



Town of Chapel Hill, Town Council  
306 North Columbia Street  
Chapel Hill, NC 27516

October 21, 2004

Dear Chapel Hill Town Council,

I am responding to an e-mail that was sent by the planning department yesterday October 20, 2004. The letter explained that our request for additional floor area at Franklin Grove that was scheduled for a November 15<sup>th</sup> "concept plan review" had been bumped to January 19<sup>th</sup>. The reason given was to make room for the council to discuss dropping the decimal point when calculating the number of affordable units a developer is required to provide as part of a residential development.

I am requesting that we be put back on the November agenda and further request that the Franklin grove floor area request be given an expedited review process. I will not address the urgency of the discussions that surround dropping a decimal when calculating the number of affordable homes, but I can address the urgency of a final determination of the floor area issue for Franklin Grove. The circumstances have all been fully addressed in the attached request. In summary the town has determined that because we built staircases to the unfinished attics in Franklin Grove that they will count as floor area. Franklin Grove was designed and approved with a very specific and limited amount of floor area. We had never been told that unfinished attics counted as floor area and therefore they were not counted as such in our approved plans. If the planning department's definition of floor area is to apply retroactively to Franklin Grove we would have to cease construction approximately two thirds of the way through building the community. From a financial standpoint this would be a disaster, and it would give the community a permanent appearance of abandonment.

The town's change in defining floor area is the result of trying to enforce its size restricted provisions in the new LUMO, not to limit our construction at Franklin Grove. In an attempt to provide more affordably priced housing in Chapel Hill the town adopted size restrictions on 25% of all homes built in new communities. The size limitation was to remain in effect for a minimum of thirty months. Apparently

in an effort to circumvent the intent of the new restriction a builder built a home with a walk-up staircase that led to an unfinished space in the attic. Once the certificate of occupancy was issued to the homeowner the space was immediately finished. The result was a 2,300 square foot house as opposed to a 1,300 square foot house. Franklin Grove was approved well before the small house ordinance was ever approved. Our affordable housing commitment was made without the force of an ordinance requiring it and did not involve any size restricted homes. We sold four reconditioned homes to Orange Community Housing at 80% of the medium income.

We believe the town staff should be afforded the latitude to interpret their ordinance in a manner which allows them to adjust to a variety of circumstances as they present themselves. We do not think it is fair, however, to apply them retroactively to a community that from its inception fully disclosed its plans to build walk-up staircases to its unfinished attic space. It was an advantage that we could offer our older, downsizing clientele. Generally our customers are moving from larger homes to the townhomes, so ample attic space is important. From the submission of floor plans to the community design review board, to the application for building permits and zoning compliance permits, our attics and their walk-up staircases were always disclosed. It was not until we had completed several of the homes that the planning department mentioned there may be a problem with the floor area in our attics.

To allow the planning department flexibility in its interpretation of what is to be considered floor area, we have simply asked for additional floor area to cover the attic space. The town council has on its agenda for next year an "ordinance recalibration" to hash out these floor area issues. We applaud that effort but Franklin Grove cannot wait. We have sold twenty-four homes and will soon use up what will be our allowable floor area if our attics are counted as floor area. This makes it a very time sensitive issue. Given the magnitude of possible harm to Franklin Grove, we believe this issue should be heard as soon as possible and not delayed another two months for the council's review. In addition, because the effect the additional floor area request impacts nothing in the community except the inside attic space we believe expedited review is appropriate. The homeowners now living at Franklin Grove all support the proposal to allow more floor area and the Community Design Review Board endorsed it last month. Thank you for your consideration.

Sincerely,



Eric B. Chupp  
Director of Development  
Capkov Ventures, Inc.

# Capkov Ventures

Developing Homes And Communities Since 1954, In Chapel Hill Since 1972.



a Kovens Company

## **Statement of Justification Special Use Permit Modification Franklin Grove**

Dear Town of Chapel Hill,

Thank you to all that were on the council, the planning staff and those that lived in the surrounding communities for your collective support for our Franklin Grove community during the approval process.

The communities' infrastructure is complete and the home construction is bringing the neighborhood to life. We believe Franklin Grove will become one of Chapel Hill's landmark communities. It seems to offer proof that residential and commercial uses can coexist functionally and aesthetically, with each providing benefits to the other.

We come to you today with a request for a modification of the special use permit that was issued for Franklin Grove. The specific request is that the council approve an additional 30,000 square feet of floor area, a modification allowing the use of the attic space within the previously approved buildings at Franklin Grove.

Our request for additional floor area at Franklin Grove arises from our early assumption that unfinished attic space did not count against a communities approved floor area. Contrary to that assumption, in a letter we received from the planning department, they explained that because we designed our unfinished attics at Franklin Grove with walk up staircases that the attic space would count against the approved floor area for the community.

Such a determination without relief in the form of additional floor area to cover the attic space would be disastrous for the Franklin Grove community. The direct consequence would be that we would have to eliminate 25%-30% of the approved project. Because roughly half of the community is now finished or

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under construction, the community would not only be a financial disaster it would leave the community with the appearance of abandonment.

