

Copies of Citizen Correspondence on the Third Draft

At and Subsequent to September 18, 2002 Public Hearing
Compiled October 4, 2002

- Rosemary Waldorf, 9/18
- Janet Kagan and Steve Reznick, 9/18
- Ruby Sinreich, 9/18
- Jim Groot, 9/18
- Gerald Pottern, 9/18
- Elaine Chiosso, 9/19
- Ed Fuchs, 9/19
- Rudy Juliano, 9/19
- John Guibert, 9/22 (two items)
- Rebecca Sowder, 9/22
- Jack Olin, 9/23
- Sally Greene, 9/23
- Kenneth Jones, 9/23
- Michael Rifkin, 9/25
- David Gerber, 9/25
- Joseph Grieco, 9/25
- Nicholas Paliouras, 9/26
- Jack Olin, 9/26
- Phil Berke, 9/26
- John Barrere, 9/26
- Josh Steinhurst, 9/27
- Jack Olin, 9/28
- Grace Beattie, 9/29
- Russell Hall, 9/30
- Julie Mertus, 10/1
- Joseph Grieco, 10/1
- James Barrett, 10/1
- Jim Protzman, 10/2
- Shannon Julian, 10/3
- Sharon Barrett, 10/3
- Stanley Robboy, 10/3
- Chris Bogan, Mary Jo Barnett, 10/3

(21)

Wednesday, September 18, 2002

Dear Mayor and Council Members,

Congratulations for getting this far in your work on the development ordinance. I can't come to the hearing this evening and wanted to pass along a couple of comments.

First, I am so pleased that you have provisions encouraging housing in the town center zones. Second, I'm also glad that you kept the transit oriented development zoning district.

I have concerns that are probably policy questions.

One is the limitation on house size. Why? If I owned a 10,000 square foot lot and wanted to build a two-story house that was 3300 square feet instead of 3,000, I would really want a good answer as to why the council wouldn't let me do so. Take a look at Southern Village. I bet lots of homes there are more than 3000 square feet on lots smaller than 10,000 square feet. Is this so bad?

If the measure is designed to protect certain areas, such as Northside or near to campus areas, why not just apply the appropriate protective designations to those areas?

A second concern I have is that the draft ordinance, as I understand it, will create a large number of nonconformities. Please carefully consider whether you should make extensive efforts to let people know that their properties would become nonconforming. This could really matter to a lot of folks. They need to understand that they couldn't add the garage or the bedroom or the patio they might be planning, and what this nonconforming status means to their property's value and potential in the event of fire or natural disaster.

A third concern is the elimination of duplexes in R 1, 2 and 3 zones. Again, why? Again, if the acute worry is about particular areas, it seems to me that it would be best to regulate those areas. I think it was Ray Gronberg's article today that pointed out that the comprehensive plan calls for a variety of housing types. That value is still a good one for us, all over town.

Thanks for considering my comments. I appreciate that this is a large and difficult job. Thanks for all your hard work.

Rosemary Waldorf

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Wednesday, September 18, 2002

To: Town Council

Dear Mayor and Council,

We are writing to encourage you to approve the third draft of the Development Ordinance that is before you this evening. Please do not succumb to the interests of developers. Chapel Hill is too precious and beautiful to yield to mediocrity.

Thank you.

Janet Kagan and Steve Reznick
Lyons Road
Chapel Hill

Wednesday, September 18, 2002

To: Town Council

I do not think that I will be able to attend your public hearing tonight on the new Land-Use management Ordinance, but I have spent many hours attempting to understand this new draft, and I hope to have some constructive feedback on it for you.

As you know, this draft was made available just 2 weeks before our scheduled discussion at the Planning Board. Even with two weekends dedicated to the task, I was not able to finish reading the document. This is clearly not enough time for a thoughtful analysis by any individual or an entire Advisory Board. I hope you will see fit to include future feedback from the Planning Board's special October meeting on this subject, and I also ask that you arrange your calendar in the future to allow for more thorough discussion on such important matters.

In the first five sections, I found over 60 of what I call "usability errors." This includes typographical, spelling, and grammatical problems. It also includes incorrect labels, names, and references. (I did not check many references, but more than half of those I did look up were wrong.) These are the kind of mistakes that make the Ordinance difficult, if not impossible, to use. This does not serve the people of Chapel Hill. I am attaching a list of these errors so that you can get a sense of what I am talking about.

While this may seem pedantic on my part, I can think of no more appropriate time to pick nits than when reviewing a document where a changed word can alter the law and have a concrete impact on property values, and the future of our community.

Thank you for your attention and continued hard work. I look forward to sharing more substantive comments with you in the future.

= Ruby Sinreich

- p. Change all uses of the words “he” and “he or she” to “he/she” (or any single consistent practice). See page 95 for 3 different uses in top 2 paragraphs. This includes references to the manager, applicants, or any other person referred to in the text.
- p. Remove or change all references to the word “chapter.” According to page 6, there is no such thing in this document.
- p.14, 3.5.1.c, 2nd line from bottom
Delete “Generally.”
- p.14, 3.5.1-2
What is the purpose of this table? Only two numbers are different from the rest of the column. This confuses rather than clarifies.
- p.19, 3.5.1.d.5.C, 6th line
Insert the word “that” between “extent” and “such.”
- p.31, 3.5.4, 5th line
Change “Code (TOD-C)” to “Core (TOD-C)”
- p.34, 3.6.2, 2nd line from bottom
Change “encourage, design whether” to “encourage design, whether”
- p.37, 3.6.2.d.4, 3rd line
Remove the comma after “Town Manager”
- p.39, 3.6.3, 4th line
Add comma after “watercourses”
- p.39, 3.6.3, 5th line
Add comma after “watercourses”
- p.41, 3.6.3.c, graphic illustration.
The graphic should demonstrate the 50’ corridors by making them equal lengths. Why does this illustration not have a number (i.e. 3.6.3-2)?
- p.45, 3.6.3.g.3, 2nd bullet
Remove second period.
- p.48, 3.6.3.h.2.A, 2nd line
Change “finish floor elevation(s)” to “finished floor elevation(s)”
- p.57, 3.6.4.c.1, 1st line
Remove “Generally.”
- p.61, 3.6.4.g.2, #A-I
Add “and” to the end of C, D, E, and G, or remove it from A, B, F, and H.
- p.65, 3.6.5, 1st line
Add commas between “distinctive older in-town residential”
- p.65, 3.6.5, 2nd ¶
Change “inner Town” to “in-town”
- p.74, 3.7-1
Make codes (e.g.: P, A, S, --) consistent, rather than zone-dependent.
- p.76, 3.8.3.a, 2nd line
Change “the Town Manager shall determine” to “that the Town Manager determines”
- p.76, 3.8.3.b, 3rd line
Change “the Town Manager shall determine” to “that the Town Manager determines”

p.76, 3.8.3.1.5, 2nd line

Change “may not be” to “are not”

p.79, 3.8-2

Change numbering so that 3.8-2 does not precede 3.8-1

p.82, 3.8-1 Rules

Remove “Generally.” Column references are all off in this section. 1st ¶ references M & N, which do not exist. F & G reference H, H references I.

p.83, 3.8-1 Rules F&G, 9th line

Change “OI-3” to “OI-3”

p.86, 3.9.2.a.3

Change “and” to “an”

p.87, 3.9.2.d

This paragraph is impenetrable. The second sentence is too long.

p.94, 4.4.1.c, 4th line

Remove commas around “by the property owner(s)”

p.94, 4.4.2.b.2

Delete the first sentence, which is repeated. What is happening with the font size here?

p.100, 4.5.3.a.2

Delete the first sentence, which is repeated. Delete 2nd ¶, which is identical to 4.5.3.a.4.

p.103, 4.5.3.j

Insert a comma after the word “proposes”

p.105, 4.5.4.b.7.B

Remove the quotation mark at the end of the sentence

p.135, 4.8.3.o, 1st line

Remove “for development tracts between 10 and 20 acres.” This is restated in (1) immediately below.

p.146, 4.13.3.c, last line

“4.15.4” should be “4.13.4”

p.148, 5, 1st line of 2nd ¶

Change the word “city” to “town”

p.148, 5, 8th line of 2nd ¶

Change “low impact design” to “low-impact design”

p.148, 5, last line of last ¶

Change “nuisance type” to “nuisance-type”

p.151, 5.2.7.a, 1st line

Change “and” to “an”

p.153, 5.3.2.c.1.A

Slope categories are not “described above.” I think it means to say “described below in Table 5.3-1”

p.154, 5.3.2.c.2, between # A & D

What happened to # B & C?

p.157, 5.4.5.a, 2nd line

Change “theses” to “these”

p.164, 5.5.2.g, 2nd line

Change the word “about” to “abut”

p.171, 5.7.2.b.1

Is 5.7.5 (“public lands”) the correct reference here?

p.174, 5.7.4.e.2, 4th line

Change the word “Supervisory” to “Supervisor”

p.176, 5.7.4.j.1, last line

“...applicable sections of this section.” Huh?

p.182, 5.7.6.d.2.B, 4th line

4.13.2 is not the correct reference

p.182, 5.7.7.a, 1st line of 2nd ¶

Capitalize “dbh”

p.183, 5.7.8.b.3, 1st line

Remove the period between “Town” and “Manager”

p.184, 5.7.8.c.3, 3rd line

What is “Article 23”???

p.184, 5.7.8.d, 2nd line

4.6 is not the correct reference

p.186, 5.8.2, 6th line

Remove the words “shall be provided” as they are redundant

p.186, 5.8.2, 3rd line

Change “are be designed” to “are designed”

p.186, 5.8.2.c

Remove the first sentence which is redundant.

p.188, 5.9.2.b.1

Please end each list item consistently either with or without “and”, and remove period at end of # D.

p.189, 5.9.2.b.3, 4th line

Remove “the” before “approval”

p.190, 5.9.5.k, 1st line

Change “ventilation of an dispersion and removal of” to “ventilation, dispersion, and removal of”

p.201, 5.12.2.d, 2nd line

Remove “documents certification of”

p.202

Please make all font faces consistent for body text on this page.

p.202, 5.14.3, 2nd & 4th lines

5.15.5 & 5.15.8(3) are not correct references

p.203, 5.14.3.g, 4th line

Change “sited” to “site”

p.205, 5.14.7

Reference to 5.15.4 is wrong.

