



Town of Carrboro

Town Hall
301 W. Main St.
Carrboro, NC 27510

Meeting Minutes Board of Aldermen

Tuesday, November 1, 2016

7:30 PM

OWASA Community Room

Present: Mayor Lydia Lavelle, Alderman Damon Seils, Alderman Sammy Slade, Alderman Bethany Chaney, and Alderman Michelle Johnson, Alderman Jacquelyn Gist, Alderman Randee Haven-O'Donnell

Also Present: David Andrews, Town Manager, Catherine Dorando, Town Clerk, Bob Hornik, Town Attorney

ANNOUNCEMENT OF UPCOMING MEETINGS

Catherine Dorando, Town Clerk, announced the upcoming public meetings.

APPROVAL OF PREVIOUS MEETING MINUTES OF OCTOBER 18, 2016 AND OCTOBER 25, 2016

**MOTION WAS MADE BY ALDERMAN SLADE, SECONDED BY ALDERMAN JOHNSON TO APPROVE THE MINUTES OF OCTOBER 18, 2016, AS AMENDED.
VOTE: AFFIRMATIVE ALL**

The minutes of October 25, 2016 were tabled until the next meeting to allow time for further review.

AWARD OF BID FOR TOWN COMMONS RENOVATION PROJECT

This item was tabled until December 6, 2016 because there were no bids received during the initial

solicitation phase. The project will be rebid with the award scheduled for December 6, 2016.

MOTION WAS MADE BY ALDERMAN SEILS, SECONDED BY ALDERMAN CHANEY TO TABLE THIS ITEM UNTIL DECEMBER 6, 2016. VOTE: AFFIRMATIVE ALL

FOLLOW-UP REPORT ON ACTIVITY FOR THE AREA OF DAVIE ROAD AND JONES FERRY ROAD

At the Board of Alderman meeting on October 18, 2016, the Board received comments from citizens concerning the behavior of individuals at the intersection of Davie Road and Jones Ferry Road. After hearing the comments, Board members directed staff to provide information on what is occurring at the corner, and possible solutions.

Chief Horton provided the staff presentation.

Alderman Gist stated that verbal harassment should be added to the sign. She stated that it is not ok for women and girls to be verbally assaulted when they walk by.

Alderman Chaney asked if there was an anti-solicitation ordinance that could be adopted for the area. She also stated that the landscaping should be considered. She also stated that not every problem with Spanish speaking individuals be pushed to El Centro for their solution. She stated that any way the Town can step-up enforcement will be better.

Alderman Haven-O'Donnell stated that she agrees that verbal harassment should be added to the sign. She asked about the people that have been coined "negative leaders" that are extorting the laborers on the corner. She stated that she is concerned the sign will not make a difference and is hopeful that the patrolling will lead to changes. She stated that the neighbors have been dealing with this for over a decade and that the activity seems to have gotten worse. She stated that the Board should have a strategy to deal with the activity that goes beyond the installation of a sign.

Alderman Johnson stated that she does not want to get into a space where it appears the Board is targeting a group of people and that their behavior is bad but that they are not bad people. She asked Pilar if the staff person from El Centro still makes trips to the corner. Pilar stated that El Centro is not at the corner as often because they lost a staff person. Jasmine lead organizer full-time staff at the program and there is difficulty in getting the people at the corner to choose CEL rather than the corner. She stated that there have been issues with the negative leaders and that the workers respond to supply and demand in the corner.

Alderman Gist stated that she would like to see an additional sign that says if you have been verbally harassed to call 911. She also stated that a PSA could go forward regarding verbal harassment and that it will not be tolerated. Mayor Lavelle and Alderman Slade agreed with this suggestion.

Chief Horton stated that a concern with fences or prickly bushes is that they will push people onto the sidewalk and that that will lead to walkers having to step into the road. Also, the regional manager for Ridgewood Apartments has stated that they do not want to move the fence.

Chief Horton stated that he believes of all the traffic on the corner 98% are there to find work.

Alderman Slade suggested that the sign that is placed should also include information for employers and employees to call El Centro for assistance in finding workers or work.

MOTION WAS MADE BY ALDERMAN CHANEY, SECONDED BY ALDERMAN SEILS TO PROCEED WITH SIGN ONE WITH DAY LABORER AND EMPLOYER CONTACT INFORMATION AND THE VERBAL HARASSMENT AND ADDITIONAL SIGNAGE THAT ENCOURAGES PEOPLE TO CALL 911 WHO HAVE EXPERIENCED VERBAL HARASSMENT. PATROLS SHOULD BE INCREASED WITHOUT HESITATION TO CITE OR ARREST. THE CHIEF SHALL PROVIDE AN UPDATE TO THE BOARD IN THREE MONTHS. ALL IN FAVOR

MOTION WAS MADE BY ALDERMAN GIST, SECONDED BY ALDERMAN JOHNSON THAT THE TOWN OF CARRBORO WORK WITH THE TOWN OF CHAPEL HILL AND UNC TO CREATE A PUBLIC AWARENESS CAMPAIGN AROUND GENDER RELATED VERBAL HARASSMENT. VOTE: AFFIRMATIVE ALL

CONTINUATION OF PUBLIC HEARINGS ON THE PROPOSED REZONING AND ASSOCIATED LAND USE ORDINANCE TEXT AMENDMENTS FOR THE LLOYD FARM DEVELOPMENT PROPOSAL

The purpose of this item was to continue the public hearings on the proposed rezoning at 700 Old Fayetteville Road from R-10, R-20 and B-4 to B-4-CZ and the associated text amendments for the Lloyd Farm development proposal.

