

CONCEPT PLAN PROPOSAL

Applicant Information

Name: Capkov Ventures Inc.
Address: 211 Old Franklin Grove Drive
City: Chapel Hill State: NC Zip: 27514
Phone (Work): (919) 942-8005 FAX: (919) 968-4646 E-Mail: ericbchupp@bellsouth.net

Property Owner Information (included as attachment if more than one owner)

Name: Capkov Ventures Inc. Phone (919) 942-8005
Address: 211 Old Franklin Grove Drive
City: Chapel Hill State: NC Zip: 27514

Development Information

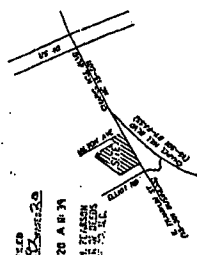
Name of Development: Franklin Grove Subdivision
Tax Map: 45 Block: A Lot(s): 1 Parcel ID #: 9799-15-5719
Address/Location: Franklin Street, Chapel Hill
Existing Zoning: R-5 New Zoning District if Rezoning Proposed N/A
Proposed Size of Development (Acres / Square Feet): 8.7 / 379,000
Permitted / Proposed Floor Area (Square Feet): 107,479 / 137,479
Minimum # Parking Spaces Required: 116 #Proposed 146
Proposed Number of Dwelling Units: 58 # Units per Acre 6.6
Existing / Proposed Impervious Surface Area (Square Feet): N/A / 152,000
Is this Concept Plan subject to additional review by Town Council? Yes

The undersigned applicant hereby certifies that: a) the property owner authorizes the filing of this proposal b) authorizes on-site review by authorized staff; and c) to the best of his/her knowledge and belief, all information supplied with this proposal is true and accurate.

Signature: [Handwritten Signature] Date: 8/9/2004

Please submit 20 sets of all materials, or 35 sets of all materials including reduced (8 1/2" by 11") copies of all plans if the Concept Plan is subject to additional review by the Town Council, no later than the first day of the month. Materials must be collated and folded to fit into a 12" x 15" envelope.

The Community Design Commission meets regularly on the third Wednesday of each month. Meetings with the Town Council will be scheduled after the Community Design Commission meeting. For confirmation of a meeting dates and the placement of your request on the agenda, please call the Planning Department at (919) 968-2728.



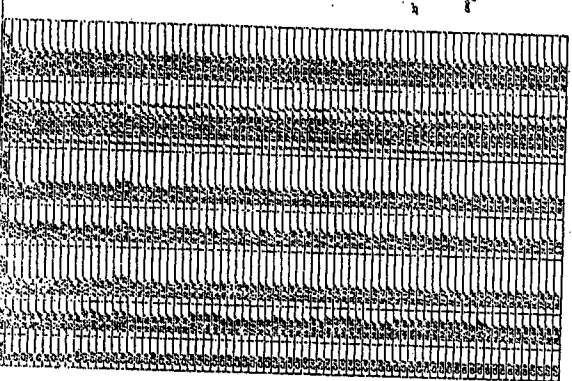
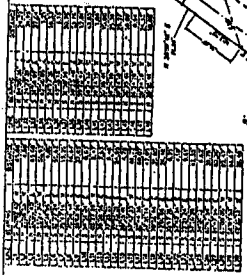
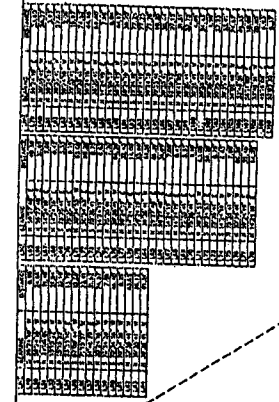
VARIETY MAP #12

PLAT 20  
SUBJECT TO A B 74  
CONTA IN PART  
CITY OF  
COUNTY OF  
STATE OF

Division of  
Surveying  
State of

NOTES  
1. THIS MAP IS A REVISION OF PLAT 20, 1974, AS AMENDED BY PLAT 21, 1974, AND PLAT 22, 1974.  
2. ALL AREAS SHOWN ON THIS MAP ARE SUBJECT TO THE REVISIONS AND AMENDMENTS REFERRED TO ABOVE.  
3. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY DASHED LINES.  
4. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY SOLID LINES.  
5. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY DOTTED LINES.  
6. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY LONG DASHED LINES.  
7. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY SHORT DASHED LINES.  
8. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY Wavy LINES.  
9. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY Zigzag LINES.  
10. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY Stippled LINES.  
11. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY Cross-hatched LINES.  
12. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY Diagonal LINES.  
13. THE BOUNDARIES OF THE PLATS REFERRED TO ABOVE ARE SHOWN BY Horizontal LINES.  
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RILEY SURVEYING, P.A.