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Wednesday, September 18, 2002

To: Cal Horton

Here is what I was referring to. Now perhaps the Chamber review is inaccurate as regards the "new" policies.

However if this is accurate, here are a few things to be considered. A restaurant the size of Red Hot & Blue would be allowed 11 parking places for 131 seats. Worse would be applying the same formula to a concept like 411 West. Our concept "turns" customers almost 50% faster at dinner than 411.

Anyway, the biggest concern should be convenience, especially at lunch. Frankly if people cannot move in and out easily, then they will simply go somewhere they can.

If you need more complaining let me know.

6. Parking

Following maximum number of parking spaces will apply:

?	Banks	1 per 350 SF
?	Business Convenience	1 per 350 SF
?	Restaurant	1 per 350 SF
?	Office Building	1 per 350 SF
?	Church	1 per 4 seats
?	Cultural Facility	1 per 500 SF
?	Public Use Facility	1 per 350 SF
?	Elementary School	1 per staff
?	Motel/Hotel	1 per lodging unit

Jim Groot
Red Hot & Blue

Wed, 18 Sep 2002
To: Edward C. Harrison

Hi Ed,

I reviewed the DWQ Stream Classification Form (32 stream indicators) and selected about a dozen that are most useful in defining the upstream limits of an intermittent stream. I then combined and re-worded them into five recommended indicators below.

To qualify as an intermittent stream for buffer protection, indicator 1) must be present, and at least one of the remaining indicators 2 through 5 must be present.

- 1) Is there a channel or depression connected with public waters by surface flow or pipe?
- 2) Is surface flow detectable more than 48 hours after the last known 0.5+ inch rainfall?
- 3) Are there deposits of hydric soil or iron oxidation (bog rust) along the channel edges?
- 4) Are aquatic algae or wetland plants present? (FACW or OBL)
- 5) Are benthic macroinvertebrates or amphibian larvae present?

Using these recommended criteria will include both stream channels and wetland seeps without a discrete channel at the heads of streams. DWQ riparian buffer rules exclude wetlands, but there's no reason for a local government to follow this unfortunate omission. Headwater seeps are extremely important for water quality, stormflow attenuation, habitat, etc.

I think this method will be fairly straightforward, intuitive to users, and simple to implement and enforce. It does not rely on those geomorphology indicators (in the DWQ Stream Form) that upper reaches of intermittent streams rarely exhibit, or that may be lacking due to alteration.

I hope this helps.

Gerald Pottern

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September 19, 2002

To: The Chapel Hill Town Council

The Haw River Assembly is a non-profit citizen organization founded in 1982 to protect the Haw River and Jordan Lake, and tributary streams, including the creeks of Chapel Hill. We have 1500 members in the watershed, including many from Chapel Hill. We commend the Town of Chapel Hill for the excellent stream protection provisions that have been incorporated into the third draft of the Land Use Management Ordinance. We believe that the expansion of the Resource Conservation District, the 150' protected stream corridors and the Stormwater Management standards will all maximize protection of water quality and riparian ecosystems in the face of increased construction and development activities.

The Stormwater Management reforms in this draft are very important. They would be applied townwide; would effectively control volume, rate and quality of stormwater releases, and regulate residential development stormwater.

Protected stream corridors, often know as riparian buffers, are important for good water quality and the health of the streams. Stream buffers are a particularly effective form of water quality protection because they hold soil in place and act as a living filter to remove pollution before it enters the steam. They create a continuous green corridor that provides, shade, shelter and food for a healthy ecosystem in and near the water. They slow storm water and prevent greater flooding downstream, and the scouring of stream banks that often results.

Chapel Hill's major creeks - Bolin Creek, Booker Creek, Little Creek, Meeting of the Waters, and Morgan Creek- are all listed as Impaired Waters on the NC 303(d) report that will be submitted to the EPA. They are all listed as biologically impaired and will require further monitoring and study to determine if they will be required to have a TMDL (total maximum daily load) to reduce pollution. In addition, the Morgan Creek arm of Jordan Lake is listed as impaired by chlorophyll a, indicating excessive nutrients, and has been targeted for a TMDL.

Preserving the natural stream corridors that are left in Chapel Hill is a truly significant way to prevent further degradation of these streams. The town would be taking a very strong stance to protect its waters in the future. Once development occurs in these stream corridors, it would be very difficult to ever reclaim the natural buffers. We believe that protecting them to this level now will be of great benefit to the town and its residents in the long run.

Thank you for the opportunity to comment on this ordinance, and please feel free to contact us if you would like further information.

Elaine Chiosso
Executive Director, Haw River Assembly

Thursday, September 19, 2002

Dear Council Members,

I'm a 67 year-old resident of Chapel Hill. I live in the East Franklin Street Historic District. Since I'm not a developer, I normally pay little attention to town development issues. However, I happened upon a cable broadcast of a Council meeting concerning a new development ordinance. After listening for several minutes, a chill ran through my body. If the ordinance passes, my home and the 15 homes in line of sight from my home, all will be non-conforming due to new slope and RCD buffer rules, with no possible way to clear the non-conformances. This includes homes on North Boundary, Mint Springs Lane and Hillsborough Street. The neighborhood is built on "the" hill and is laced with temporary runoff streams. The neighborhood is built up and the present RCD buffers work well. Based on what I heard at your meeting, it appears that, when I am ready to sell my home to move into an assisted living facility, the nonconforming property will be difficult to sell, will not yield the value that I have been counting on to buy into an old age home, and any prospective buyer will have great difficulty finding a mortgage for a nonconforming property with a looming sunset rule. This is nothing short of an unmitigated disaster. Please tell me that I dreamed the whole thing. My knowledge of the topography of Chapel Hill tells me that I and my 15 neighbors are not alone by a long shot. It appears that you may be making a significant fraction of the homes in Chapel Hill non-conforming. I hope and pray that you will take the trouble to inform the homeowners of Chapel Hill about what you are planning to do to them. Once informed, I know that we will do whatever is necessary to protect our interests. Or preferably, let me know that I have got it all wrong.

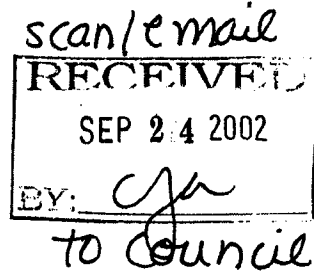
Yours truly,

Ed Fuchs

(M)

(3)

408 Lyons Rd.
Chapel Hill NC 27514
Sept 19, 2002



Mayor Kevin Foy,
Chapel Hill Town Council
Town Hall
306 North Columbia Street
Chapel Hill, NC 27516-2124

Dear Mayor Foy and Council Members,

I am writing in behalf of the Board of the Coker Hills Neighborhood Association regarding the 3rd Draft of the Land Use Management Ordinance. We wish to express our views concerning the potential impact of the Ordinance on our neighborhood. Coker Hills is part of a large swath of R-1 zoned neighborhoods in north-central Chapel Hill. It is a mature, very stable neighborhood with moderate sized homes on large treed lots. The residents are anxious to maintain the current character of our neighborhood.

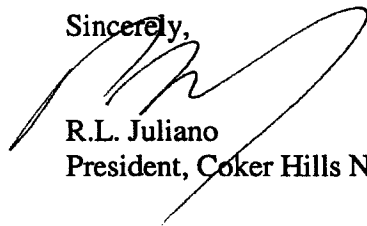
First, we heartily approve of the change in the 3rd Draft that prohibits duplexes or other multi-unit dwellings in R-1 neighborhoods. We understand that some developers and real estate interests are fighting this provision, but we urge you to maintain it. The large lots in our area might be tempting to developers looking for places to put up multi-unit housing. Thus we need this provision to maintain the single-family residential character of our neighborhood.

Second, we were distressed to learn that the 3rd Draft still contains a marked reduction in the setbacks for R-1 property. We feel that this will encourage "mansionization" in neighborhoods such as ours. We do not wish to see super-sized homes that are inappropriate to the character of our neighborhood. We hope that some consideration can be given to retaining the previous setbacks in established neighborhoods.