Tina Moon, the Town's Planning Administrator, made the staff presentation.

Josh Dalton, with Sungate Design Group, P.A. Design Group, P.A. Engineering provided a presentation regarding stormwater retention systems and answered questions related to storm events and flooding.

Alderman Gist stated that she would like to see that the owner of the permit would be responsible for any damage that occurs downstream from the tampered or unmaintained device written into the CUP.

Leanne Brown, the attorney representing the developer, discussed condition #16 language with the Board. She stated that they have no problem complying with what the ordinance requires for stormwater retention devices.

Alan Mangus, BBM Associates, stated that they feel that they can design to the 50 year storm requirement but not the no-rise piece due to the cost to the developer of designing this type of system.

Ted Barnes, representing the developer, in follow-up to Alan Magus' comments, stated that they are probably two years away from any activity on the site and that allows the Town time to react to the changes in regards to stormwater improvements the Town may make. He stated that is why they have designed to the Town's current standards and that those changes may evolve over the next couple of years. He stated that the condition at this point in the process may need to be revisited during the CUP process and that would cause a very expensive redrawing. He stated that it is in everyone's best interest that the retention systems be inspected regularly. He stated that they would be willing to have someone from the Town, including Sungate Design Group, P.A. Design Group, P.A., inspect the systems on a regular basis.

Alderman Gist asked for the attorney to respond regarding the liability issue about the damage that occurs when a stormwater retention device fails to work as designed. This information will be provided at a later date.

Travis Blewit, with Kimley-Horn, discussed the traffic impacts and possible changes to the entrance/exit onto Highway 54 and changes to Carol Street.

Alderman Chaney asked about working with NCDOT and the Post Office about ingress and egress options and ways to make certain cut-throughs less attractive. She asked that a discussion be had with the Post Office about ways to make it less convenient.

Mayor Lavelle asked if there had been any discussion with the Post Office about traffic calming options. Travis Blewitt stated that there had not been any discussions to date.

Kevin Brigham, a resident of 306 Rainbow, stated that the traffic issue must be considered along with stormwater. He stated that the success of this project will depend on the ease of access and that existing onto Highway 54 would make the project much more desirable. He stated showed a video of recent flooding and asked the Board to have design standards to the 100 year storm as a minimum.

Aja Kellowar, a Carrboro resident, stated that the neighbors' top three concerns are stormwater/rain, traffic and safety, and noise. She asked about what the developer is going to do and what the Town intends to do to fix the current problems. She asked about the possibility of a bond that would protect current residents if planned stormwater retention devices fail. She stated that the Town needs to correct the stormwater problem before the development is approved.

Tyler Johnson, a resident of 308 Rainbow Drive, expressed concern with traffic and stormwater. He stated that the Town should not spend any more time on this until there is a signalized intersection on Highway 54.

Chip Romeo, a resident of 311 Carol Street, stated that the development is more harm than good. He expressed concern with the scope and scale of the development and stated that traffic and water

are his number one concerns. He asked the Board to vote against the rezoning as it has been proposed.

Julie Shaw Kokot, a resident of 313 Carol Street, thanked the Board for having the Davenport Study done. She stated that she does not want Carol to be a one-way street west but suggested that the no through traffic sign would be more viable.

Meredith Bratcher, a resident of 107 Carol Street, expressed concern with increased noise and traffic. She asked the Board to think about this as a place that is important to Carrboro and that it is a neighborhood.

Greg Rosenthal, a resident of 110 Carol Street, stated that he is concerned with traffic and flooding. He asked the Board to deny the rezoning request.

Barney Kohout, a resident of 112 Carol Street, stated that the street is not wide enough and that that James Street has a buckled sidewalk that has not been repaired. He asked if the traffic engineer considered if school was in session at McDougal or if they measured the road width when developing their models.

Sharon Schramm, a resident of 312 Carol Street, expressed concern with the increase in traffic. She stated that she does not want to see Carol Street become one-way. She stated that there will be increased accidents and that people's lives are more important than NCDOT not wanting a light.

Allen Spalt, a resident of 300 James Street, stated that the main concern should be with the increased flooding downstream of Main Street. He stated that the Town's rules do not apply to the Post Office because they are federal. He stated that people should not be allowed to go through the Post Office. He expressed interest in the continuous T idea for the exit option onto Highway 54. He stated that he is concerned with James Street and Lisa Street proposed right-of-way connections that are on the table because they do not provide a good location to exit from the proposed development.

Austin Brown, a resident of 107 Melba Circle, stated that he was concerned with the flooding. He stated that these issues keep coming forward but there has not been a plan to address the issues. He asked the Town to move forward and do something to address the infrastructure concerns.

Alderman Gist stated that she was not ready to vote tonight. She stated that she wants to know how they can guarantee that this project will not negatively affect the surrounding neighborhood with stormwater flooding. She also wants to see a guarantee or a way to guarantee that if increased flooding damages are shown to be caused by the development that they are liable.

Alderman Haven-O'Donnell stated that she is not ready to make a decision because the information falls short of ensuring that the development will not increase flooding in the neighborhood. She thanked all of those that were part of the mediated process for the development.

Mayor Lavelle stated that she would like the Board to vote on this project during their next meeting. She stated that she would like to see a condition that addresses the 100 year storm and a condition that requires inspections of the stormwater devices along with a financial mechanism

such as a bond. She asked staff to provide clarity on the expected use of the right-of-ways proposed in condition #17. She stated that she would like to have staff opinion on the “continuous T” exit option. She also asked if a roundabout or traffic light can be an option and if traffic calming can be included for Carol Street with the example of a sign that reads “local traffic only.” She stated that the Town is looking into a stormwater utility and that will be an expensive and serious process that the Town undertakes to address the aging infrastructure.