PLAT 20  
SUBJECT TO A B 74  
CONTA IN PART  
CITY OF  
COUNTY OF  
STATE OF

Division of  
Surveying  
State of

Division of  
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State of

Division of  
Surveying  
State of

Division of  
Surveying  
State of

FINAL PLAT  
FRANKLIN GROVE  
A TOWN OF  
COUNTY OF  
STATE OF

CARPOY VENTURES, INC.



LEGEND  
1. UNIMPROVED LOT  
2. IMPROVED LOT  
3. UNIMPROVED LOT  
4. IMPROVED LOT

LEGEND  
1. UNIMPROVED LOT  
2. IMPROVED LOT  
3. UNIMPROVED LOT  
4. IMPROVED LOT

# Capkov Ventures

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



## 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

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 downright 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

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

**MEMORANDUM**

**TO:** Mayor and Town Council  
**FROM:** W. Calvin Horton, Town Manager  
**SUBJECT:** Report on Possible Adjustments to Land Use Management Ordinance  
**DATE:** November 10, 2003

This memorandum lists topics and issues that the Council will be discussing in January 2004 as part of a Public Hearing on Chapel Hill's Land Use Management Ordinance. The purpose of tonight's report is to relay to the Council the list of topics that have been identified as candidates for change, to offer an early review of the January 21, 2004 Public Hearing, and to offer the Council an opportunity to suggest additional issues for consideration at the hearing.

**BACKGROUND**

On January 27, 2003, the Town Council enacted a new Land Use Management Ordinance for Chapel Hill. This new ordinance contains new initiatives in several substantive areas, including stormwater management, tree protection, Resource Conservation District regulations, and impervious surface requirements.

When the Council enacted the new ordinance, it directed the Town Manager to begin keeping a file of ideas and experiences related to administration of the new regulations. The Council called a Public Hearing for January 2004, one year after enactment of the ordinance, to afford an opportunity to make any changes or adjustments that the Council deems appropriate.

The Council also directed the Town Manager to bring immediately to the Council's attention any provisions in the new ordinance that were creating serious and immediate problems in administration of the regulations. We have taken three such issues to the Council for action. Those are:

- Public water-sewer requirements for new development
- Adjustments to definitions in Resource Conservation District regulations
- Adjustments to size restrictions for houses in new subdivisions

In addition, the Council has identified three specific issues that are to be considered at the January Public Hearing, all resulting from additional study that has been ongoing. Those are:

- Regulation of duplex dwelling units
- Creation of a Northside Neighborhood Conservation District
- Creation of new parking regulations

We note that consideration of duplex regulations is especially time-sensitive, because the current prohibition on new duplexes in most residential zones expires at the end of February 2004.

### INVENTORY OF IDEAS

As requested by the Council, we have been keeping an inventory of ideas and issues that have been raised which suggest consideration of changes to the Land Use Management Ordinance. We have grouped these ideas into three categories:

1. Correction of error
2. Clarification of intent
3. Suggestions for substantive change

We are not offering recommendations on any of these items at this time, but will in January. The lists below are compilations of ideas that have been suggested to us.

#### Corrections

We have flagged the following provisions in the Land Use Management Ordinance that we believe to be errors in translation from the former Development Ordinance, and that have resulted from the re-formatting of the new ordinance. Suggested corrections are:

- Delete "minor arterial" in street classification system.
- Add "sorority" in table of uses.
- Add appeal of minor subdivision to Board of Adjustment in Section 4.10.
- Add special standards for "Places of Worship" in the Rural Transition district.
- Adjust section references and cross-references.
- Adjust permitted uses in the Resource Conservation District regarding utility lines to private dwellings, and regarding driveways for single-family dwellings.
- Adjust secondary height limit in TC-1 district (should be 60').
- Correct several typographical and formatting errors.

