zoning.

Ms. Wilkinson stated that University Heights residents feel that planned development was intended to be used for large tracts of land and not for small lot requests such as this proposal. Residents also believe that commercial properties should not be allowed to encroach on the neighborhood they were designed to serve.

Ms. Wilkinson addressed the four findings. Residents believe the proposal does not meet finding #1 because of the unnecessary increase of traffic through a residential neighborhood. Residents believe the proposal does not meet finding #2 because it does not meet the requirements of Section 8.8.1.1. Residents believe finding #3 is not met because the residential zoning of University Heights is weakened because of the increased potential for property to be converted from residential to non-residential use. Residents believe the proposal does not meet finding #4 because it goes against objectives d.2 and d.4 of the Comprehensive Plan.

Ms. Wilkinson submitted a copy of her presentation and asked that it be entered into the records of this hearing. (Please refer to the Clerk's files.)

Mr. David Tripp of 111 Cooper Street expressed his support of the previous speakers from University Heights. Mr. Tripp asked that Council consider imposing some type of regulations for the contractors performing work in the neighborhood so that residents can be assured of unblocked access to their properties and to the roads. He also said the roads in the area are becoming bumpy due to construction in the area.

Responding to a question from Council Member Smith, Assistant Manager Loewenthal said the town has already obtained the rights-of-way for the entire Cooper Street improvement.

Council Member Preston noted that no CDBG money is being used for public utility connections for the two existing residents. She asked what it would mean to the two existing residences as far as water and sewer if this project is not approved. Assistant Manager Loewenthal replied that the residences would be treated as the rest of the residences in University Heights and would receive water and sewer connections. Council Member Preston asked if the CDBG funds are being withheld in anticipation of this project. Assistant Manager Loewenthal said no and explained that the budget for the CDBG money is being finalized at the present time. Responding to a question from Council Member Preston, Assistant Manager Loewenthal said construction of Colony Lake must begin by February 1985. She noted that the developers for Colony Lake have recently submitted final plans for Phase I and the plat for dedication of the right-of-way at Scarlette Drive intersection has been received. Assistant Manager Loewenthal said completion of Standish Drive is planned for Phase II of Colony lake.

Council Member Howes asked Ms. Ingram if the Planning Board would have recommended approval if Section 8.8.3 was not in the ordinance. Ms. Ingram said the Planning Board feels there should be some type of protection for residents in subcommunities in this area as well as throughout the town. The Board was also concerned about this type of request continuing into University Heights until there is either no University Heights neighborhood or a very small one. In response to a

question from Council Member Howes, Ms. Ingram said the Planning Board did have the benefit of Ms. Wilkinson's presentation. Council Member Howes noted that the Planning Board did not cap its recommendation with the change of use argument Ms. Wilkinson presented. Ms. Ingram said the change of use argument is relevant in this discussion as well as in the agenda item on Bread and Breakfast Inns.

Council Member Broadfoot asked if change of use is relevant to planned developments since decisions on planned developments must be based on the four findings. He also asked how one decides if enough land has been set aside for housing for families of various income levels. Assistant Manager Loewenthal said that the number of acres needed for housing families of various income levels needs to be determined in gross terms and smaller lots need to be looked at as unique situations. Assistant Manager Loewenthal said that change of use, proposed use, or existing use is relevant in the discussion of a special use permit and the four findings to be made are not unrelated to the use. In addition, the use is relevant in Section 8.8.3 in that it must be related to existing uses or permitted uses in the adjoining zoning district and it must provide protection to the existing neighborhood.

Responding to a question from Council Member Broadfoot, Assistant Manager Loewenthal said the CDBG funds for University Heights were received based on the income factors of the residents in the area. Council Member Broadfoot opined that improvements to the area, which will be financed by CDBG funds, are what is making the area attractive for development. Assistant Manager Loewenthal explained that Council Member Broadfoot's concern has been a topic of discussion at the local, state and national level.

Council Member Broadfoot indicated that the Manager's recommendation does not address the previous discussions and decisions on how to save and how much to save of the University Heights neighborhood. He said the property was zoned R-4 in order to help protect the low intensity use of University Heights and this request will not preserve that low intensity. Assistant Manager Loewenthal said discussions of February 1983 are referred to the Manager's recommendation. The February 1983 memo explains previous discussions on the rezoning requests in the area.

In response to a question from Council Member Pasquini, Mr. Redfoot said the buildings will be two-story with 13' floor-to-floor height with gabled roof on top. From the underside of the soffit, the building will be 26' and then to the apex of the gable it will go up to 34'. Council Member Pasquini asked how high the duplexes to the south are? Mr. Redfoot said the duplexes are two-story with 4-12' hip roofs. He also said the duplexes are a little less floor-to-floor than the proposed buildings because they are residential. Responding to a question from Council Member Pasquini, Mr. Redfoot said the slope from Old Durham Road to the proposed site decreases. Mr. Redfoot said he would have to examine an overlay of the duplexes and the proposed buildings in order to determine the relationship in height.