Finally, we hope that the Council will allow facile use of the Neighborhood Conservation District provision for neighborhoods such as ours. We see this as a way of instituting increased protections, perhaps in line with our existing deed restrictions. This approach would allow Council to establish R-1 parameters consistent with the needs of newer, denser neighborhoods, while still allowing older areas such as ours to protect their character. However, use of this approach cannot be overly cumbersome and bureaucratic so as to deter small neighborhoods from seeking its benefits.

Thank you for your consideration.

Sincerely,



R.L. Juliano
President, Coker Hills Neighborhood Association

September 22, 2002

To: Mayor Foy and the Chapel Hill Town Council Members

I have recently become aware of the retroactive provisions of the proposed Chapel Hill Land Use Management Ordinance.

When approached by several concerned neighbors regarding those provisions, I initially told them that they were probably over-reacting, that no one could be really proposing something so egregious or absurd, and that we all should re-read the proposed ordinance. Subsequently, some of my neighbors attended the recent hearing on this proposal -- and asked you straight out if they were correctly interpreting your proposal. To their shock (and mine), you told them that they were correct in their interpretations.

You now have my attention -- and I hope very soon you will have the attention of most if not all of the Chapel Hill citizens who will be adversely affected by the proposed ordinance's retroactive provisions related to current single-family residential property owners. Those directly and immediately affected include, among many others, effectively all homeowners in the Chesley sub-division; most homeowners in the Silver Creek sub-division; most homeowners in the Lake Forest/Bolin Creek sub-divisions; and, I am told more than 2/3 of the homeowners in Southern Village. If the ordinance is adopted as currently adopted, I believe that within a matter of months all Chapel Hill citizens will be affected -- as the need to increase the overall tax rate becomes apparent. I further believe that before long you too will be affected, as the sleepy citizens of Chapel Hill wake up to what you have brought about.

I sincerely request that you re-evaluate and remove the retroactive provisions of the proposed Chapel Hill Land Use Management Ordinance that you propose to apply to single-family residential property. **Chapel Hill's Land Use Management Ordinance should not be used to unfairly attack and diminish the property rights of current residential homeowners.**

I have chosen -- for the first time ever for me -- to write a letter to the Editor of the Chapel Hill News regarding today's article on this subject. Electronic copies of that letter in both Word and Adobe pdf formats are attached. Please note that it only discusses the potential adverse impacts on current single-family residential homeowners, although I understand that the proposed ordinance may also adversely affect other current property owners.

Sincerely,

John Guibert

September 22, 2002

Editor
The Chapel Hill News
505 West Franklin Street
Chapel Hill, NC 27516

Re: The Proposed Development Ordinance

Dear Sir:

I believe that the article in Sunday's paper regarding the Town's proposed Development Ordinance failed to sufficiently identify and emphasize two of the most significant issues:

1. The people most adversely affected by the proposed ordinance are current, individual residential homeowners. The retroactive provisions of the proposed ordinance go well beyond affecting "several existing properties". I certainly do not purport to have exact figures, but I would estimate that at least 20-25% of the current single-family residential homeowners in Chapel Hill will be adversely affected by these retroactive provisions when their property becomes classified as "non-conforming" -- due to its being located within 150 feet of a stream or being located on a significant slope. Once a property is classified as "non-conforming", the value of the land itself would almost certainly decline to zero or near zero.
2. The vast majority of the affected citizenry are not currently aware of the full reach of this very consequential proposal. This is clearly one of the most significant (and disturbing) aspects of this situation.

Fred Stevens (manager of TriPointe Properties/York Simpson Underwood) has gotten it right on two key points regarding the provisions of the proposed ordinance:

1. "It's an effective taking of property without an accounting of how many people are going to be affected."
2. "It's so absurd that I don't think people even believe it."

It's time for the citizens of Chapel Hill to WAKE UP, to become familiar with this proposal and to demand that Chapel Hill's Land Use Management Ordinance not be used to unfairly attack and diminish the property rights of current residential homeowners -- before it is too late.

If the retroactive provisions related to existing residential property of this proposed ordinance are not removed or significantly modified, just what is going to happen when the affected citizenry figures out what has happened to them? Here are just a few of the more likely possibilities:

- A long series of legal actions against the Town will begin (does the Town have extra money to spend on these potential court battles or, for that matter, to repay adversely affected citizens for the financial damages that the Town will have caused to them?).

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- The Orange County Assessor's office will be overwhelmed with demands for property tax value reevaluations, due to the effective loss of land value caused by this ordinance. As a result of the resulting property reevaluations, it will become necessary to significantly increase the tax rates for everyone (how many of us can afford that?)
- In the next local election, more than just 18% of the Town's citizens will decide that it is worthwhile to exercise their privilege to vote (and they will vote to remove from office as many of the architects and supporters of this proposal as is possible).

Your newspaper can provide a great public service by increasing public awareness of the key issues and the potential impacts (good and bad) of this proposed ordinance before the Town Council votes on it. Please do so.

Sincerely,

John C. Guibert

P.S. I am not a real estate developer or real estate agent. I have no interest in real estate other than in my personal home ownership.

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Sunday, September 22, 2002 9:31 AM
To: Town Council

Dear Mr. Kevin Foy and Chapel Hill council members,

I am writing in response to possible regulations on off-campus housing, to be discussed by the town council on October 21. The possibility of limiting houses to only 2 non-related people is ridiculous. This regulation would displace many students, heightening the demand for apartments, which currently is a problem in Chapel Hill. This regulation could perhaps spur further construction of apartment buildings in the area, a result that many residents, students and non-students, would oppose. Similarly, eliminating duplexes in Chapel Hill would again displace many students who rely on such housing.

The university has been the core of the Chapel Hill community for hundreds of years. Such a blatant move to exclude students from the community is unfair and unreasonable. Please consider these factors in your decision.

Thank you very much,

Rebecca Sowder
UNC-sophomore

Monday, September 23, 2002 7:07 AM
To: Cal Horton

Dear Sir,

Thanks very much for the documents / CD you sent me regarding the RCD changes under consideration, and also the offer to have someone meet with us. Our board will look at the material and then decide how to best follow up.

I do have one specific question regarding the people along Cleland and Kendall whose homes are shown to be in the RCD according to the map you sent me: **will their ability to modify or sell their homes be in any way affected, now or anytime in the future, and if so, how?** In spite of a valiant effort to work through the whole planning document, I could not find an explicit statement addressing this issue.

I should tell you that the planning initiative overall is received by many as positive because it will put needed constraints on indiscriminate construction of buildings and parking lots in the two major river basins converging in the Little Creek basin along Cleland and Pinehurst and thus help reduce the detrimental impact on flooding along Cleland. At the same time, the value of long established homes in the neighborhood should not be impacted in terms of resale at a fair price **anytime** in the future. Even a grandfathering clause would be detrimental since any such attachment would undoubtedly scare away potential buyers.

Another issue not quite clear from examining the planning document relates to the 3 foot elevation above the 100 year flood plain: What is the impact on established homes which do not meet this requirement either partially or totally. Is this only an insurance issue, or could it also impact future changes and/or resale.

If you or perhaps someone in your or Roger Waldon's organization could address these two issues (phone or e-mail) prior to our upcoming board meeting, it would go a long way toward reassuring potentially affected Oaks I neighbors, and in fact strengthen support of the overall initiative. If the board then has further concerns, we may take you up on your offer to have someone meet with us at a board meeting or even a general neighborhood meeting.

Thanks again for your support.

Jack Olin

Monday, 23 Sep 2002

To: Mayor Foy

I've been trying to study a way out of this mess on the "nonconforming" RCD properties. I found it very helpful to look back at the current ordinance.

First, the RCD section of the existing ordinance is much better organized. It's really clear where it's talking about what you can build (what kind of structure, that is), and how you can add on to an existing structure. There's a distinction between what's in the regulatory floodway, the regulatory flood plain, and the non-FEMA RCD.

This distinction is in the new draft too but the whole discussion is kind of a mess. I mean, it starts out with what all you can't do, and the three managed zones, and the line isn't really clear where it starts to talk about what it actually means to existing houses.

But the main thing to notice in the current ordinance is that everything is grandfathered from the moment the ordinance went into effect, March 19, 1984. Construction existing or substantially begun then "shall not be considered as nonconforming." Different rules apply for how you can remodel or add on depending on if you're within the FEMA flood plain or not, but in either case, you can do it as long as you meet certain design standards.

The draft ordinance also says construction existing or substantially begun on a certain date "shall not be considered as nonconforming," but it only gives the March 19, 1984 date.

One critically missing piece here is a new grandfather date (Jan. 1, 2003, or whatever the new implementation date is) for the properties that will newly be in the RCD. There need to be two grandfather dates (maybe we can call the new one the grandmother). This seems to me an extremely obvious conclusion and an important one. Without such new date, it's no wonder people are upset! We're telling them to freeze their homes as is, which is something that pointedly was not done in 1984.

(I think it would pay you to look at the old (current) ordinance for comparison. The new ordinance needs to be just as generous to existing structures.)