Alderman Johnson stated that she does not think the Board should vote tonight. She thanked all that were involved with the mediation process. She stated that she would like to see a condition related to inspection and liability for stormwater devices. She stated that the issues regarding stormwater need to be addressed regardless of if the Town rezones.

Alderman Chaney stated that she would like to see the turtle conditions added. She stated that she would like to understand the Post Office’s ability to work with the Town regarding traffic management through their property. She stated that she would like to work with Chapel Hill Transit to see if the bus could be rerouted through the development and away from Carol Street. She stated that the housing options are going to be beneficial to the Town’s affordability efforts. She stated that she can do without condition #17 related to access/right-of-way.

Alderman Slade stated that from the beginning the Planning Board has encouraged the developer to think of scales that are more pedestrian and biker friendly. He stated that he feels that the project is a strip mall project. He explained that he is not in favor of the project due to the impact it will have on continued worsening of global warming.

Alderman Seils stated that it is time for the Board to vote and asked the Board to set the date when they will vote. Ted Barnes stated that he could not attend the November 15, 2016 meeting but could attend the December 6, 2016 meeting.

MOTION WAS MADE BY ALDERMAN SEILS, SECONDED BY ALDERMAN GIST TO CONTINUE THE PUBLIC HEARING UNTIL DECEMBER 6, 2016. VOTE: AFFIRMATIVE ALL

MOTION WAS MADE BY ALDERMAN CHANEY, SECONDED BY ALDERMAN SEILS TO RECONSIDER THE PREVIOUS MOTION. VOTE: AFFIRMATIVE ALL

MOTION WAS MADE BY ALDERMAN SEILS, SECONDED BY ALDERMAN CHANEY TO CLOSE THE PUBLIC HEARING AND TO SCHEDULE THE ITEM FOR DECISION ON DECEMBER 6, 2016 VOTE: AFFIRMATIVE ALL

CONTINUATION OF PUBLIC HEARING ON TOWN CODE AMENDMENT TO ESTABLISH VACANT NONRESIDENTIAL BUILDING ORDINANCE

The purpose of this agenda item was for the Board of Aldermen to continue its consideration of public comment and a draft ordinance that establishes Town Code requirements related to the

condition of vacant, nonresidential buildings.

**MOTION WAS MADE BY ALDERMAN HAVEN-O'DONNELL, SECONDED
BY ALDERMAN SEILS TO ADOPT THE ORDINANCE BELOW:**

CHAPTER 11A

ORDINANCE NO. 6/2016-17

**TOWN OF CARRBORO VACANT NONRESIDENTIAL BUILDING ORDINANCE (Created
11/1/2016)**

Sec. 11A-1. - Title. This ordinance shall be known and may be cited and referred to as the
“Town of Carrboro Vacant Nonresidential Building Ordinance.”

Sec. 11A-2. - Purpose. In order to protect the health, safety and welfare of the Town and its
residents and citizens including but not limited to owners of vacant nonresidential buildings or
structures, it is the purpose of this ordinance to establish minimum standards of maintenance,
sanitation, and safety relating to vacant nonresidential buildings or structures, as expressly
authorized by G.S. § 160A-439. This ordinance provides for the repair, closing or demolition of
vacant nonresidential buildings or structures as a result of a public necessity caused by
conditions that are dangerous to the public health, safety and welfare.

Sec. 11A-3. - Definitions. The following words and phrases shall have the meanings set forth
herein unless the context clearly indicates otherwise:

Administrator means the Town officer designated to administer and enforce this ordinance.

Agent means any person, firm or corporation who is responsible for the management,
maintenance, operation, renting, leasing or sale of any property, or who makes application for or
seeks a permit or certificate on behalf of the owner of any property or who in any other way
represents the owner of the property in any particular case.

Bathroom means a heated enclosed space with privacy containing a toilet with access to a
lavatory (either within enclosed space or specifically accessible by enclosed space).

Building means the primary structure (or structures) on a lot designed to be used as a place
for the shelter or enclosure of persons, animals or property of any kind.

Nonresidential means any building or structure or portion of a building or structure designed
or intended to be occupied, in whole or in part, for a use other than a dwelling, home, residing
place, or permanent living space or sleeping space for one or more human beings.

Owner shall mean any person who alone, jointly, or severally with others:

- (1) Shall have title in fee simple to, or hold mortgage or deed of trust in, any nonresidential building or structure, with or without accompanying actual possession thereof; or
- (2) Shall have charge, care or control of any nonresidential building or structure as owner or agent of the owner, or as executor, administrator, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this ordinance and of rules and regulations adopted pursuant thereto, to the same extent as if such person were the owner.

Parties in interest mean all individuals, associations and corporations who have interests of record in a nonresidential building or structure and any who are in possession thereof.

Premises means any lot or parcel of land inclusive of any building or improvements located thereon.

Structure means, in addition to its ordinary meaning, anything constructed, regardless of where it was constructed.

Vacant means not occupied for or in active use for any purpose intended or allowed by the owner of the building or structure.

Vacant industrial warehouse means any building or structure designed for the storage of goods or equipment in connection with manufacturing processes, which has not been used for that purpose for at least one year and has not been converted to another use.

Vacant manufacturing facility means any building or structure previously used for the lawful production or manufacturing of goods, which has not been used for that purpose for at least one year and has not been converted to another use.

Sec. 11A-4. - Applicability and compliance.