Council Member Pasquini asked how much of the existing vegetation will be disturbed by the proposed development. Mr. Redwood responded that some pine trees will have to be removed in order to build the northeast portion of the parking lot. He said they plan to introduce white oaks, pin oaks and red maples to the site. Mr. Redfoot said they will provide the required 10' buffer on the east, south and west sides of the property. Plans call for using fitzer juniper (3' high) on the east and west sides and photonia (6' high) on the south side. Mr. Redfoot said the new trees will add another level of vegetation to the screening. Also, the introduction of deciduous trees will help compensate for some of the pines that might die in the future. Council Member Pasquini asked if they plan to put in small trees. Mr. Redfoot said that hopefully the trees will be maintained and will develop into large trees. In response to a question from Council Member Pasquini, Mr. Redfoot said they will be glad to provide a site line drawing showing the relationship between the buffers and the respective heights of the buildings.

Responding to a question from Mayor Nassif, Assistant Manager Loewenthal said staff does not have a map showing the proximity of the buildings on adjacent properties in relation to this site. Mayor Nassif asked if

Mr. Harder, the petitioner, owns the duplexes to the south and if he owned the entire tract prior to any development. Mr. Harder replied affirmatively.

Mayor Nassif noted that due to having half ownership in a lot on Legion Road he abstained from voting on the previous rezoning request on property in this area since the entire site was voted on as a package. However, he said since this proposal concerns only a particular lot he does not feel compelled to continuing his abstention from voting.

In response to comments Council Member Broadfoot made, Mayor Nassif explained that this area was zoned low density in the 1981 passage of the new ordinance. When the rezoning request came through in 1982 and the "compromise" was worked out, Council had and continues to have the authority of whether or not to rezone. He said nothing has changed in the ordinance when marking the property R-4 and nothing changes when the option to come before the Council with a special use request for an office building on less than five acres exists. Mayor Nassif noted that Council Member Broadfoot voted in favor of the rezoning request.

Mayor Nassif also noted that at each meeting Council Member Broadfoot makes statements as if the Council does not have any option on requests. Mayor Nassif stated that Council has the option of whether or not to approve a request as it stands.

Council Member Smith noted that extension of the sewer line to this site will be provided by CDBG funds. He said normally the developer is required to provide extension of the sewer lines. Assistant Manager Loewenthal explained that the survey for CDBG funds for this area was performed two years ago and included the two residences on this site. She said staff feels compelled to provide sewer lines for this site since it was included as part of the CDBG proposal.

She noted that the developer will bear the cost for sewer connection.

Responding to questions from Council Member Broadfoot, Attorney Barrett explained that under Section 8.8.3 Council has the discretion of whether to consider an extension of a zone that has neighboring planned development or has similar uses. Council's discretion is in whether to use Section 8.8.3 to extend the similar use. That discretion is found in the phrase that says the project will provide the "necessary safeguards" in relation to the surrounding area. Under the four findings, Council has a significant amount of latitude in making or not making the findings, but at a certain point the legal status of a special use permit is if the findings are made the special use permit must be issued. Attorney Barrett went on to say that in granting or denying a special use permit, Council does not have unbridled discretion. However, in fashioning the four findings Council has introduced a fair amount of latitude such as "public health, safety and welfare" and "the safety of residents", etc. in which it can use a fair amount of discretion. Also, in requiring conformity with the Comprehensive Plan Council can provide indirect protection through its policy judgement on the Comprehensive Plan since Council is the body that adopts the plan.

In response to a question from Council Member Preston, Assistant Manager Loewenthal explained that the Manager prefers access from this site be onto Standish Drive or onto Cooper Street rather than onto Old Durham Road. The reason for this preference is in order to limit the number of curb cuts on Old Durham Road and introduce traffic onto Old Durham Road via smaller streets such as Cooper Road or Standish Drive.

COUNCIL MEMBER THORPE MOVED, SECONDED BY COUNCIL MEMBER BOULTON, TO REFER THIS ITEM TO THE TOWN MANAGER AND ATTORNEY.

THE MOTION CARRIED UNANIMOUSLY (9 - 0).

Development Ordinance Text Amendment - Request to Allow "Bed and Breakfast" Inns in Residential Zones of Historic Significance

Assistant Manager Loewenthal introduced the request. (Please refer to Agenda #2 - Development Ordinance Text Amendment - Bed and Breakfast Inns.)

Brad Barker introduced himself and his wife, Sindy Barker, as applicants of the request. Ms. Barker distributed information to Council members. Mr. Barker stated that the growth and change that have taken place since he and his wife moved here in the 1970's have added strength to the Town. He noted that their request is a request to permit Bed and Breakfast Inns in residential districts as special uses.

Mr. Barker explained that under the current ordinance, a resident may rent out a maximum of two rooms as a home occupation. By amending the ordinance to include Bed and Breakfast Inns, the Town would create standards for such occupations. Increasing the number of rooms that a resident can rent from two to five is not a new activity but is a function of the size of the house.

The request is based on H.2.b. and B.4.d. of the Goals and Objectives of the Comprehensive Plan. In regards to H.2.b., Bed and Breakfast Inns are an adaptive use of an older home within the Historic District. Of the homes sold within the District in the last three years, the average size and price was 3,000 square feet and \$160,000, respectively. The house in question is 4600 square feet and the price is \$260,000.