Then, there's one other point that really must be emphasized. The "grandfathered" properties in the RCD are not "nonconformities." In the current ordinance, the RCD is not mentioned at all under Art. 22, "Non-conformities."

In the draft new ordinance, a reader could possibly be confused on this point. The table of contents of Art. 7, "Nonconformities," has a subsection on the RCD. But this is misleading, because if you turn to that subsection, there is nothing. You are referred to the RCD section itself in Art. 3. That section, in turn, tells us that existing structures in the RCD are not nonconforming. But because the RCD is referenced at all in the "nonconformities" section, there is a suggestion that structures in the RCD are subject to a sunset law and that their value has to be amortized over a period of time.

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BUT THAT PROVISION DOESN'T APPLY to existing structures in the RCD!
All the talk about people's property values going to zero is misguided,
erroneous, and needs to be corrected as soon as possible, loudly and in
public.

Sally Greene

Monday, September 23, 2002

Honorable Mayor and members of the city council:

It is with increasing alarm that I have read of a proposed land use management ordinance. This ordinance seems to have been drafted without much input from those affected by these new rules. I do not remember being notified in any way that these matters were subject to revision until I read about them in the local paper last weekend. Having spent most of the last 15 years living in this town, I am well aware that this is not how these things have been done in the past.

This whole matter was driven forcefully home this afternoon when I received a four-page letter from a real estate agency outlining these proposals. It is not a ringing endorsement of open government when you have to learn of sweeping changes by way of a mass mailing from a private company, which obviously has an ax to grind.

My reservations spring from the fact that I do own a property, which is currently on the edge of the RCD line along Booker Creek. As the lines are currently drawn, my residence is not in the RCD, but if the RCD were to be extended, I would own a "nonconforming" property. I have serious concerns about the impact these ordinances would have on my home's resale value or in the event of fire or natural disaster what options I may have.

In addition, the proposal on lot slope might prevent me from rebuilding on my lot. In the matter of the creation of Neighborhood Conservation Districts, is it really your intention to rewrite homeowners' covenants and create a dictatorship of the majority with the proposed NCD zoning? Perhaps 51% of us can agree that a nice safe, neutral, earth tone will become the universal and acceptable color. Do we really want to be just like Cary?

I have always supported Chapel Hill's attempts to limit development in Watersheds and prevent deforestation. I have no problem with these regulations pertaining to new development. I do, however, have real concerns about the retroactive nature of some of these regulations. As a matter of basic fairness, property owners should be bound by the regulations and covenants in effect when they built on a specific site. I knew the limitations I faced when I bought my land (part of which is zoned RCD) in 1991. To go back 11 years later and change those rules for me or anyone else who might buy my property in the future is a usurpation of my property rights by the city government.

I hope that Chapel Hill's seemingly secret revision of its land use ordinance was an oversight. I hope that the town will notify affected landowners of how these changes will impact their property rights. I hope that we can go about protecting our natural resources in a way that does not injure thousands of the town's citizens. I hope to hear more about this matter in the very near future.

Respectfully,

Kenneth E. Jones

4b

Wednesday, September 25, 2002 7:12 PM
To: Town Council

There was a notice posted on our (community cluster) mail boxes regarding a recently passed retroactive ordinance regarding lot slope and RCD (whatever that is).

It stated "Did you know that the new regulations about lot slope and RCD are retroactive?" It stated that there is 40 years to become compliant. It also said to email City Council.

Can you shed any light on this? Thank you.

Michael Rifkin

(41)

Wednesday, September 25, 2002

Dear Council Members,

As Chapel Hill homeowners my wife and I are deeply concerned about the town's revised development ordinance. We have lived in a wonderful home in downtown Chapel Hill for nearly 5 years and we are fearful that broad ordinance changes designed to moderate growth in our town may become a Catch-22 for existing homeowners. The definition of "steep slopes, creeks or potential waterways" leave us wondering (hopefully unnecessarily) about the future of our homestead.

There are many critical issues for the future of our town; causing unrest and dyspepsia for the current homeowners does not seem like a wise use of the council's time and effort.

Thank you,

David Gerber

Wednesday, September 25, 2002

Dear Mayor Foy and Members of the Council

I am very concerned about the new proposed land use management ordinance. Five elements of the current draft of the ordinance could place in jeopardy my most important investment, my home at 204 Oxford Hills Drive, in Oxford Hills.

--First, my property runs close to Booker Creek Greenway, and my home was built close to the current RCD line. If the line is raised, it would run through my house, thereby, as I understand it, placing my home in non-compliance with the new land ordinance.

--Second, my house, as most in Oxford Hills, is build on a significant slope, which again would put my house in non-compliance with the new ordinance.

--Third, my house is two stories one one side of the setback line and is more than 20 feet in height. My understanding is that this too would put me in non-compliance with the new ordinance.

--Fourth, the effect of being in non-compliance due to RCD, slope, and/or set-back changes in the ordinance would make it impossible for potential buyers to obtain a mortgage to buy my home, were I to wish to sell it, thus destroying the value of the house. I realize that there would be a 40-year rule in effect, but that simply would mean that no prudent buyer would wish to purchase the house, for over time the value of the house could go only in one direction, down.

--Fifth, as I understand the current draft of the ordinance, because of the RCD and the slope elements of that ordinance, if my house were destroyed in a natural disaster, I could not rebuild it on my property. Given that, it is not clear that my insurance company would be obliged to make good on my policy with them. I would be wiped out financially.

Finally, please let me say that, from my viewpoint, this new ordinance has been drafted with no effort by the city to contact the homeowners whose homes would be put at risk by virtue of its enactment. This absence of notification or warning of affected homeowners marks an unfortunate departure from past practice. For example, when work was going forward on the Booker Creek Trail, and when there was the matter of possible rezoning of the Kroger property on Franklin Street, homeowners in this neighborhood were kept informed of developments. Why are you not following this wise precedent in this instance, involving as it does radically more important stakes for each and every homeowner in Oxford Hills?

I support Chapel Hill's goals of green spaces, good watersheds, and ample water supplies. I would support legislation regarding new development that would advance these goals. However, it is completely unjust to make these rules have what is in effect an ex post facto application. Current homeowners should be held to the laws in this field that were in effect when they constructed or purchased their homes.

Sincerely,
Joseph M. Grieco
Professor of Political Science, Duke University

September 26, 2002

Dear Mr. Mayor, Members of the Town Council, and Staff:

The purpose of this letter is to address many of the concerns I have with the proposed changes to the Third Draft of the Land Management Ordinance. I attended the public hearing held on Wednesday, September 18, 2002 in the Town Council Chambers and decided to wait to make comments after hearing what others had to say.

I was born and raised in Chapel Hill and have been here my entire life. I work in the real estate development field and can almost guaranty with 100% certainty that I will remain in Chapel Hill for the remainder of my life. I would ask how many of the people who claim to be in favor of the dramatic changes in the ordinance will be around Chapel Hill, continuing to pay taxes to Chapel Hill, and trying to improve old and run-down properties around town for that much longer. My guess is not many. Because of the nature of this town many people come and go. However, those of us who remain and truly care about the future pay for the decisions that are influenced by those who end up leaving after a period of time.

After hearing what the vast majority of citizens had to say at the public hearing I do not see any possible justification for passing the major changes in this draft of the Ordinance. The public was first exposed to the 3rd draft a week prior to the public hearing. If the 3rd draft contained minor modifications to the previous drafts one could justify moving it through the processes quickly. However, as was evidenced by the large turnout at the public hearing, many of the proposed changes seem to be new ideas that will have a very major impact on thousands of existing residents and business owners in our community. A prime example of the effect of the changes is the fact that the Town's own Planning Board did not have sufficient time to respond to the sweeping changes proposed.

Below is a summary of some of the major points I take issue with and believe need very close scrutiny and input from the residents of Chapel Hill.

Expansion of the RCD and inclusion of intermittent streams:

The vast majority of the individuals who I saw speak at the public hearing were very much opposed to the proposed changes in the RCD. Such a major increase in the buffer would affect thousands of property owners all over town. Most in attendance at the public hearing recognized that their homes and the homes of their neighbors would become non-conforming should such a change be made. The concern expressed over such a situation caused much unrest among the residents in attendance. Many realized that their homes would become non-conforming, therefore essentially worthless. The local realtors made a valid point when they spoke of the "sale-ability" of a house that is non-conforming. They indicated that the hurdles associated with selling a non-conforming home could prove very difficult to overcome. I would also argue that lenders would become reluctant to finance a home or building that is non-conforming. Non-conformity affects Title and will show as an exception. As a commercial real estate lender I spent six years financing commercial real estate projects throughout the area. I can tell you that my financial institution would have

thought long and hard over accepting a non-conforming property to collateralize a loan. Most who spoke at the hearing indicated they thought it appropriate that the town to provide notification to the homeowners that will be affected. The majority of the population is not informed of the sweeping changes proposed. The public deserves to know that their homes may become non-conforming and essentially worthless. If the objective of the changes in the 3rd draft is to devalue the majority of property in town, then I believe you may have accomplished this goal. However, I would warn you that the majority of the property owners would likely file for tax abatements based on the devaluation of their properties. Thus, the tax revenue to the Town would be substantially reduced.