- (a) This ordinance shall apply to all nonresidential buildings or structures which now are, or may become, vacant, and which are now in existence or which may be built within the corporate limits of the Town.
- (b) Every vacant nonresidential building or structure and the premises on which it is situated shall comply with the provisions of this ordinance, whether or not such building or structure shall have been constructed, altered, or repaired before or after the enactment of this ordinance, and irrespective of any permits or licenses which have been issued for the use or occupancy of the building or structure or for the installment or repair of equipment or facilities. This ordinance establishes minimum standards for all vacant nonresidential buildings or structures and does not replace or modify standards otherwise established for the construction, repair, alteration, or use of the building or structure contained therein.

Sec. 11A-5. - Maintenance standards for vacant nonresidential buildings and structures.

(a) *Space and use standards.*

- (1) The floor and walls, if in contact with the earth, are waterproof and dampproof in accordance with the state building code requirements. Such waterproofing and dampproofing shall be between the floor or wall finish and the ground.
- (2) Access. Access shall be provided to all rooms within a vacant nonresidential building or structure such that reasonable exit is available if necessitated by circumstances.
- (3) Doors. Doors shall be provided at all doorways leading to bathrooms.

(b) *Entrances and exits.*

- (1) All entrances and exits must meet the standards set forth in the state building code.
- (2) Doors providing entrance and exit for any nonresidential building or structure shall have locking devices capable of being operated from the inside and outside of the nonresidential building or structure, even if vacant or intended by the owner to be vacant.
- (3) Safe, continuous and unobstructed exit shall be provided from the interior of the building or structure to the exterior at street or grade level.
- (4) Platforms and steps shall be provided, where appropriate, to serve exits and shall be maintained in a safe condition.

(c) *Light and ventilation standards.* Window frames and glass shall be reasonably weathertight, with no cracked or broken glass. If, in the opinion of the administrator or his or her designee, certain cracked glass does not present a danger or hazard, a waiver of this provision may be granted. Windows shall at all times remain operable consistent with the windows' design.

(d) *Lighting of halls and stairs.* Every enclosed area shall be adequately lighted at all times with fixtures with conveniently located light switches controlling the lighting system which provides the illumination required therein and which may be turned on when needed. This provision may be waived by the administrator.

(e) *Heating.* Heating facilities. Every nonresidential building or structure shall have an operational heating unit appropriate for the use of the nonresidential building or structure.

(f) *General requirements relating to safety and maintenance.*

- (1) *Good repair and safe condition.* Every nonresidential building or structure and all parts thereof designed or intended used or occupied as an enclosed area shall be kept in good repair, in safe condition and fit for any use to which it may be put. The roof and walls of all such buildings or structures shall be maintained so as not to leak; and all means of draining water therefrom shall be maintained as to prevent dampness in the walls, ceiling or crawl space or basement.
 - (2) *Quality of materials and workmanship.* Material used in making any repairs shall be of a quality suitable for the purpose and of a kind normally used by a contractor or tradesman to accomplish such a repair. Such repair shall be accomplished in a manner that is in accordance with the accepted standards and practices of the trade.
- (g) *Structural standards.*
- (1) *Foundation.*
 - a. Every nonresidential building or structure unit shall be situated on firm ground. Foundation drainage shall be provided and maintained so as to prevent standing water.
 - b. Footings shall be sound with adequate bearing.
 - c. All elements of the foundation, including structural members and masonry, shall be in good repair.
 - d. No piers shall be used for support in which the plumb line from top center falls outside the middle one-third of the base of the pier. (A plumb bob held firmly against the top of the pier and hanging down the side wall indicates the vertical alignment).
 - e. No isolated masonry piers exceeding in height ten times the least dimension of pier shall be permitted.
 - f. A crawl space access hole having a door shall be provided to any under-floor space in all nonresidential buildings or structures.
 - (2) *Walls, exterior.*
 - a. All exterior surfaces shall be structurally sound, waterproof, weatherproof and vermin proof.
 - b. All exterior finishes shall be weathertight with no holes, cracks or rotted boards which permit outside air or water to penetrate rooms.
 - c. All structure or load bearing walls, exterior or interior, shall not be bowed or out of plumb and shall be structurally sound.
 - d. Studs shall provide sufficient support for sheathing or exterior finish.

(3) *Roofs.*

- a. Roofing shall be provided to prevent the entrance of moisture and shall be maintained by renewal, repair, waterproofing or other suitable means.
- b. Gutters and downspouts, if installed, shall be provided to properly collect, conduct and discharge the water from the roof and away from the structure.
- c. Roofs shall be supported and no rafters shall be rotted, broken, sagging or have improperly supported ends.
- d. Attics shall have ventilation that allows the movement of air to dissipate excessive heat build-up. Heat buildup is excessive if it causes deterioration of any structural member or roofing material.
- e. Sheathing shall not be rotted, loose or sagging excessively.
- f. Roof covering shall not be loose, nor have holes or leaks.
- g. Flashing shall be provided at walls and chimneys and shall be installed in accordance with the state building code.
- h. Soffits shall be maintained in a weathertight condition and shall not be rotted, loose or sagging.

(4) *Porches.* Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 42 inches in height. Such guardrails shall not be rotted, broken or termite damaged.

(5) *Stairs and steps.*

- a. Stairs and steps shall be free of holes, grooves and cracks large enough to constitute accident hazards.
- b. Handrails having minimum and maximum heights of 30 inches and 38 inches respectively, measured vertically from the nose of the treads, shall be provided on at least one side of stairways of four or more risers.
- c. No flight of stairs shall be settled out of its intended position or pulled away from supporting or adjacent members.
- d. Stairs shall be strongly supported and supports shall not be rotting, sagging or deteriorated.
- e. Stairs shall be plumb, level and treads shall be uniform in width and risers uniform in height, sound and securely fastened to structure. A slight

uniform tilt of the treads to aid in the runoff of water is permissible for exterior steps.