Mr. Barker noted that many of the older homes were built when the size of families was larger. He added that the large homes are becoming increasingly difficult to maintain as single family residences given the cost of acquisition and maintenance.

Mr. Barker referred to an excerpt from a book entitled Bed and Breakfast American Style by Simpson (a copy of the excerpt was distributed to Council Members). Mr. Simpson surveyed 330 different Bed and Breakfast accommodations, 40 of which are one to five rooms. He found that 73% of the 40 inns are in residential districts.

In regards to B.4.d, Mr. Barker referred to a letter (distributed to Council Members) from Mr. Blaine Liner who was vice-chair of the Planning Board when the Historic District was created. Mr. Barker read part of Mr. Liner's letter.

Mr. Barker specifically named some of the present non-residential uses of sites located within that part of the Historic District generally referred to as single family residential.

Mr. Barker complimented the staff for the draft ordinance they prepared.

Mr. Barker referred to a map (distributed to Council members) showing the number of inns that would be allowed in the Historic District under the proposed ordinance amendment.

Council Member Broadfoot asked that the Mayor direct the applicant to restrict his comments to the general development ordinance request and not to the special use request that is covered in Agenda #3. Council Member Broadfoot also said it is highly irregular for the Manager to put the topics of Agenda #2 and Agenda #3 piggyback on the agenda.

Council Member Broadfoot said there is nothing in the proposed ordinance indicating that the inns will be permitted solely in the Historic District. Attorney Barrett referred him to Section 8.7.2.3 under Section IV of the proposed ordinance.

Mr. Barker said his statement focused on the Historic District since that is where most of the concern expressed about the proposed amendment has come from. He said the map shows that there would be at the most two Bed and Breakfast Inns permitted in the Historic District under the proposed ordinance.

Mr. Barker noted that he and his wife plan to live in the residence that they are proposed as a Bed and Breakfast Inn. They also plan to keep residential character of the house. Mr. Barker said they will respect the decision of the Council on this matter.

Ms. Ingram spoke for the Planning Board. By a vote of 4-3, the Planning Board recommended approval of the ordinance change that would allow

Bed and Breakfast Inns as a special use. Discussion of the Planning Board centered around containing the proliferation of the inns. There was also some question as to what would happen if a new Historic District was designated in the McCauley Street area. There was also concern with traffic. The Board recommended that the inns front on a principal arterial. The Board also pondered the future of the Town Center.

Arthur Marks spoke for the Historic District Commission. By a vote of 7-3 at its meeting on 9/13/84, the Historic District Commission recommended that the request not be approved. Mr. Marks said it is important to note that the Commission considered whether or not the request was appropriate for the Historic District rather than its town-wide appropriateness. He said the ordinance from Santa Cruz, California, which the Barkers propose as a model for the Chapel Hill amendment, deals with property listed under an individual historic building survey rather than with a collection of buildings forming a discrete neighborhood such as Chapel Hill's Historic District. Mr. Marks said the Barkers' statement of justification and letters sent to the Mayor on their behalf only rarely recognize the particularities of the proposed location and its impact. He also said the writers seem to confuse the historic town of Chapel Hill with the designated historic district. Residents of the Historic District expressed opposition to the request via a petition. Those sentiments were also echoed by the Trustees of the Preservation Society.

Mr. Marks stated the Historic District Commission feels that the portion of the District east of the Central Business District should be maintained for residences. As has been noted, there are already several non-residential establishments within the District but some of these date back to the turn of the century and have become a vital part of the District. The Commission feels this request is the first real test of the Commission's long standing residential perception of the District. Mr. Marks stated that the Commission fears approval of the request would set a precedent and create a domino effect for other commercial uses within the District. The Commission thinks a "rescue" of homes in the District is premature and is not necessary for their preservation since many of the homes have been and continue to be occupied as single family residences. Mr. Marks also noted that the District functions as a buffer to the Central Business District. The Commission, as an advisory board, encourages Council to heed their advice. If Council elects to approve the ordinance amendment, the Commission requests that Council not take immediate action on the Barkers' special use permit request but rather return the request to the advisory boards for reconsideration in light of the new ordinance.

Acting Manager Secrist said the Manager's preliminary recommendation is that Council adopt the attached resolution denying the request to amend the development ordinance to allow Bed and Breakfast Inns as special uses within residential zoning districts.

Knox Tate introduced himself as an architect, a member of the Preservation Society and a Commissioner on the Historic District Commission. Mr. Tate complemented the Barkers for a nice idea and a worthwhile concept. However, he said he feels a Bed and Breakfast Inn would destroy the neighborhood feeling that exists within the District because of the introduction of a transient population. He also expressed concern with the amount of parking that would be needed for an inn with five bedrooms. He said the yards might be converted into parking areas which he stated would be a creeping form of deterioration with the District.