Thinking all along that if attic space was left unfinished it would not count against our floor area limitation, we designed each townhome to have ample attic storage and accessibility by way of walk up stairs instead of pull down staircases. We were convinced early on that our market at Franklin Grove would consist of primarily those over 50 living in the adjacent single family neighborhoods like Lake Forest, Coker Woods, etc. Given the age group we were building for and the fact that many would be downsizing from larger homes, having accessible storage areas in the attic seemed essential. If you have ever tried putting luggage away or storing Christmas ornaments until next season through a pull down staircase, you know that they are inconvenient at best and can be down right dangerous. For an aging clientele, the attic storage would be useless if not serviced by walk up stairs.

All of the attics were designed to be left unfinished. Basic utilities have not been extended in any of them. No plumbing, no heating or air conditioning, and only electric to serve a utility light. We hung no sheet rock, left the floors rough plywood, and rendered them useable only for storage.

It was in reliance on this interpretation of floor area that the whole project was designed. The number of townhomes was based on the number of square feet of floor area in the first two floors, not the unfinished attic space. Open space, recreation facilities, and architectural appearance were all driven by our understanding of the floor area allowed and what was to be included in the floor area calculation.

Such reliance was not without reason. First of all, in our 15 years of working with the planning staff, the engineering department, and the building inspections department, we had never been told that walk up staircases would transform our attic space into "floor area" finished or not. After receiving the letter informing us of the determination being made, we did some research and can not find a single instance prior to Franklin Grove where a walk up attic has been the triggering device that subjected an attic to floor area requirements without being finished.

Second of all, the determination conflicts with the North Carolina Building Codes definition of floor area. The building code would not count our attics as a separate floors at all because they do not have 7' of height over 50% or more of their surface area. The code looks at livable space "Space within a dwelling unit utilized for living, sleeping, eating, cooking, bathing, washing, and sanitation purposes." This would most certainly not include our attics. The town has recognized this conflict and has made it a topic to be discussed at this falls discussion on re-calibrating the new "LUMO" (see attachment A).

Third of all, the inspections department reviewed five building permit applications submitted for Franklin Grove and approved all based on the square footage situated on the first and second floors and not the attics. Five homes were nearing completion when the planning staff notified us of concerns with the attics floor area. At no time did the inspections office raise any concerns with not counting the attics as square footage. The plans were presented at all levels of review from Community Design Review Board to the council and approved. We fully disclosed the staircases and the use of the attics for storage throughout the entire approval process.

Last of all, the LUMO's definition itself is ambiguous. No where does it say that attics should be counted as floor area, and no mention is made of the difference between walk up staircases and pull down staircases. Garages that would be substantially easier to finish are not counted as floor area, while elevator shafts are. And while the catch all in the definition holds that floor area includes the sum of all enclosed areas on all floors, the NC Building Code would not count our attic as floors.

I have confidence that the town will work out any of the problems with the definition of floor area this fall when it comes up for discussion as part of the recalibration hearings. We also agree with the town that a recent problem regarding finishing, unfinished floor area gives good reason to review floor area in general. When the town passed its restricted homes ordinance as part of the LUMO, it soon became evident that a builder could build a 1350 square foot, first floor with a 1350 square foot second floor, unfinished, and then upon issuance of the certificate of occupancy the homeowner could finish the upstairs. Thus, owning a 2700 square foot home and effectively circumventing the ordinance. If attics with staircases were allowed in subdivisions where size restricted homes are required, it would take unreasonable oversight to make sure the ordinances intent was being fulfilled.

We understand the need to adjust the ordinance to changing circumstances and this is a case in point. Franklin Grove, however, was passed five years ago before the small home ordinance was conceived of, there was no requirement of size restricted homes for Franklin Grove and Franklin Grove was the first community to make a substantial contribution to affordable housing without an ordinance forcing us to. Our commitment took the form of four rehabilitated houses along Milton Street being deeded to Orange Community Housing at a price well below market.

In summary, we have relied on extensive past experience in dealing with the NC Building Code, the Chapel Hill Development Ordinance and the planning department to conclude attic space left unfinished did not count against floor area limitations. These assumptions were confirmed by the approval of the plans at every level of review through issuance of building permits. Perhaps, we should

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have asked for a declaratory clarification of the somewhat ambiguous definition of floor area, but to be quite honest the thought had never occurred to us.

We respect the town's right to define floor area as is necessary to address problems as they present themselves, but think it would be unfair to hold a project like Franklin Grove, which was approved five years ago to such an interpretation. The result would be catastrophic for the community.

The relief that we petition for is to increase the floor area at Franklin Grove by 30,000 square feet to be used exclusively in the existing attic spaces planned within the buildings. The project otherwise remains identical to what was approved. The elevations, the footprints, the impervious surface, rooflines, and finishes would all remain identical. The additional square footage would only be used to allow access to the attics already constructed and to be constructed at Franklin Grove.

We would also request that this application get expedited review. The community is already half completed and with every home built the floor area is reduced. It is of critical importance to know how to proceed sooner rather than later. In addition, the review time should be minimal because we are making no revisions to the originally approved plans. The only change requested would be to extend sufficient floor area to the unfinished attic space. Our application is in line with the planning department's recommendation to modify the special use permit. (See attachment B) This request is vital to the continuation of the Franklin Grove Community and we appreciate your consideration.

Respectfully yours,

Eric B. Chupp  
Director of Development