- f. Every stairway, including inside stairs and rails, porches, decks and appurtenances thereto shall be kept in sound condition and good repair.
- g. Platforms and steps shall be provided to serve exits and shall be maintained in a safe condition.

(6) *Ceilings.*

- a. Joists and supporting members shall provide sufficient support for the ceiling.
- b. No holes or cracks which permit outside air to penetrate rooms shall be permitted.
- c. There shall be no loose plaster, boards, sheetrock, or ceiling finish. Any materials used in the repair of the ceiling shall be of a material that is similar in texture and appearance to the original material. This provision does not prohibit the replacement of the entire ceiling; provided that the material used is contiguous over the entire ceiling area within the affected room.
- d. Ceilings shall be maintained free of holes, cracks or loose or deteriorated materials.
- e. All ceilings shall be kept clean and free of any flaking, loose or peeling paint and paper.

(7) *Walls, interior.*

- a. Interior finish shall be free of holes and excessive cracks which:
 - 1. Permit outside air or moisture to penetrate rooms; or
 - 2. Contain loose or flaking materials.
- b. All walls, woodwork, doors and windows shall be kept clean and free of any flaking, loose or peeling paint.
- c. There shall be no loose plaster, boards, or other loose wall materials.
- d. Cardboard, newspaper or other highly combustible or improper wall finish is prohibited.
- e. Studs shall provide sufficient support for interior wall.

- f. Doors must fit the opening in which they are hung and be equipped with hardware that allows for their opening and closing.

(8) *Floors.*

- a. Broken, overloaded, excessively decayed or sagging structural floor members are prohibited.
- b. Structural floor members shall be supported on foundation walls and piers that are not deteriorated and perform the function for which they were intended.
- c. Floor joists shall be supported on structural bearing members and shall not be made structurally unsound by deterioration.
- d. Flooring shall be reasonably smooth, not rotten or worn through, and without holes or excessive cracks which permit outside air to penetrate rooms.
- e. Flooring shall not be loose.
- f. Split, splintered or badly worn floor boards shall be repaired or replaced.
- g. Floors in contact with soil shall be paved either with concrete not less than three inches thick or with other masonry not less than four inches thick, which shall be sealed tightly to the foundation walls.
- h. All bathroom, laundry and kitchen floors shall be constructed and maintained so as to be impervious to water by covering with a waterproof nonabsorbent material.

Examples of this type of material include asphalt tile, ceramic tile, linoleum tile or sheet, rubber tile, terrazzo, vinyl tile, vinyl plastic tile or sheet, finished wood, parquet, masonry, polyurethane. Certain absorbent materials covered with a waterproof finish shall also be permitted. Porch and deck-type enamel paints shall be prohibited due to their nondurable nature. The administrator can approve other types of waterproof nonabsorbent materials that meet the criteria of this section.

(h) *Property maintenance.*

- (1) *Structures.* Floors, walls, ceilings and fixtures shall be maintained in a clean and sanitary condition.

- (2) *Open areas.*

- a. Surface and subsurface water shall be appropriately drained from open areas to protect structures and to prevent development of stagnant ponds.

- b. Fences and all accessory structures, either attached to or detached from the primary nonresidential building or structure, shall be maintained in a safe and substantial condition. Accessory structures shall include, but are not limited to, sheds, storage buildings, carports, and garages.
- i) *Electrical standards.* Electrical service. Every enclosed area shall be supplied with adequate electric service, of at least 100 amp service which shall be properly installed and connected to the source of electric power in a manner prescribed by the ordinances, rules and regulations of the Town.
- (j) *Plumbing standards.*
 - (1) *General.*
 - a. Every nonresidential building or structure shall be connected to public water supply and/or sanitary sewer system where they are available; unless a private water supply and sanitary sewer system for each nonresidential building or structure is approved by the county health department. This provision may be waived by the administrator.
 - b. All plumbing, water closets and other plumbing fixtures in every nonresidential building or structure shall be installed and maintained in good working condition and repair and in accordance with the requirements of this ordinance and the state plumbing code. All plumbing shall be so maintained and used as to prevent contamination of the water supply through cross connections or back siphoning.
 - d. All fixtures shall be in proper working condition with no leaks existing.
 - e. No fixtures shall be cracked, broken or badly chipped.
 - f. All water piping shall be protected from freezing by proper installation in enclosed or concealed areas or by such other means as approved by a Town plumbing inspector.
 - g. Access to all bathrooms shall be through a weathertight and heated area.
 - (2) *Water heating unit.* Every enclosed area shall have supplied a water heating unit which has been listed by a testing agency and is properly installed, operated and maintained in safe and good working condition and is properly connected to the bathtub or shower, sink and lavatory basin, as required in this ordinance and the state plumbing code. Such water heating unit shall be capable of automatically heating water to a temperature of 120 degrees Fahrenheit and capable of meeting normal demands at every required outlet, even though the enclosed areas' heating unit is not in operation. All gas-fired water heaters shall be vented to the outside.
 - (3) *Bathroom.* Every enclosed area shall have access to a bathroom in good working condition which shall be properly connected to the public sanitary sewer or to an approved sewage disposal system. The lavatory basin shall be properly connected to both hot and cold water lines, and the water closet shall be properly connected to a cold water line.