Kathryn Chandler of 523 E. Rosemary Street referred to a letter she sent to Council members approximately one month ago. Ms. Chandler said there is no demand for accommodations that will cost more than a room at the Carolina Inn. She stated that the clientele the Barkers hope to attract can stay at Hotel Europa or the new hotel being planned for Rosemary Street. She said the inns would ruin the Historic District, which is the heart of Chapel Hill, because of the precedent they would set for other commercial uses. Ms. Chandler noted that 36 houses within the District have changed hands since the District was created 10 years ago. She also explained that some of the present owners of houses in the District would not have bought within the District if Bed and Breakfast Inns had been allowed. Prospective property owners of the District feel secure from creeping commercial development and allowing Bed and Breakfast Inns would threaten that security. Ms. Chandler suggested that the applicants

establish a Bed and Breakfast Inn in Orange County rather than in the Historic District.

Mary Turner Lane of 519 Dogwood Drive spoke for the Executive Board and Trustees of the Chapel Hill Preservation Society. She noted that the Board and Trustees of the Society passed a resolution recommending that Council deny the request. Ms. Lane stated that the Society has 800 members which shows there is a great deal of interest in preservation within the Chapel Hill community. Ms. Lane said the issue at hand is the Historic District and whether or not Council is going to maintain the covenants and restrictions placed on the District by Council when the District was created. Ms. Lane said that present and past residents of Chapel Hill are proud of the District. She also noted that more than \$200,000 has been invested by residents of Chapel Hill in the District to restore and maintain homes. Ms. Lane asked that Council not begin the process of change within the District that would occur with approval of this ordinance.

Tom Newsome of 213 W. Boundary Street spoke in opposition to the request. He asked that Council pay attention to the actions taken by the Historic District Commission and the Preservation Society as well as to the close vote of the Planning Board. Mr. Newsome said the fact that there are presently non-residential uses within the District indicates a need for tighter control. He noted that there are a limited number of single family homes within the District. He feels that allowing Bed and Breakfast Inns would justify other commercial uses in the area. Mr. Newsome submitted for the record an article from The Chapel Hill Newspaper entitled "Mixed Use Eases Plan for Criminals". Mr. Newsome stated that if the money that has been put into trying to allow Bed and Breakfast Inns had been put into the house proposed as an inn, the house could have already been made habitable for a single family residence. Mr. Newsome noted that the Bed and Breakfast business provides a tax shelter for its owners. He stated that Bed and Breakfast Inns are not an idealistic solution to an imagined social problem, but a commercial proposition with a slick public relations campaign. The single family restorations of the houses in the 1950's, 60's, and 70's made the area attractive enough to be worth defining as a Historic District. Had it not been for those single family restorations, the area might have turned into a student ghetto. Mr. Newsome noted that he knows of three houses in the District which were rental that have not been turned into single family residences since 1980. Mr. Newsome said that if the Bed and Breakfast Inns will be such an asset to the Town, why not spread them around to other areas of the town. He said it is unfair to lump the inns into an area that already has a limited number of single family residences. Mr. Newsome suggested that Council devote its efforts into developing new safeguards for the Town rather than considering new exploitations.

Shirley Marshall of 707 E. Franklin Street spoke in favor of the request. She noted that she voted for creation of the Historic District when she was an Alderman. She also noted that she is a member of the Preservation Society and is treasurer of the Chapel Hill Historical Society. Ms. Marshall commented that her residence is next to Gorgan's Head Secret Society and the society's yard is littered thanks to weekly late night invasions. She also feels the Bed and Breakfast Inns are one of the best adaptive uses for mixed use neighborhoods. Although the zoning for the Franklin Street area is not a manifest error, she said the zoning atlas does not reflect the mix uses presently found along Franklin Street. Ms. Marshall noted that the residences along Franklin Street do not share the same ambiances with neighbors as found on Boundary Street, North Street and Rosemary Street. She also noted that the house at 704 E. Rosemary Street needs a great amount of restoration. Ms. Marshall explained that there sometimes comes a need for these homes to be sold and she fears what might happen to the homes if there is not some flexibility for their use. She said if one home in the district is bulldozed, she fears it might set a precedent for other properties in the area.

Sandra Churchill of 406 Overland Drive, who resides next door to the Barkers, spoke in favor of the amendment. She expressed favorable comments about Bed and Breakfast Inns, located within residential district, that she has visited in other cities. She noted that by staying at Bed and Breakfast Inns, she has been provided interesting information about a community that she would not have gained by reading about it.

She said the inns will enhance the property at 704 E. Franklin Street as well as the Historic District.

David Godschalk introduced himself as a professional city planner, Preservation Society member, resident of Chapel Hill and supporter of the Historic District. He spoke in favor of the request. He said the Bed and Breakfast Inns would provide high quality restoration and maintenance for the large homes. He said the inns are a type of adaptive use that is in keeping with the concept of neighborhoods. Mr. Godschalk said Bed and Breakfast Inns are widely found in Historic Districts throughout the United States. He also stated that if the inns are approved and controlled by judicial regulation the quality of the Historic District can be maintained. Mr. Godschalk said the request achieves H.2.b. of the Goals and Objectives of the Comprehensive Plan.