Duplexes:

Aside from a few residents residing in the Northside community, practically every other citizen who spoke on the issue of duplexes was totally against the proposed changes to the regulations. I to am against such drastic measures to reduce what the Town Council considers to be undesirable properties. What I would like to know are how many people in the room at the hearing, and how many living in Chapel Hill now, at one time or another lived in a duplex. If some of those people attended UNC I would imagine that many of them would not have had a place to live when they were in school had it not been for duplex owners. While I appreciate the Northside residents concerns, I do not believe you can put all the blame on the "greedy developers" for ruining the character of the neighborhood. After all, the developers have to acquire property from somebody in order to modify or redevelop it. Or, the existing homeowner must make the decision to convert their home into a rental property. Therefore, is it not the homeowners themselves who have assisted in their present situation? It can be argued that the individuals who sold their single-family homes to investors are just as "greedy" as the person who offers a premium to purchase it. Doing away with future construction of duplexes will greatly reduce the amount of affordable homes in Chapel Hill. It would also greatly diminish the viability of our downtown area. Many of the current duplexes in town are located within walking distance to the town center. Disallowing those units to remain would significantly reduce the number of people who walk to town. On one hand the Town Council wants to provide incentives for residential development in the town center. At the same time, however, you are trying to substantially reduce the number of people who currently live close to the town center. This does not make any sense to me, or many others with whom I have spoken. Think about the individuals you know who now live, or have in the past lived, in a duplex and think about what affect not having such an alternative in the future would mean. Many of the "concerns" expressed by the affected homeowners who claim to be "surrounded" by duplexes are not zoning issues. Rather, they are crime issues that can be handled by calling local authorities. Punishing the masses for the acts of a select few is not fair.

Building on Slopes:

Phil Post gave a great example of why the new restriction for building on slopes outlined in the 3rd draft of the ordinance does not make sense. He pointed out that our own Town Hall is built on a slope greater than 25%. Implying that it is unwise to build on such terrain is not logical when one looks at what already exists and what has been

accomplished on sites with slopes greater than 25%. One simply has to look around and realize that the vast majority of homes in Chapel Hill are built on steep slopes and in "hilly" neighborhoods. Consider Southern Village, Meadowmont, Lake Shore, Country Club Road, and I could go on and on. So much of the land in Chapel Hill is sloped and saying that one would not be able to build or rebuild on anything over 25% would render much of the land in town useless. Furthermore, it would be hard to justify when citizens would be turned down while standing in a building that is built on a very steep slope.

Burial of Three Phase Power Lines:

As was clearly stated by Scott Gardner, a representative from Duke Power, the cost associated with burial of the power lines would be very prohibitive. Even the Town, therefore the taxpayers, would be required to spend millions of dollars burying the lines on new projects. Scott indicated that buried lines, while sometimes less likely to fail, are much more difficult and time consuming to repair.

One resident made the comment that he may not necessarily care whether or not his property would be non-conforming in 40 years, likely because he will not be around here in 40 years. However, as a 31 year old who has established himself in Chapel Hill, I do plan to be around in 40 years. Furthermore, my family has real estate holding throughout town. Many of those properties are in need of repair and even redevelopment. But if the new ordinance is passed many of those properties will become non-conforming. Should I decide to do anything to them over the coming years I would be prohibited by the new ordinance. I have no incentive to reinvest money in the properties to enhance their appearance and the overall appearance of the town. Additionally, investing in the properties would increase their value, further increasing the tax revenue to the Town. It is quite clear that Chapel Hill needs to find ways to increase its commercial tax base. Condemning a great number of commercial properties in Town would be a step in the wrong direction. I could be content collecting rents on run-down, dilapidated properties, contributing to the demise of the character of Chapel Hill, but this is not my intention nor desire. I do not mean to sound cynical, but it is a simple reality that improvements to existing properties could not occur based on the impact of the new ordinances.

Because so much uncertainty exists among the residents, the town, the advisory boards, etc I honestly believe, as do many others, that moving forward on the 3rd draft of the ordinance would be very unwise. Many people were opposed to the drastic changes, and even those that were in favor of some of the changes seemed uninformed on others. I implore you as trusted leaders of our unbelievable community to listen to the residents and hear what they have to say. I think that if you do so you will understand that the impact of the changes on our community are too great and you will face numerous lawsuits, appeals, etc in the future. Thank you for your time and consideration.

Sincerely,
Nicholas J. Paliouras



46

September 26, 2002

Dear Sir,

Thank you for including me in your distribution list and your memo below. As previous president and current board member of the Oaks I neighborhood association, I care much about the issue at hand. Here is my response:

(1) ***We in the Oaks appreciate the Council's*** initiative in putting constraints on future construction in the two major river basins converging on the Little Creek / Cleland corridor in an ***effort to limit storm water damage in the downstream Little Creek valley in case of major downpours.*** I personally congratulate you on your planning efforts, and the council on having the courage to deal with the issue

(2) ***It is our position, however, that existing private property values must not now or anytime in the future be affected by new development regulations.*** It appears that this is consistent with your statement below and with that made by Kevin Foy in his newspaper article today. ***I therefore trust that existing private property values will not be adversely impacted by either a redefinition of the RCD or by redefinition of flood plains beyond their current vulnerability to storm water.***

I am looking forward to the Council discussion on this issue on October 7th.

Sincerely,

Jack Olin

September 26, 2002
From Phil Berke

Right now I am neutral on the newly proposed buffer. I like the concept and there is scientific justification for it concerning the benefits to watersheds, but the fact base on the impacts of this new rule is somewhat shaky.

The new proposed buffer rules go further than the existing rules as they will cover intermittent streams. A 300 foot wide swath of land running along all streams (perennial and intermittent) in an urbanizing community may or may not be feasible. Further, the language in the ordinance is vague. The standards for identification of intermittent streams to be protected by the buffer are ambiguous for purposes of nailing down a clear procedure for stream delineation.

Before these new rules are adopted the town should have data on the parcels of land that are affected. For example, it could be that some undeveloped parcels would not be deep enough to permit any type of new development. The new buffer rules could be shot down since landowners of these undeveloped parcels would have plenty of legal precedent to fall back on. I don't like the idea of legalise getting in the way of good land use planning, but there are some clear limits to what can and cannot be done in this instance.

The upshot is that the Town needs an analysis of the impacts of the new buffer rules. At a minimum, the Town could identify the number and location of parcels affected by the new rules. This type of study would entail a low-cost GIS-based evaluation. Alternatives for improving the existing buffer rules would then be more defensible.

Also, the goal of the non-conforming use rule seems to be inconsistent with the rule that allows a building footprint of an existing structure in the buffer to expand by 10% or less. Finally, the new 20 foot height limit in residential neighborhoods may lead to creating more impervious rooftop surface (lower homes) inside the buffer and in upland areas. We need some information on the impacts of these proposed rules.

I want to see healthier watersheds and a more livable community. Crafting sound, well-grounded ordinances is a linchpin for making progress toward these goals.

Phil Berke

48

Thursday, September 26, 2002
To: Town Council

I have reviewed the "Nonconformities" section of the proposed ordinance. Does the absence of discussion in this section of houses already built on steep lots mean that the proposed ordinance will in no way affect these structures? Or, does the ordinance propose that houses built on steep lots would automatically become non-conforming? If so, what would be the consequences?

Thank you.

John Barrere

(49)

Friday, September 27

Mayor and Town Council of Chapel Hill:

I am writing to protest a proposed change to the land use ordinance that would restrict unrelated persons from occupying the same dwelling. This is not a new issue for me, I have testified against similar restrictions, successfully so far, in the other college towns where I have resided: Burlington, VT and Carrboro.

I do not live in such a group right now but I have in the past, I have friends that are currently, and I might again in the future. Here are some of the reasons I think you should reject this proposal:

* It does not directly address the supposed concerns of parking and noise, but rather pre-judges people based on what does or does not happen in their bedroom[s]. Consider the following scenarios: an unmarried couple each with a kid from another relationship, three people who share a bed, two independent married couples, four college age brothers, or four unrelated college students. How will staff determine the differences between these situations? Does this definition correct pick apart those that will cause noise and parking problems? I doubt it. Does the ordinance allow for civil unions? Domestic partnerships?

* It is a thinly veiled, if poorly aimed, swipe at students. Anyone who moved to Chapel Hill after 1776 can't pretend to be surprised at the existence of college students here. Unfortunately, many of the people I know who live in informal group houses are not students, but rather work at modest income jobs at the university, or in town, that don't pay enough to afford the \$400,000 homes in Chapel Hill. Shall we kick them all out of town so we can tear down the duplexes and build McMansions?

* Didn't we just start a rental licensing scheme to address these very issues? Shouldn't we let that take effect before going forth adding new restrictions?

Josh Steinhurst

28Sep2002

Gentlemen,

Upon closer inspection of the third draft of the Chapel Hill Land Use Management Ordinance, specifically section 7.9 (see Attachment below), it occurred to me that a Nonconformity Survey based on the proposed Ordinance ought to be conducted and made public prior to a vote on the Ordinance in order to give people *with existing properties* potentially impacted by the Ordinance an opportunity to respond to, or challenge, the ordinance prior to a final vote. At this time, many of our Oaks I neighbors do not know whether to be concerned or not because they do not know whether or how the ordinance will or might impact them specifically.