- (k) *Painting.* All exterior surfaces of buildings and structures, not inherently resistant to deterioration, shall be treated with a protective coating, such as paint or other suitable preservative, with sufficient frequency to prevent deterioration. All such portions shall be cleaned and free of flaking, loose or defective surfacing materials prior to painting or coating. All interior loose or peeling wall covering or paint shall be removed and the exposed surface shall be placed in a smooth and sanitary condition. No paint shall be used for interior painting of any enclosed area unless the paint is free from any lead pigment.
- (l) *Fire and safety standards.*
- (1) *Fireproofing and fire protection.*
- (2) *Fire extinguishing equipment.* All fire extinguishing equipment required by the state fire code shall be provided and maintained in an operable condition.
- (3) *Smoke detectors.* Enclosed areas shall be equipped with a smoke detector (battery operated or 110 volt) which has been listed by a testing agency (such as Underwriters Laboratories). All smoke detectors shall be located on or near the ceiling of the room wherein it is located and shall be installed in accordance with the manufacturer's instructions and maintained in proper working condition.
- (4) *Abandoned iceboxes.* The doors shall be removed from all iceboxes, refrigerators and other large air-tight containers which are abandoned and which are accessible to children, unless the door or lock can be released or opened from the inside.
- (m) *Awnings.* All canopies, metal awnings, stairways, porches, fire escapes, standpipes, exhaust ducts, air conditioners, and similar overhanging extensions shall be maintained so as to be free of missing, defective, rotting or deteriorated foundations, supports, floors, other members, and steps thereto, so as to be safe to use and kept in sound condition and in good repair.
- (n) *Other dangerous conditions prohibited.* Any combination of conditions which in the judgment of the administrator renders any nonresidential building or structure dangerous or injurious to the health, safety, or general welfare of owners, occupants or members of the general public.

Sec. 11A-6. - Designation of the administrator as public officer. The administrator is hereby designated as the public officer pursuant to G.S. 160A-439.

Sec. 11A-7. - Powers of the administrator. The administrator is authorized to exercise such powers as may be necessary or convenient to carry out and effectuate the purpose and provisions of this ordinance, including the following powers:

- (a) To investigate nonresidential buildings and structures in the Town to determine whether they have been properly maintained in compliance with the minimum standards established by this ordinance so that the health, safety and/or welfare of the occupants or members of the general public are not jeopardized;
- (b) To administer oaths and affirmations, examine witnesses and receive evidence;
- (c) To enter upon premises for the purpose of making examinations and inspections provided that such entries shall be made in accordance with law and in such manner as to cause the least possible inconvenience to the persons in possession;
- (d) To appoint and fix duties of such officers, agents, and employees as the administrator deems necessary to carry out the purposes of this ordinance; and
- (e) To delegate any of his or her functions and powers under this ordinance to other officers and agents.

Sec. 11A-8. - Inspections. For the purpose of making inspections, the administrator is hereby authorized to enter, examine, and survey at all reasonable times, any vacant nonresidential building or structure as defined in this ordinance. If entry upon the premises for purposes of investigation is necessary, such entry shall be made pursuant to a duly issued administrative search warrant in accordance with G.S. 15-27.2 or with permission of the owner, the owner's agent, a tenant, or other person legally in possession of the premises.

In addition, the administrator may adopt a periodic inspection program, subject to the council's approval, to provide for the routine inspection of all nonresidential buildings or structures as defined in this ordinance.

Sec. 11A-9. - Procedure for enforcement.

- (a) *Preliminary investigation.* Whenever it appears to the administrator that any nonresidential building or structure is, or has been, vacant and has not been properly maintained so that the health, safety and/or welfare of its occupants or members of the general public are jeopardized for failure of the property to meet the minimum standards established by this ordinance, the administrator shall undertake a preliminary investigation.
- (b) *Complaint and hearing.* If the preliminary investigation discloses evidence of a violation of the minimum standards established by this ordinance, the administrator shall issue and cause to be served upon the owner of and parties in interest in the nonresidential building or structure a complaint. The complaint shall state the charges and contain a notice that a hearing will be held before the administrator at a place within the Town, not less than ten days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to answer the complaint and to appear in person, or otherwise, and give testimony at the

place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the administrator.

(c) *Procedure after hearing; issuance of order.*

- (1) If, after notice and hearing, the administrator determines that the vacant nonresidential building or structure has been maintained in that the property meets the minimum standards established by this ordinance, the administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof a copy of said determination and the matter shall be closed.
- (2) If, after notice and hearing, the administrator determines that the vacant nonresidential building or structure has not been properly maintained so that the health, safety and/or welfare of its occupants or members of the general public is jeopardized for failure of the property to meet the minimum standards established by this ordinance, the administrator shall state in writing findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order in accordance with the provisions of either subsections (c)(3) or (c)(4) and subject to the limitations set forth in this ordinance.
- (3) If the administrator determines that the cost of repair, alteration, or improvement of the vacant nonresidential building or structure would not exceed 50 percent of its then current value, then the administrator shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
 - a. Repair, alter, or improve the vacant nonresidential building or structure in order to bring it into compliance with the minimum standards established by this ordinance, or
 - b. Vacate and Close the nonresidential building or structure for any use.
- (4) If the administrator determines that the cost of repair, alteration, or improvement of the nonresidential building or structure would exceed 50 percent of its then current value, then the administrator shall state in writing the findings of fact in support of such determination and issue an order that requires the owner, within a reasonable time specified in the order, to either:
 - a. Remove or demolish the vacant nonresidential building or structure, or
 - b. Repair, alter or improve the vacant nonresidential building or structure to bring it into compliance with the minimum standards established by this ordinance.