P.H. Craig, an appraiser, member of the Preservation Society and a backer of the Historic District said he favors the request. In regards to the effect on area property values, Mr. Craig read a letter from Charles Stewart of MAI Appraisal Associates of Savannah, Georgia. Mr. Craig said the inns will not cause a decrease in property values in the area but will cause an increase. He said the Planning Board did a good job adding protections to the proposed ordinance which will prevent proliferation of the inns. Mr. Craig spoke specifically about the proposed inn at 704 E. Franklin Street and said it is ideally suited for use as an inn because it is on a large corner lot with a good access and already has plenty of parking. Mr. Craig asked that the following be submitted into the records of this hearing: a letter from Charles Stewart of MAI Appraisal Associates of Savannah, Georgia and a copy of his comments.

Mary Reckford of 729 E. Franklin Street spoke in favor of the request. She said the parking at the proposed inn at 704 E. Franklin Street would not be an eyesore. She also noted that people who spoke against the request are not nearby neighbors of 704 E. Franklin Street.

Mayor Nassif asked that speakers address only Agenda #3 at this time.

Dick Havens of 620 E. Franklin Street said he favors the request.

Sally Sather, a resident of Boundary Street, spoke in opposition to the request. She said it is a bad precedent to allow commercial use of a residential home. She stated that she knows of two other homes within the District that are under consideration for use as inns. She also said the inns are not necessary for the preservation of the neighborhood. Ms. Sather noted that of the 23 letters she reviewed that support the request, 19 are from residents who live outside the Historic District. She said the way to preserve the District is to encourage single family residences. She stated the way to preserve the District is to encourage single family residences. She stated that most of the homeowners within the District bought the houses because of their love for the houses and for the District, not because they wanted to make a profit from their use. Ms. Sather submitted a petition signed by residents of the Historic District opposing the request and asked that it be submitted into the records of this hearing.

J.D. Eyre of 619 E. Franklin Street said he thought the role of the Historic District Commission was to regulate concerns of appearance with the District.

Mayor Nassif responded that Mr. Eyre is correct but that the report from the Historic District Commission is in order. Mayor Nassif said the Commission did not exercise its jurisdictional control but rather issued an advisory statement. Attorney Barrett said one of the advisory roles of the Historic District Commission is to comment on general matters related to the District. Attorney Barrett said he attended the meeting of the Historic District Commission when this request was discussed and knows that staff advised the Commission of its general advisory role in this matter.

Mr. Eyre spoke in favor of the request. Mr. Eyre said there is a long standing practice of using private residences in the District to produce income (rooms or buildings for rent, home occupations) and he feels the Bed and Breakfast Inns, (with the proposed restrictions.) will fit within the presently accepted practices. Mr. Eyre stated that Franklin Street is

not inherently residential or a typical part of the Historic District. Therefore, Franklin Street should be treated along with but separately from the rest of the District. Mr. Eyre also noted that when the Historic District overlay ordinance was being formulated, discussions among Planning Board members recognized an already varied land use and agreed there should be opportunity for future land use changes in the District. He said the inns will contribute to the general vitality of the District, maintain and enhance the more specific character of Franklin Street, and will promote an activity that is economically feasible and appropriate to the portion of the District that abuts the UNC campus.

James Eder of North Street said he fears that Rosemary Street and North Street might soon be classified as thoroughfares and be eligible for Bed and Breakfast Inns. He also stated it is money that is running the Town and the realtors are lowering the standards for residences. Mr. Eder noted that the Coker house would make a good Bed and Breakfast Inn. He also said that by decreasing the available housing close to campus, students will be forced to drive to school and compete for the already limited number of parking spaces.

Council Member Boulton said she would like to have had specific suggestions from the advisory boards on how they feel the proposed ordinance could be changed. Council Member Boulton said she did not understand staff's objection. Assistant Manager Loewenthal said there was a judgment call for the decision. Staff feels that in balancing the need for an adaptive reuse versus the need to keep the neighborhood as a viable social entity, the Bed and Breakfast Inns should be avoided. Assistant Manager Loewenthal said the inns do not have the advantage in Chapel Hill as they would in some cities where it is important to have adaptive reuses to restore and maintain the homes.

Council Member Pasquini said one of the distinctions between renting out two rooms as compared to renting out five rooms is that there would probably be a greater amount of traffic generated with the renting out of five rooms due to the shorter length of the rental period. Council Member Pasquini asked what other areas in Town are under consideration for designation as an Historic District. Mayor Nassif said there are presently no areas in Town under consideration since Council opted not to pursue consideration of the McCauley Street area. Assistant Manager Loewenthal noted that McCauley Street is not a principal arterial.

Council Member Broadfoot expressed objection to having both a request for a development ordinance amendment and a request for a special use permit based on that amendment on the same agenda. He asked that the situation not reoccur in the future.

Council Member Broadfoot noted that the Historic District overlay has nothing to do with use. He opined that the ordinance cannot be restricted to R-2 zones only within the Historic District but must apply to all R-2 zones. Attorney Barrett said that although he understands Council Member Broadfoot's point of view, he has a different opinion. Attorney Barrett explained that the approach taken by this ordinance is that Bed and Breakfast Inns are allowed as special uses. As a condition of the special use, the inn must meet certain conditions in certain geographical areas. Therefore, the use applies to all R-2 zones within that certain area. The purpose of the amendment is to focus in on adaptive reuses within the Historic District.

Council Member Broadfoot noted that although the proposed ordinance requires frontage on a principal arterial street, it does not address the issue of ingress/egress.