#### Clarifications

We have identified the following provisions of the ordinance which we have found to lack clarity, hampering administration of the ordinance. The suggestions are:



- Add cumulative provisions to the land disturbance thresholds triggering stormwater and tree protection requirements, such that development on a lot cannot be split into multiple projects to avoid requirements.
- Do not require that creation of townhouse lots by subdivision, as part of a Council-approved Special Use Permit, need further Planning Board approval.
- Clarify meaning of "access" to street in Section 5.8.1.
- Clarify land disturbance triggers for soil and erosion control requirements; coordinate with similar requirements in other regulatory documents.
- Clarify definition of land disturbance.
- Clarify that "Total Suspended Solids" standards in stormwater requirements apply to the incremental impact of development of a property.
- Clarify distinctions between water treatment requirements for runoff from public streets vs. private lots.
- Clarify floor area requirements for single-family, two-family, and Planned Development scenarios.
- Clarify intent of a "Common Development Plan" in Section 5.4.2.
- Adjust Buffer requirements to be internally consistent.
- Clarify formula for payment in lieu of affordable housing.
- Clarify what is a "registered trademark" for signs.
- Clarify intent of "expansion" regulations in the non-regulatory floodplain portions of the Resource Conservation District.
- Clarify the relationship between building code and Land Use Management Ordinance definitions of floor area.
- Clarify the criteria to be considered in revoking a Home Occupation permit.

#### Suggestions for Substantive Changes

Suggestions for changes have come from citizens, Council members, advisory board members, developers, and staff. The following suggestions have been made:

- Require a residential component for Mixed-Use Planned Developments.

- Re-think "24-hour storm" in Section 5.4.
- Increase flexibility in "alternate buffer" provisions.
- Consider how to handle porous pavement as impervious surface.
- Re-consider requiring stormwater management facilities on individual single-family lots.
- Re-consider requiring that all new parking lots downtown have at least 20 spaces.
- Re-consider the time frames specified for action in the OI-4 zoning district.

#### **NEXT STEPS**

The Council has called a Public Hearing for January 21, 2004. We intend to prepare a discussion of the items identified in this memorandum for consideration at that hearing. We welcome direction from the Council as to addition of items for reconsideration.



TOWN OF CHAPEL HILL

December 4, 2003

Mr. Eric Chupp  
Kovens Construction Company  
P.O. Box 16815  
Chapel Hill, NC 27516

Subject: Franklin Grove Development – Floor Area Issue  
(File No. 45.A.1)

Dear Mr. Chupp:

Thank you for your patience as we reviewed the issues related to your October 8 letter. Your letter asks specific questions about the floor area allowed at the Franklin Grove Development and how floor area is calculated. It was especially helpful touring several of the existing dwelling units on site two weeks ago. Unfortunately, I cannot offer relief from the Development Ordinance definition of floor area. The walk-up attic spaces we reviewed do count as floor area. I recommend that you consider proceeding with a proposal to modify the Special Use Permit, if this application of the floor area definition will not allow you to build the project you intend.

I believe you are correct that a source of some of the confusion about floor area has to do with different definitions of floor area. I understand from your letter that the North Carolina Building Code definition is different from the definition in the Chapel Hill Development Ordinance that was in place when Franklin Grove received approval of a Special Use Permit.

As you know from our multiple discussions on this issue, the Development Ordinance definition of floor area is very broad:

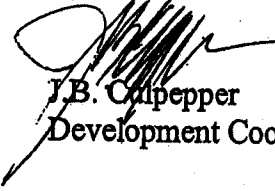
**2.47 Floor Area:** The sum of enclosed areas on all floors of a building or buildings measured from the outside faces of the exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and any below-grade floor areas used for access and storage. Not countable as floor area are open terraces, patios, atriums, balconies, carport, garages, and breezeways.

The October 27, 1999 approval of the Franklin Grove Townhomes includes stipulations that limit the floor area of the project to 107,479 square feet with no more than 58 dwelling units. This floor area limit of 107,479 square feet is based on the Development Ordinance definition of floor area, noted above. Because this floor area limit is based on the definition in the Development Ordinance, the Town staff does not have the ability to apply a different definition.

Again, thank you for your patience.

If you have any questions, please call the Planning Department at 919-968-2728.

Sincerely,



J.B. Calpepper  
Development Coordinator

cc: Lance Norris, Inspections Director  
Maggie Bowers, Enforcement Officer  
Roger Waldon, Planning Director  
Ralph Karpinos, Town Attorney