(d) *Failure to comply with order; adoption of ordinance by Board of Aldermen*

(1) If the owner fails to comply with an order to either:

- a. Repair, alter, or improve the vacant nonresidential building or structure, or
- b. Vacate and Close the vacant nonresidential building or structure, the administrator may request that Board of Aldermen adopt an ordinance ordering the administrator to cause such vacant nonresidential building or structure to be repaired, altered, or improved in order to bring it into compliance with the minimum standards established by this ordinance or to be closed for any use. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following the Board of Aldermen adoption of an ordinance, the administrator may cause the building or structure to be either repaired or closed for any use. The administrator may cause to be posted on the main entrance of any vacant nonresidential building or structure so closed a placard with the following words: "This building is unfit for any use; the use or occupation of this building for any purpose is prohibited and unlawful." Any person who occupies or knowingly allows the occupancy of a building or structure so posted shall be guilty of a class 3 misdemeanor.

(2) If the owner fails to comply with an order to either:

- a. Remove or demolish the vacant nonresidential building or structure, or
- b. Repair, alter, or improve the vacant nonresidential building or structure, the administrator may request that the Board of Aldermen adopt an ordinance ordering the administrator to cause such vacant nonresidential building or structure to be removed or demolished. No ordinance shall be adopted to require removal or demolition of a nonresidential building or structure until the owner has first been given a reasonable opportunity to bring it into conformity with this ordinance. The property or properties shall be described in the ordinance. The ordinance shall be recorded in the office of the register of deeds and shall be indexed in the name of the property owner or owners in the grantor index. Following the Board of Alderman adoption of an ordinance, the administrator may cause the building or structure to be removed or demolished.

Sec. 11A-10. - Limitations on orders and ordinances—Historic landmark or historic district.

Notwithstanding any other provision of this ordinance, if the vacant nonresidential building or structure is designated as a local historic landmark, listed in the national register of historic places, or located in a locally designated historic district or in a historic district listed in the national register of historic places and the Board of Aldermen determines, after a public hearing, that the nonresidential building or structure is of individual significance or contributes to

maintaining the character of the district, and the nonresidential building or structure has not been condemned as unsafe, an order issued by the administrator pursuant to this ordinance and an ordinance approved by Board of Aldermen pursuant to this ordinance may only require that the vacant nonresidential building or structure be vacated and closed until it is brought into compliance with the minimum standards established by this ordinance.

Sec. 11A-11. - Same—Vacant manufacturing facility or vacant industrial warehouse.

Notwithstanding any other provision of this ordinance, an order issued by the administrator pursuant to this ordinance and an ordinance approved by the Board of Aldermen pursuant to this ordinance may not require repairs, alterations, or improvements to be made to a vacant manufacturing facility or a vacant industrial warehouse to preserve the original use. The order and ordinance may require such building or structure to be vacated and closed, but repairs may be required only when necessary to maintain structural integrity or to abate a health or safety hazard that cannot be remedied by ordering the building or structure closed for any use.

Sec. 11A-12. - Limitation on enforcement of complaint or order—Approved renovation plan.

- (a) If the owner of the vacant nonresidential building or structure is served with complaint or order due to exterior and interior violations on such vacant nonresidential building or structure and if such owner repairs the exterior violations and secures the vacant nonresidential building or structure within an agreed upon timeframe, then administrator may suspend the enforcement of this ordinance for a period of up to two years from date of issuance of complaint or order if:
 - (1) Owner presents proof that owner is actively seeking to sell the property upon commercially reasonable terms. Such proof includes posting a sign in a conspicuous place on the premises indicating such nonresidential building or structure and premises is for sale or lease or other evidence that such building or structure is being actively marketed for sale or lease upon commercially reasonable terms; and
 - (2) Owner states that purpose of not repairing interior is to allow a new owner or tenant to upfit or renovate the interior of the building or structure.
- (b) When the owner secures the vacant nonresidential building or structure pursuant to this section, the administrator may require the owner to take reasonable measures to ensure that the building or structure in its closed state is in a safe and sanitary condition. Such measures include but are not limited to requiring the owner to keep boarded, if any, windows free of graffiti.

However, the administrator may reinstate the enforcement of the provisions of this ordinance at any time if the vacant nonresidential building or structure is no longer secure, other exterior violations appear or if the vacant nonresidential building or structure has conditions or a change of circumstances that make it dangerous and injurious to public health, safety and welfare.

Sec. 11A-13. - Vacated and closed nonresidential buildings or structures; abandonment of intent to repair.

- (a) If the Board of Aldermen has adopted an ordinance or the administrator has issued an order requiring the vacant nonresidential building or structure to be repaired or vacated and closed and such building or structure has been vacated and closed for a period of two years pursuant to the ordinance or order, then if the Board of Aldermen finds that the owner has abandoned the intent and purpose to repair, alter, or improve the building or structure and that the continuation of the building or structure in its vacated and closed status would be inimical to the health, safety, and welfare of the Town in that it would continue to deteriorate, would create a fire or safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, or would cause or contribute to blight and the deterioration of property values in the area, then the Board of Aldermen may, after the expiration of the two-year period, adopt an ordinance and serve such ordinance on the owner, setting forth the following:
 - (1) When the cost to repair is less than or equal to 50 percent of the nonresidential building or structure's current value, the ordinance shall require that the owner either:
 - a. Demolish and remove the nonresidential building or structure within 90 days, or
 - b. Repair, alter, or improve the nonresidential building or structure to bring it into compliance with the minimum standards established by this ordinance within 90 days; or
 - (2) When the cost to repair exceeds 50 percent of the nonresidential building or structure's current value, the ordinance shall require that the owner demolish and remove the nonresidential building or structure within 90 days.
- (b) In the case of a vacant manufacturing facility or a vacant industrial warehouse, the building or structure must have been vacated and closed pursuant to an order or ordinance for a period of five years before Board of Aldermen may take action under this section.
- (c) If the owner fails to comply with the requirements of the ordinance, the administrator shall demolish and remove the nonresidential building or structure.