Council Member Thorpe said he thinks it is appropriate to have the request for a development ordinance amendment and a project related to that request on the same agenda. He said he hopes the practice continues.

Council Member Howes asked where the limitation of this kind of use as a home occupation is found in the proposed ordinance. Attorney Barrett replied that it is in Section 5.5. Attorney Barrett noted that he raised some legal questions as to enforcement of a management provision. Staff accepted the view that if an owner occupies the property, the owners are

in "common sense" managing the property.

Council Member Howes asked if the term "principal arterial" is unequivocal in the Town's ordinance. Attorney Barrett responded that it is a term defined in the Design Manual. He also noted that the only principal arterial in the current Historic District is Franklin Street. In response to a question from Council Member Howes, Attorney Barrett said that although changes in the design manual (e.g. - street designations) can be performed by the Manager, administratively, any changes require prompt review by Council.

In response to a question from Council Member Preston, Assistant Manager Loewenthal explained that Bed and Breakfast uses would be allowed as special uses in residential districts. However, tourist homes are presently allowed in most commercial districts and staff proposes that Bed and Breakfast Inns be allowed in these commercial districts as tourist homes are not by right. Attorney Barrett said that theoretically the maximum number of inns on Franklin Street might be three. He said you only get two as a maximum number if you accept as a premise the starting point that is not appropriate to accept at this point; that is, that the corner of Park/Franklin Streets would be special use. Council Member Preston asked if this is giving economic favoritism to these certain homes. Attorney Barrett responded that the question relates to a previous question on distance. The opinion he gave to staff on distance was that 1000' was too great because in that event you would limit the number of inns to one and that would be favoritism. Attorney Barrett said 500' would allow three inns which he said is reasonable given the relatively small geographic size of the Historic District.

Council Member Preston asked what procedure can be used to grant the Historic District Commission's request to reconsider the request for a special use permit at 704 E. Franklin Street if the development ordinance is adopted. Mr. Marks stated that the Historic District Commission was unaware the two issues were going to be separate agenda items.

Mayor Nassif defended the Manager's scheduling of the development ordinance amendment and the request for a special use permit on the same agenda. He said it is a practice that has been done for many years. Mayor Nassif said in the event that the ordinance amendment takes on a number of new or different stipulations and is passed, Council would need for the attorney to give an opinion as to where that would leave the special use permit request.

Council Member Preston said it was very difficult for her to separate the ordinance amendment and the special use permit request.

Council Member Preston noted that she was a participant in the designation of the Historic District. She said at that time one of the purposes of the District designation was to help preserve the residential character of the area. She said that purpose should be given consideration.

Mayor Nassif asked that the Manager consider the following in his review of this proposal: mandate minimum square footage for the lot, require a maximum number of rooms, require that there be no new additions to the existing structure., limit the number of structures of one per lot, limit the meals served to occupants/tenants, require that the ingress/egress to the site not be off the major arterial, specify that parking be at the rear of the building, and make a recommendation of whether or not to require paved parking (perhaps not require parking so that the residential scale of the house will be enhanced). Mayor Nassif noted that if some of the suggested requirements are put in the ordinance, a limitation of distances probably would not be needed as a means or preventing proliferation. He also said he feels the distance requirements would be granting economic favor.

Council Member Boulton stated that the types of suggestions made by the Mayor are the kinds of comments needed from the advisory boards. She also said that any suggestions the advisory boards might have discussed for changes to the ordinance should be brought to Council's attention.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER KAWALEC, TO REFER THIS ITEM TO THE MANAGER AND ATTORNEY.

THE MOTION PASSED UNANIMOUSLY (9 - 0).

The Inn on Franklin Street - Request for a Bed and Breakfast Special Use Permit at 704 E. Franklin Street

Citizens wishing to speak to Council about this proposal were sworn in by the Interim Town Clerk.

Acting Town Manager Secrist requested that the following documents be entered into the record of this hearing: (Please refer to the Clerk's files.)

- Agenda #3, September 17, 1984, The Inn on Franklin Street - Request for a Bed and Breakfast Special Use Permit
- Applicant's Project Fact Sheet
- Applicant's Statement of Justification
- Applicant's Traffic Impact Report

Assistant Manager Loewenthal noted that this is not a legal request but is contingent upon the passage of the previously considered development ordinance amendment. Assistant Manager Loewenthal introduced the request. (Please refer to "Agenda #3, September 17, 1984, The Inn on Franklin Street - Request for a Bed and Breakfast Special Use Permit.")

Brad Barker, the applicant, presented the request. (Please refer to Applicant's Statement of Justification.) Mr. Barker said he has agreed to the closing of the Franklin Street driveway and curbcut. In regards to the parking, Mr. Barker said the Planning staff recommends that the driveway be paved. However, he prefers to comply with Article 6.6.5.d. and to surface the drive with an all weather type of material. Mr. Barker stated that he will comply with whatever Council deems appropriate for the drive. In addition, Mr. Barker said he accepts the condition made by the Planning Board to locate a sidewalk on Park Place beside the property and have it surfaced with Chapel Hill gravel.