I realize that it is more convenient for the City Council to vote first and survey later, but since the City Council's reason for existence is to represent the interests of all the people of Chapel Hill, the Council's credibility and the broad acceptance of the new Ordinance would be greatly enhanced if people -- prior to a final Council vote -- had an input to the process based on knowing specifically whether and how *their specific existing properties* are in nonconformance and how *their specific* long-term property value and *their specific* control over their property will be impacted by the Ordinance.

As I have said to you in prior communications, I congratulate you on your effort to get future development under control, but the impact on existing properties needs to be sorted out in non-ambiguous terms understandable to the average citizen untrained in legal jargon. I might add that the last sentence in the related article published in today's (Sunday) Chapel Hill paper about "people not having to tear down their homes", completely misses the point. What we are concerned about is much more subtle than "not having to tear down our homes". What we are concerned about is an insidious process of value deterioration.

Sincerely,

Jack Olin

Board Member,
Oaks I Neighborhood Association

Attachment:

Excerpt from the Online published draft of the proposed planning ordinance

7.9 Nonconformity Survey and Notice

After the effective date of this chapter, or subsequent amendment thereto, the Town Manager shall make an inventory of all nonconforming uses, signs having nonconforming features, and other significant nonconforming features existing within the Town jurisdiction.

On completion of the inventory, the Town Manager shall notify the owner(s) of the property on which each nonconformity is located of the determination of nonconformity, the reasons therefore, and deadlines, where applicable, for compliance with the provisions of this chapter. The above requirements shall not preclude the further inventory and subsequent notices of nonconformity.

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scan/e mail
RECEIVED
OCT 01 2002
BY: *JA*
Council

Mayor Kevin Foy and Members of the Town Council
306 North Columbia Street
Chapel Hill, NC 27516

September 29, 2002

Dear Mayor Foy and Members of the Council:

This letter is **In SUPPORT of the new LAND USE MANAGEMENT ORDINANCE**, particularly proposed sections on the RCD, steep slopes, tree protection and duplexes, which will better preserve existing neighborhoods from destructive new development.

In this spirit I also endorse both the rezoning proposal for Colonial Heights/Pinebrook Estates and your idea of combining facilities on the Horace Williams tract for the University, Chapel Hill and Carrboro.


As a Village West resident I appreciate all the time Mayor Foy and Council Members spent from 1999 through 2000 when we were concerned with Mr. Rogers' development off of Jay Street. At that time **OUR HANDS WERE TIED BY TOWN REGULATIONS PERMITTING DUPLEXES TO BE BUILT ON ANY EXISTING LOT. WE WERE ASSURED THAT THE COUNCIL RECOGNIZED THE PROBLEM AND WOULD WORK TO CORRECT IT. IF YOU WOULD LIKE TO GET A CLEAR PICTURE OF WHY THE NEW PROPOSED REGULATIONS SHOULD BE PASSED, PLEASE COME BACK AND SEE THE BUILT-UP SITE.** Some of my main concerns regarding the adequacy of the present regulations follow:

1. Environment. If you visit the Jay St/Nunn St. Ext. site you will see steep inclines in the topography as well as sharp drops created by the builder (probably 3 to 8 ft). Because the builder was allowed to clear cut this environmentally sensitive area near a creek, stormwater runoff is excessive. As a result sedimentation and flooding are uncontrolled, which jeopardizes innocent people downstream.
2. Low income housing and diversity. These duplexes are not for low-income families -- the last I heard they were renting for \$1,600 per side. If house size and the environment is not considered, limited and controlled in new construction, you create serious problems and expenses for future owners as well as people downstream. Water problems make homes unaffordable to maintain and unlivable for low-income families. However, I do applaud your desire to work out limited accommodations for existing nonconforming buildings.
3. Parking/Impact on Town Services. Because these duplexes are much too big for the lots, even though renters use every available inch of land for parking, there isn't enough space for all the cars. Cars have been parked regularly on adjacent properties owned by Mr. Merritt's estate and Village West. Also, there is no room for garbage cans, and loose garbage bags continually end up on Jay St. On one occasion an ambulance could not reach its destination because of parked cars blocking Jay St., and EMS workers had to stop and knock on doors.

Please -- the size and placement of a house must be regulated with respect to lot size and environmental constraints.

This letter is in support of the Land Use Management Ordinance and the rezoning proposal. I hope the references to Village West serve to illustrate the problems that the old ordinance caused, and show the importance of preventing similar problems elsewhere in Chapel Hill.

Sincerely,



Grace Beattie
31 Bluff Trail
Chapel Hill, NC 27516

Monday, September 30, 2002

Dear Mayor and Council:

I am writing to express my concern, in the strongest possible terms, regarding the proposed land use management ordinance. Not only are the specifics of the land use ordinance blatantly unfair to current property owners, the method and attitude of the council and mayor regarding citizen concerns regarding this ordinance are extremely concerning.

Specific elements of the proposed ordinance that are of great concern to me include, but are not limited to, the following:

a) Provision 7.2.1b provides that no building devoted to a non-conforming use shall be reconstructed unless such building conforms to the provisions of the ordinance. This provision would not allow a homeowner to rebuild his home after a destruction of the home by fire or other accident. This ordinance would reduce the value of the existing home, reduce the value of the lot, essentially taking the home of a family, leaving them no recourse in the event of an unforeseen event such as a fire.

b) Provision 7.2.2b states that non-conforming use shall cease within 40 years. As stated in this ordinance an individual's home could not be used after 40 years. I take little comfort in the quote of Mayor Foy that this possibility is "... so far removed from any possibility". Individual homeowners should not have to rely on the ability to get waivers and to rely on the government not enforcing existing regulations to keep their homes. A provision such as this has no place at all in the ordinance as it pertains to family homes. The mayor and council should be able to state that this issue is totally outside of possibility and such a provision is not listed in the ordinance for family homes.

c) Provision 7.3.1 states that no increase to the degree or extent of the nonconforming feature. This provision essentially removes without due process the property value from the homeowner, purchased by the homeowner in full compliance with all existing laws. This provision essential takes property, which has been developed safely for years in Chapel Hill (slope provision for example), from the owner. I could find no provisions for grandfathering such property.

This represents just three provisions that I was able to find in reading one section of the provision. I can only imagine what the rest of the ordinance includes.

As disturbing as these provisions are, I am even more disturbed by the attitude of the Mayor and Council regarding this matter. The way in which this issue was buried and not brought before the people until a third draft of the ordinance, the cavalier attitude of the Mayor and Council regarding homeowners' concern and the statements that 'we haven't ever enforced such rules before so you shouldn't be worried' reflect a palpable disdain for the very real concerns of the citizens

(53)

of Chapel Hill for their property. For Mayor Foy to state that " It's unfortunate that , instead of concentrating on real issues, people have been scared into thinking that their homes will be taken." (Chapel Hill News, Sunday Sept. 29,2002). I am sorry Mr. Foy but the possibility, even an unlikely possibility, that my home will be taken is a real issue to me and I am sorry that you don't realize that. I am not reassured with the explanation that we should just rely on the fact that it has never been done before.

While this issue may be solved before the final passage of the ordinance, the manner in which the city council and mayor have responded to the real concerns of the citizens of Chapel Hill does not bode well for the future of our community. I would suggest that you carefully consider the concerns of all of the citizens of Chapel Hill when you craft future ordinances and not just the concerns of the anti-growth, anti-development minority.

Sincerely,

Russell P Hall III MD

Tuesday, 10/1/2002

Dear Mr. Foy:

Jackie Gist forwarded your email dismissing my mother's concern over the saleability of her house as "panic" and suggesting that she contact a reputable realtor who can set her straight. I appreciate your prompt and candid response.

My mother is a reputable realtor with Howard, Perry and Walston, and she has indeed experienced great difficulty selling her home. The RCD has been the obstacle. A written assurance from you or someone else working for the town of Chapel Hill would be most helpful. You should have no problem writing this if, as you contend, there is nothing to worry about.

The inability to sell the home has caused far greater injury to my parents than feeling "upset." My father, an Alzheimer's patient with numerous serious health problems, has been unable to move into a safe environment where his health care needs could be appropriately addressed. He has fallen repeatedly and seriously and he will continue to be injured as long as he is in that house. All of their finances are tied up in the house. I am sure you can appreciate how important it is for you to communicate your opinion in writing as soon as possible.

Now that you have notice of this situation, Chapel Hill is legally responsible for the failure to act appropriately in this situation. As a Yale Law School graduate and professor of negligence law, I could work up a nice case on this matter. But, as we both know, my father will be dead by the time a lawsuit is settled. I appeal then to your moral and civic sense of responsibility. I just want my father to live with dignity and die peacefully. You can make the difference.

I look forward to her receiving the letter by the end of the week. Her name and address is: Marilyn Mertus, 1094 Burning Tree Drive, Chapel Hill, NC 27514.