Sec. 11A-14. - Methods of service of complaints and orders.

- (a) Complaints or orders issued by the administrator under this ordinance shall be served upon persons either personally or by registered or certified mail and, in conjunction therewith, may be served by regular mail. When service is by regular mail in conjunction with registered or certified mail, and the registered or certified mail is

unclaimed or refused, but the regular mail is not returned by the post office within ten days after mailing, service shall be deemed sufficient. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

- (b) If the identifies of any owner or the whereabouts of persons are unknown and cannot be ascertained by the administrator in the exercise of reasonable diligence, and the administrator makes an affidavit to that effect, then the serving of the complaint or order upon the owners or other persons may be made by publication in a newspaper having general circulation in the Town at least once no later than the time at which personal service would be required under the provisions of this ordinance. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

Sec. 11A-15. - Notice of lis pendens.

Upon issuance of a complaint and notice of hearing or order, a notice of lis pendens with a copy of the complaint and notice of hearing or order attached thereto may be filed in the office of the clerk of Superior Court of Orange County or the county where the property is located. The notice of lis pendens and a copy of the complaint and notice or order shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice or order shall be binding upon the successors and assigns of the owners of and parties in interest in the nonresidential building or structure. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the nonresidential building or structure at the time of filing. The administrator may cancel the notice of lis pendens if the action in which the complaint and notice or order was issued has been settled, discontinued, or abated.

Sec. 11A-16. - Costs, lien on premises.

- (a) The amount of the cost of repairs, alterations, or improvements, or vacating and closing, or removal or demolition by the administrator shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority as, and be collected as a lien for special assessment provided in G.S. ch. 160A, art. 10.
- (b) The amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the administrator shall be a lien on any other real property of the owner located within the Town limits except for the owner's primary residence. The additional lien provided in this subsection is inferior to all prior liens and shall be collected as a money judgment.
- (c) If the nonresidential building or structure is removed or demolished by the administrator, the administrator shall offer for sale the recoverable materials of the building or structure and any personal property, fixtures, or appurtenances found in or attached to the building or structure and shall credit the proceeds of the sale, if

any, against the cost of the removal or demolition, and any balance remaining shall be deposited in the superior court by the administrator, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the council to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise.

Sec. 11A-17. - Temporary injunction remedy for aggrieved person and certiorari review.

- (a) Any person aggrieved by an order issued by the administrator or a decision rendered by the Board of Aldermen may petition the superior court for an injunction restraining the administrator from carrying out the order or decision. The petition shall be filed within 30 days after issuance of the order or rendering of the decision. A hearing on the petition shall be as provided in G.S. 160A-446(f).
- (b) Certiorari review. Every decision of the board shall be subject to review by the superior court by proceedings in the nature of certiorari instituted within 15 days of the decision of the board, but not otherwise.

Sec. 11A-18. - Conflict with other provisions.

In the event any provision, standard or requirement of this ordinance is found to be in conflict with any other ordinance or code of the Town, the provision which establishes the higher standard or more stringent requirement for the promotion and protection of health and safety of the citizens of the Town shall prevail.

Sec. 11A-19. - Violations; penalty; fee; remedies.

- (a) It shall be unlawful for the owner of any vacant nonresidential building or structure to fail, neglect or refuse to repair, alter or improve the same, or to close or remove or demolish the same, upon order of the administrator duly made and served as herein provided, within the time specified in such order, and each day that any such failure, neglect or refusal to comply with such order continues shall constitute a separate and distinct offense.
- (b) It shall be unlawful for the owner or agent of the owner in charge of such vacant nonresidential building or structure with respect to which an order has been issued pursuant to this ordinance, to occupy or permit the occupancy of the same in a dilapidated or deteriorated condition found to be unfit for any use in violation of such order for its repair, alteration or improvement or its vacation, closing or demolition, and each day that such unlawful occupancy continues after the expiration of the time prescribed in the order to repair, alter, improve, vacate, close or demolish such nonresidential building or structure shall constitute a separate and distinct offense.

- (c) Any person that fails to comply with any of the provisions of this ordinance shall be subject to a civil penalty in the amount of \$300.00 for the first day of noncompliance and \$50.00 for each day thereafter. This penalty may be recovered by the Town in a civil action in the nature of debt if the person does not pay the same within 30 days after the initial day of noncompliance.
- (d) The owner of any vacant nonresidential building or structure who fails to repair or vacate and close it, or demolish or remove it, upon order of the administrator duly made and served as herein provided, within the time specified in such order, shall be subject to an administrative fee in an amount set by the Town council for noncompliance. This fee allows the Town to recover some of its administrative costs incurred due to the owner's failure to comply with the administrator's order described herein.
- (e) The violation of any provision of this ordinance shall constitute a misdemeanor and shall be punishable in accordance with section 1-9.
- (f) A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by G.S. 160A-175. The Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien.

Adopted this 1st day of November 2016.

The motion carried by the following vote:

Aye: Alderman Seils, Alderman Slade, Alderman Chaney, Mayor Lavelle, Alderman Johnson, Alderman Gist and Alderman Haven-O'Donnell

DISCUSSION OF GREENE TRACT

This item was postponed.

ADJOURNMENT

**MOTION WAS MADE BY ALDERMAN GIST, SECONDED BY ALDERMAN JOHNSON TO
ADJOURN THE MEETING. VOTE: AFFIRMATIVE ALL**