Mr. Barker reviewed the Traffic Impact Report. (Please refer to the Clerk's files.)

Alice Ingram spoke for the Planning Board. The Planning Board discussed the requirement for a paved driveway and voted to recommend that the driveway be paved to Town standards and that the parking area be surfaced with crusher run stone or some other material approved by the Manager. The Board also recommended that the applicant provide a Chapel Hill gravel sidewalk beside the property along Park Place.

Arthur Marks spoke for the Historic District Commission. He stated that the Commission did not thoroughly discuss this specific special use request. The Commission recommends that if the development ordinance text amendment allowing Bed and Breakfast Inns is adopted that Council refer this request back to the advisory boards for consideration in the context of the amended ordinance. Mr. Marks said that since the vote recommending denial of the development ordinance amendment was 7-3, the Commission did not feel compelled to discuss this request until a decision is made by Council on the ordinance amendment.

Acting Manager Secrist stated that if the previously discussed proposed ordinance allowing Bed and Breakfast Inns in residential districts as special uses is adopted, the Manager's preliminary recommendation is that Council adopt this request subject to the proposed stipulations.

Tom Newsome of 213 N. Boundary Street spoke in opposition to the request. He noted that the request contains no safeguards to ensure that successor use of the residence as an inn will be of an acceptable quality. Mr. Newsome referred to an article from The Chapel Hill Newspaper titled "Mixed Land Use Eases Plans for Criminals" that reviewed results of a study about the potential for crime in mixed residential/commercial neighborhoods. Mr. Newsome also noted that neighbors do become familiar with the tenants of the house, at least for a short while, whereas with a Bed and Breakfast the tenants would be unfamiliar. Mr. Newsome said if

the price of the house is too high to be sold the price will go down. Finally, Mr. Newsome indicated that there is no assurance that Franklin Street will always be the only principal arterial in the Historic District. He said that with the addition of Rosemary Square, Rosemary Street might be designated a principal arterial. He also said there is no guarantee that the ordinance will contain the requirement that the inns front on a principal arterial.

P.H. Craig, an appraiser, said the property values in the areas will increase if this project is approved. He read part of a letter from Charles Stewart of MAI Appraisal Associates in Savannah, Georgia, which stated that property values will not decrease due to the introduction of a Bed and Breakfast Inn in an area. If anything the area will be supported and enhanced by the Inns.

Mr. Craig said he is unaware of Bed and Breakfast Inns outside a Historic District since the concept of the inns is to locate them in interesting areas. Mr. Craig stated that no extensive changes will be made to the residence except to add an 8' breakfast area onto the rear of the structure. Mr. Craig noted that the Barkers plan to furnish the house with period antiques and are planning to do extensive landscaping. Mr. Craig said the property values in the area will go down if something is not done to restore this house. He noted that other uses of this property might be less desirable than a Bed and Breakfast Inn.

Shirley Marshall of 707 E. Franklin Street said the proposed use will promote public health, safety and welfare. Deteriorating conditions will be improved. Traffic access, now uncontrolled for roomers, will be planned, designed and buffered. The grounds will be landscaped and the present unsafe overgrowth of vegetation will be removed. Turning sight distance from Park Place onto Franklin Street would improve. Left turns into the drive from Franklin Street would be discontinued.

Ms. Marshall said the use as presented and designed does or can easily be adapted to comply with all regulations and standards of the development ordinance. The use will be located, designed and proposed to be operated so as to enhance the value of contiguous property. The use will conform with the general plans of the physical development of the development ordinance. The use encourages pedestrian access to downtown and to the Historic District as well as bus access to other parts of town. The house will be an adaptive use that preserves and enhances the historic entranceways.

J.D. Eyre of 619 E. Franklin Street said the house is ideally located on the fringe of the Historic District and is within easy walking distance to downtown and UNC. He said the house would be an attractive place that students, alumni and their families could be proud of. Mr. Eyre said approval of the request would result in a definite upgrading of a unique piece of property that is now badly deteriorated. He noted that the house would be well maintained by the owners. Also, the proposals would result in no significant increase in traffic in the area. Mr. Eyre said a majority of the residents who live near 704 E. Franklin Street support the request.

In response to a question from Council Member Broadfoot, Mr. Barker said they have an option to buy the property but have not yet made a purchase. Council Member Broadfoot noted that there has been no evidence presented that proves older homes cannot be restored and maintained by means other than proposed.

Council Member Broadfoot opined that the present use of the house by five renters is an illegal use. Attorney Barrett read the portion of the ordinance that defines "family."

In response to a question from Council Member Broadfoot, Assistant Manager Loewenthal said the present structure has been given a priority rating of 2 on the Historic District Commission's map that rates homes of historic and/or architectural significance within the District. Attorney Barrett noted that the proposed ordinance requires that "an inn shall be located within a structure designated on the Historic District Commission's

map as having historic and/or architectural significance.

Council Member Smith noted that Bed and Breakfast Inns are now allowed in single family districts in Savannah. Mayor Nassif said that Savannah's zoning districts are probably different than Chapel Hill's and there are probably single family detached districts. Mayor Nassif stated that there are Bed and Breakfast Inns located within the Historic District in Savannah. Attorney Barrett said this same issue was raised at the Planning Board meeting. He said he thinks the Historic District in Savannah is mixed use and Savannah's single family district might be comparable to Chapel Hill's R-1.