Sincerely yours,

Professor Julie Mertus

55

October 1, 2002

Dear Mr. Waldon,

Thank you for your email and your detailed response to the concerns I raised in my email to the Mayor and the Council. I continue to follow developments closely, including the reports of the Mayor's helpful comments at the most recent Council meeting. I also continue to have concerns about the scope of the proposed grandfather clauses, and to that end I assisted in the drafting and signed a petition that will be submitted shortly to the Mayor by several households here in Oxford Hills.

One particular concern I have is that I have a deck that does not press up against the current RCD line, and at some point in the future I may wish, as many neighbors have already done, to turn that deck into a room. If the new RCD were to cut across what is now the deck, would I be prohibited from adding a room? If so, I feel that this is unfair treatment, for when I purchased the home it was my understanding that I could, at some point, turn that deck into a room. As I mentioned above, several of my neighbors have in fact done this.

I fully support the efforts of the Mayor, the Council, and the City staff to improve Chapel Hill by way of the new land use ordinance. My belief is that many of the proposed rule changes make good sense for new construction. However, as I said in my email to the Mayor, those of us who bought our homes in full compliance with the current rules should continue to be held to those rules.

Thank you again for your reply to my email.

Sincerely,
Joseph M. Grieco

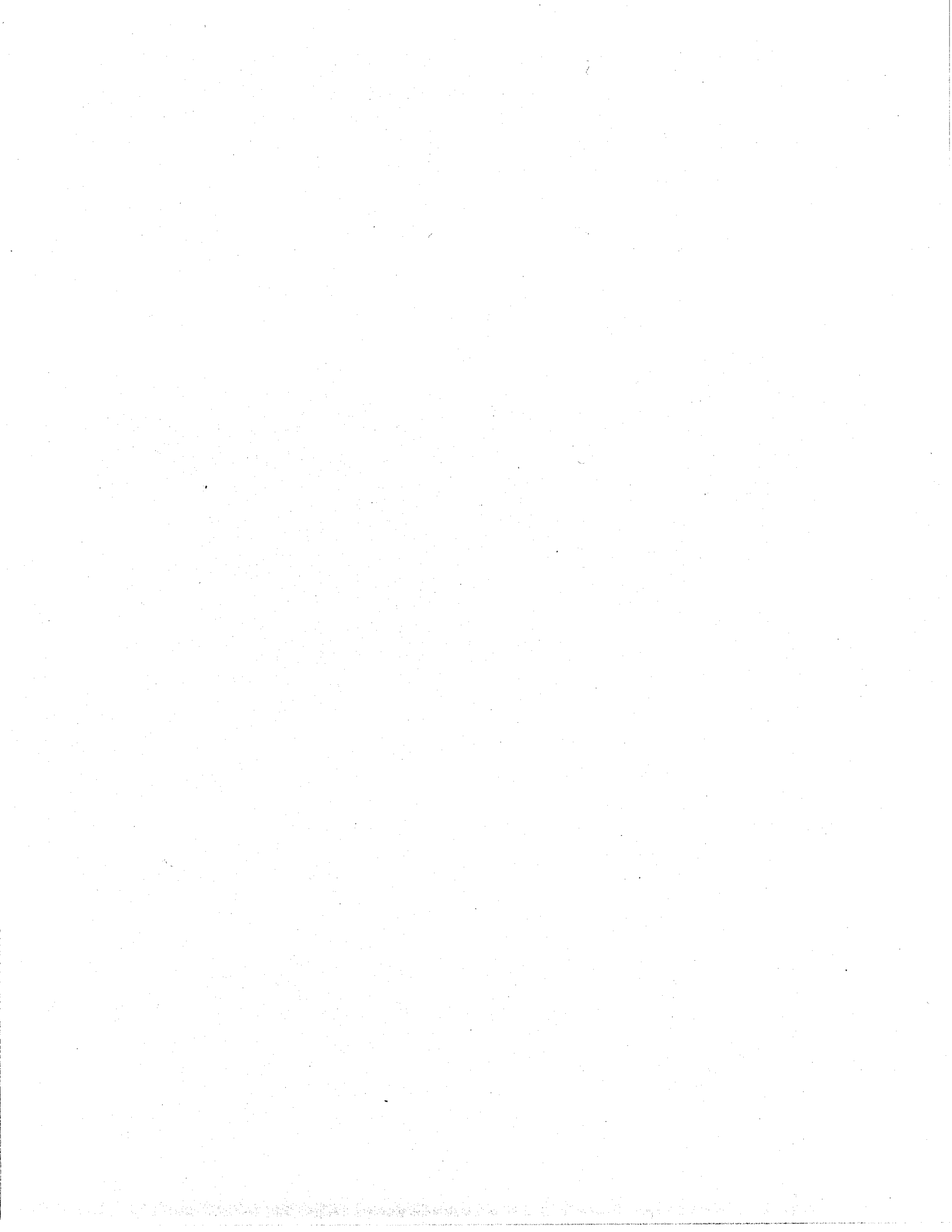
56

Tuesday, October 01, 2002 10:15 AM
Subject: Duplex ban

Dear Mayor Foy and the Chapel Hill Town Council,

The complaints about student rentals appear to be noise, garbage, and parking. Isn't it odd that we want to change the structure of the buildings in order to correct behaviors? Wouldn't it make much more sense to impose stricter penalties (or whatever it takes) on the behaviors of people before we go changing buildings? For example, larger fines and then jail time! Tow cars that violate parking regulations, even on their own property. I think you do have the power to influence the behavior of students. And this would improve all sorts of existing property instead of just limiting where they can live.

-James Barrett



Wednesday, 2 Oct 2002

I am sending this urgent message to people in my community.
PLEASE FORWARD THIS TO ANYONE YOU KNOW WHO MIGHT BE AFFECTED (anyone
who lives in Chapel Hill!)

Dear Neighbors.

The Chapel Hill Town Council is in the midst of considering a new land-use ordinance. Here are some things you should know.

1. Any home around Eastwood Lake and bordering any of the creeks and streams in the Town of Chapel Hill would become a "non-conforming use" under this ordinance. That means you would not be able to construct an addition onto your house, add a deck or carport or bedroom, add or expand your driveway, or cut down any trees on your property that are 18" in diameter or larger. If your house burns down, you would not be able to rebuild.

2. Any home in Chapel Hill on a slope of 10% (one foot rise for 10 feet of run) would be restricted in terms of development and impervious surface. Nearly every home in the entire Lake Forest area would become "non-conforming."

3. If you try to sell your "non conforming" house, you will have to tell any potential buyer that your house has this designation. Traditional lenders do not offer mortgages on non-conforming properties. And that means your buyer will have to go to a lender who specializes in higher risk loans . . . which will likely be at least 1% higher . . . and will have more demanding credit standards.

4. If you have an empty lot that is in this non-conforming area, you will never be able to build on it.

5. The Town is also creating a new kind of Neighborhood Conversation District. That means that if 51% of the people in a neighborhood agree, the Town Council can impose rules to control all redevelopment, all rehabilitation, all renovation and all aspects of building including color, landscaping, fences, building materials, architectural style, roof pitch, lighting, window size and more. Just think! You could tell your neighbors what color they can paint their front door . . . and they can do the same to you!

All this is being done without notifying the property owners that would be affected. Have you received a letter from the Town saying that they are considering a new law that could dramatically affect the value of your property? The Town is doing all to help reduce sediment run-off . . . which is a laudable goal. But it's impossible to make the case that these burdensome new regulations are necessary to accomplish that goal.

If you are concerned about this, NOW IS THE TIME TO ACT. Come to the Town Council meeting on Monday, October 7th, and tell the Mayor and Council to scrap this new ordinance and start over. The meeting starts at 7 pm.

I have met no one in Chapel Hill who supports this ordinance -- except, of course, for Town Council members. The environmentalists understand it is a formula for even more sprawl. The affordable housing advocates understand it is a formula for a sharp spike in housing prices. Those interested in having a broader tax base to fund Town services understand it is a formula for shutting down almost any commercial development and the tax base that comes with it. The civil libertarians understand it is a gross violation of personal rights.

Call me if you have questions.

Jim Protzman

(59)

October 3, 2002

To: Roger Waldon

While you're in the middle/end of the development ordinance re-write, I want to share with you my observations on nonconforming status. As I understand the current ordinance, when 50% or more of the tax assessed value of residential nonconforming structure is destroyed; it can only be rebuilt to current zoning. In other words, it cannot be rebuilt as it was before the destruction.

With this kind of "death sentence", conventional financing and typical insurance coverage are NOT available. In the past 11 years, I have appraised thousands of local properties. Whenever the houses are nonconforming, the lender wants to know the answer to one question: "Can the house be rebuilt if it is destroyed?". When my answer is no, the loan does not close. The financing options to owners of nonconforming structures is extremely limited, as their loans would not be sold on the secondary mortgage market. This can create a very real hardship, and perhaps one that the council did not expect.

Please understand that I do not disagree with the "death sentence" on nonconforming structures. After all, without that mechanism, cleaning out the nonconforming uses would be much more difficult. I just want you to fully understand one of the ramifications of nonconformity.

I appreciate your time. I am available for any questions that you or the council may have.