Council Member Preston expressed concern as to whether or not this proposed use will be economically feasible. She said her understanding of the Economic Recovery Act is that funding under the act requires property owners to invest an amount equal to the cost of the property into restoration. In response to a question from Council Member Preston, Mr. Barker said he and his wife do not feel it would be economically feasible to rent out two rooms, as now permitted under the ordinance, because of the cost and size of the house.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER KAWALEC, TO REFER THIS ITEM TO THE MANAGER AND ATTORNEY.

THE MOTION PASSED UNANIMOUSLY (9 - 0).

Council Member Boulton left the meeting.

Request to Rezone 0.64 of an Acre at the Southeast Corner of Airport Road and Bolin Heights Road from R-4 and R-6 to Neighborhood Commercial

Assistant Manager Loewenthal presented the request. (Please refer to "Agenda #4, September 17, 1984, Danziger Rezoning.") She noted that the site is bordered by the proposed Mill Creek development. Assistant Manager Loewenthal emphasized that Mill Creek is proposed but not yet built. The developers have been working with Town staff to get their final use permit and are working on preliminary plans. However, the starting date for Mill Creek is 1/31/86 and completion must be by 1/31/90. Even though staff expects Mill Creek to be built, there is no guarantee. She also noted that the developers of Winding Ridge have submitted plans but the project has not been started. The starting date for Winding Ridge is 6/30/85 and it must be completed by 6/30/88. Assistant Manager Loewenthal pointed out that there is a non-conforming commercial use, Sparrow Glass Company, on the property located to the east of this site.

Council Member Preston asked why staff did not recommend that the applicant submit a request for a planned development under Section 8.8.3. Assistant Manager Loewenthal responded that a request for rezoning is broader than for a special use. She also said a special use permit request requires that a site plan be completed. It also requires showing the relationship of the proposal to the adjoining activity center and sufficient protection for the surrounding area. Assistant Manager Loewenthal said that was not the level of detail with which the applicant was working.

Mary Danziger, applicant, explained the proposed use for the site. She said she feels there is a need for a center where people can relate to each other. Ms. Danziger said the project planned for this site is one of seven projects that a group of residents concerned about violence has undertaken. Ms. Danziger noted that the property could have been sold to the developers of Mill Creek but she wanted to preserve it especially because of the stand of trees on the property. Ms. Danziger stated that she resides at #5 Bolin Heights, near the proposed site.

Mayor Nassif told Ms. Danziger that it is illegal for Council to consider a specific project planned for the property that is up for rezoning.

Ms. Danziger explained that in order for her to use the property for the desired use, the property must be rezoned. In regards to why she chose

the option of a rezoning request, she explained that it was suggested to her by the Town staff.

Alice Ingram spoke for the Planning Board. She said the Planning Board agrees, except for one member, with staff's recommendation.

Acting Manger Secrist stated that the Manager's preliminary recommendation is that Council adopt the proposed ordinance approving the request.

Jim Longstreth of #11 Bolin Heights said that Sparrow Glass Company is a new company that began business in January 1984. He said the Town was called in on the matter and determined that Sparrow Glass Company was in compliance but not to the letter of the law.

Mr. Longstreth noted that Ms. Danziger does own property at #5 Bolin Heights but uses the building for storage and does not reside at that address.

Mr. Longstreth said the tendency for the area in question has been to go more towards residential rather than commercial. He said there is already a problem turning off of and onto Airport Road and the problem will increase with the development of Mill Creek. He said the planned widening of Bolin Heights Road will not alleviate the problem but will only provide a longer turn lane. He said widening the road will not compensate for the amount of increased traffic. Mr. Longstreth also said the property in question is very small and he does not believe there will be adequate room to provide on-site parking. Mr. Longstreth asked that Council consider the request more carefully and in terms to its subsequent use.

Council Member Broadfoot said one of the statements made was that the Town is trying to concentrate commercial and activity in centers. He expressed concern that the town is losing a great deal of residential land to commercial development. He asked if there is a policy that states that low and moderate income housing is supposed to be close to activity centers.

Council Member Broadfoot asked why staff is favoring commercial use over residential use that you want close to activity centers. Assistant Manager Loewenthal replied that this is an attempt to balance the need to have commercial uses available for residential uses (i.e. have higher density residential areas around activity centers) as opposed to leaving the land open for future residential development. Assistant Manager Loewenthal stated that leaving land open for residential development does not ensure that the land will be used for low to moderate residential development. Council Member Broadfoot said that by leaving it open to residential development at least there is a chance that the property will develop for low to moderate housing.

COUNCIL MEMBER KAWALEC MOVED, SECONDED BY COUNCIL MEMBER BROADFOOT, TO REFER THIS MATTER TO THE MANAGER AND ATTORNEY.

THE MOTION PASSED UNANIMOUSLY (8 - 0).

There being no further business, the meeting was adjourned at 12:15 a.m.

Joseph L. Nassif, Mayor

Robin G. Rankin, Deputy Town Clerk