Regards,

Shannon Julian
Julian Appraisals & Consulting

60

October 3, 2002

Dear Mr Foy and council members,

I am writing to you to express my concerns to you and the council about the proposed changes in the RCD limits and the grade regulations. My husband and I own land on Morgan Bluff Lane that we plan to build on in a year or two. The more extreme of the proposed changes would render our land unbuildable, and even the milder changes may do so.

Putting the RCD at 150 feet, which goes against the advice of your staff, strikes us as both unnecessary and unfairly punitive to landowners in this town. Even putting it at 100 feet makes the building of our house difficult at best, or potentially impossible.

The grade regulations are similarly over the top -- as has been noted, this is Chapel Hill, not Chapel Flat. Additionally, the proposed ordinance does not include required variances for the grade restrictions, as it does for the RCD. (That is, in section 3.6.3.j.2.A: The review of the Board of Adjustment shall extend to the entire zoning lot that includes area within the Resource Conservation District. The Board of Adjustment shall grant a variance, subject to the protections of this Article, if it finds: (i) That the provisions of this Article leave an owner no legally reasonable use of the portion of the zoning lot outside of the regulatory floodplain; and (ii) That a failure to grant the variance would result in extreme hardship.) Without this, our lot is likely to be unbuildable, with no means of recourse.

We understand the town's environmental concerns and appreciate the efforts underway to protect Morgan Creek. Both of us have lived here or in Raleigh nearly all our lives, and want to see the beauty of the area protected. But these restrictions would go too far. We need to be smart in how we develop the land, but that must be in balance with the growth needs of the community -- balance that is frequently lacking in town decisions. For us, these restrictions would be devastating; we would lose a \$100,000 investment that we made in good faith, understanding the already-strong limits the town had in place.

Thank you for considering our concerns as you move ahead with the ordinance. I would be glad to speak with you about this, if you have time to contact me. My number is 929-9392.

Sincerely,
Sharon Kebschull Barrett

(61)

Thursday, October 03, 2002

Subject: Dislike the new development ordinances revisions

Dear Mayor Foy,

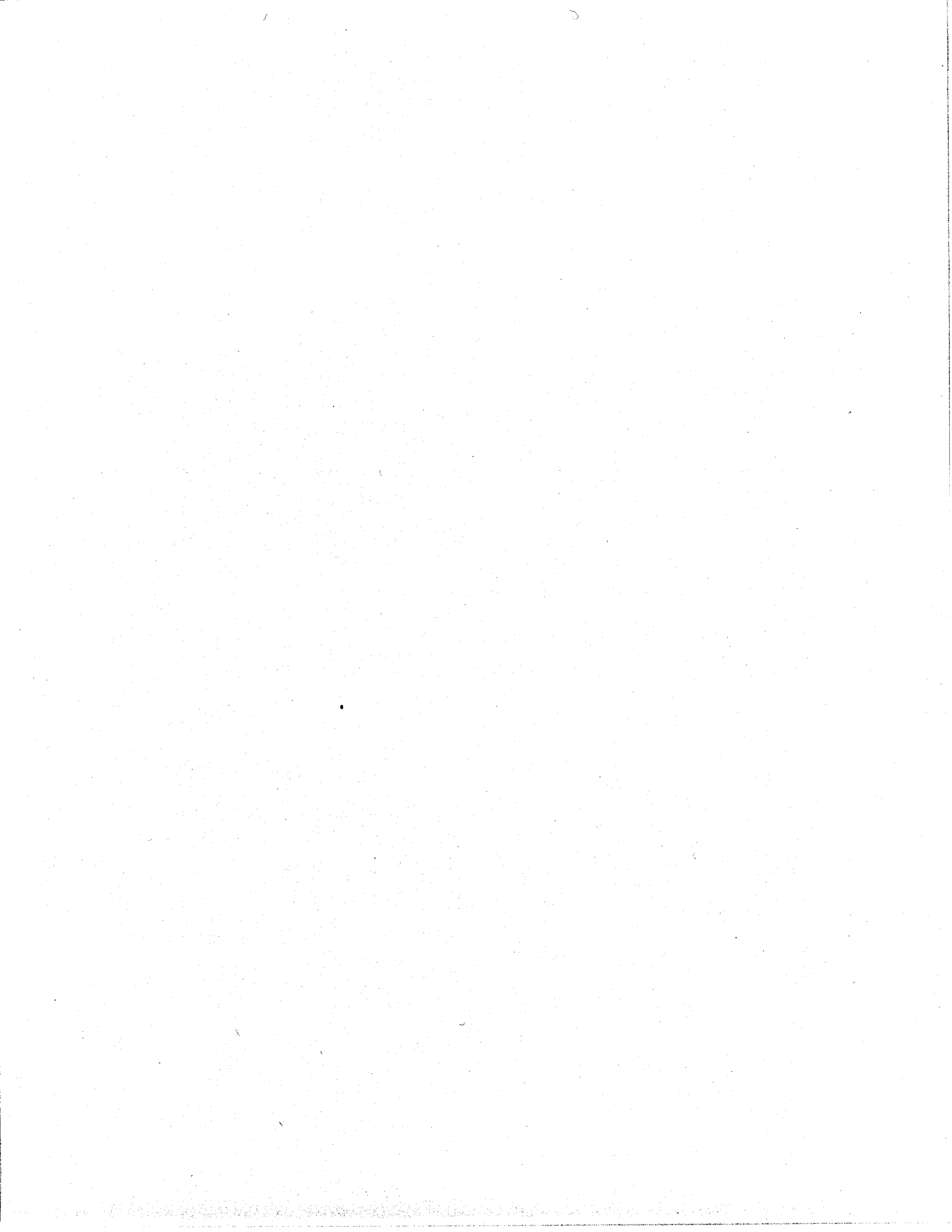
I am long time resident of Chapel Hill.

The proposed new development ordinances revisions are a mistake both with regard to extending the protected zone around streams from 100 to 250 feet and that about the parking and driveways.

I would hope you would list this as a city wide referendum, and I am sure you would find the proposed revisions not received well.

Also, please consider better parking downtown (along Franklin) We like to shop and dine there, but find parking problematic and often nonexistent.

Stanley Robboy



Thursday, October 03, 2002 6:56 PM

Subject: Citizen's Letter Protesting Chapel Hill's Third Draft of Land Use Ordinance & Identifying Specific Damages We Would Suffer

Dear Mayor Foy & Town Council Members:

I have just finished reviewing the proposed changes in the Third Draft of the Chapel Hill Land Use Ordinance with respect to the Expansion of the Resource Conservation District (RCD). I now understand the anger, outrage, and disappointment that our Founding Fathers felt when the British used revised ordinances, laws and covenants to capriciously usurp critical rights from our forefathers.

Specifically, the proposed changes in the Third Draft of the Land Use Ordinance expand the interpretation of the RCD so as to have significant negative impact to my family and to many others who live along Eastwood Lake in the Lake Forest subdivision. I am writing this letter to express my opposition to these changes and to request that you and the Town Council rectify the problems and thereby prevent the prospective damages that these Ordinance revisions would create for me and for others in this neighborhood.

OUR FIRST PROTEST: Throughout the nearly 10 years that my family and I have lived in Chapel Hill, we have never complained or written a protesting letter to the city leadership. This first protest letter reflects the depth of my opposition to these damaging proposed changes.

DAMAGES CAUSED BY RCD CHANGES: The proposed Third Draft RCD changes would reduce our existing property rights and would appear to damage us financially. In fact, the negative impact is twice felt for us. First, it reduces our property rights and options in our existing home at 424 Lakeshore Lane. In addition, we are in the midst of purchasing a home on the lake. The purchase price has been based on existing market values that reflect our ability to update, renovate, expand and improve the home we had planned to retire in. Based upon the Third Draft changes as they affect the RCD and the definition of the floodplain, this property -- an older lakefront home that needs updating -- becomes non-conforming. Consequently, our life savings will be at risk, we won't be able to make the improvements that were discussed and which have already been brought to our banks and that are the basis for our plans and property agreements.

If the Third Draft changes are not stopped and rectified, we believe we would potentially suffer damages that could be counted in the hundreds of thousands of dollars ? based upon the current home price.

REQUEST TO PREVENT DAMAGES BY REVISING THIRD DRAFT CHANGES: Consequently, I ask you and the Town Council to correct these over-zealous efforts at expanding the RCD. Specifically, I ask that the town's leadership return the RCD language and covenants to a form that would allow our existing home and our future lakeside home to continue to be "not non-conforming" and that we be allowed to maintain all our renovation, expansion and improvement rights that were part of our homes and properties when we purchased them.

(63)

As proud and loyal citizens of Chapel Hill, we will work with the city in every way we can through all formal channels of communication, commentary, lobbying and public debate. We are also ready to protect the rights that transmitted with our home when we purchased it nearly 10 years ago. If the Town Council cannot remedy these capricious taking of rights, we will pursue all appropriate legal channels afforded to citizens to prevent these actions and / or to recover damages created by the town's actions.

Thank you for stopping an ordinance change that goes much farther than the Town Planning Department and the Town's own experts seem to have recommended. My wife and I appreciate your consideration of our appeal and of the damages we believe we would incur should the Third Draft be adopted.

Sincerely,

Chris Bogan
Mary Jo Barnett