

Capkov Ventures

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



Town of Chapel Hill
306 N. Columbia Street
Chapel Hill, NC 27516

April 21, 2005

**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.

By submission of this application we request that the floor area within our Franklin Grove Development be increased by 35,000 square feet to permit the use of the attics as functional storage space or alternatively to be finished as additional living area. It is important to keep in mind that the request only applies to the attic space and nothing else will change. The floor plans, elevations, roof lines, parking spaces, entrances, and number of homes will all remain consistent with the original application that was approved by the council back in October of 1998. We only propose to make use of the existing attic space that was originally planned within each home.

To understand the basis for our request, I think it is necessary to convey a bit of the background of the Franklin Grove development. When the special use permit for Franklin Grove was approved we believed the approval that was granted permitted the homeowners to use the unfinished attic spaces for storage without counting the area against the maximum allowable floor area of 107,479 square feet. From the community's

very inception, we had incorporated walk up staircases in each home and disclosed this at every step of the approval process.

Prior to designing the community we held numerous focus groups with realtors, prospective customers, and the surrounding neighborhoods to uncover who our target market was and what their needs and desires were. What we found was that our market was primarily those of retirement age or approaching retirement age. It was also recognized that a substantial portion of these prospective clients would be downsizing from larger homes where they had raised families, but no longer needed four bedrooms and an acre of land. For this client storage space would be very important and furthermore that it would need to be functional. Indeed, to retrieve Christmas ornaments or to store the old family dining room table, a pull down staircase would simply not be practical. Our solution was to give each homeowner a walk up staircase.

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. This letter was written five years after the S.U.P. was approved and after twelve building permits had been issued where the attic space was not considered floor area.

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.

We never, ever considered the possibility that attics if left unfinished would be considered "floor area" and went to great lengths to make sure they were 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.

We believed we were entitled, under the approved plan, to construct unfinished attics in the Franklin Grove Townhomes without them counting against our allowable floor area of 107,479 square feet. We would had never risk building the walk up staircases if we thought that they could possibly have the effect of eliminating one third of our entire community. Our belief that the attics did not count as floor area was not without basis. We think it was a reasonable presumption based on the following factors:

1. With full disclosure of our plans to build walk up staircases to the attics at Franklin Grove, to the council, community design review board, and the building inspections department nobody ever notified us that the attics could be counted as floor area. It was not until twelve building permits had been issued, and five

homes had been completed that the Zoning Inspections Department wrote us a letter informing us of their decision to count the unfinished attic spaces as floor area. The permits issued by the Chapel Hill Inspection Department did not count the attics as heated floor area nor did the plans reviewed by the Community Design Review Board.

2. At the time that Franklin Grove was approved, there had never been a case where an attic had been left unfinished and the town counted the space as floor area. This is undisputed by the Town of Chapel Hill. It is true that recently, long after Franklin Grove's approval, one or two homes have been required to count their attic spaces as floor area. This however was done to prevent them from circumventing the small house ordinance that was made part of the LUMO. From our research, it is only in this context that unfinished attics have been counted as floor area. Only when they were part of the affordable housing component of a community. When Franklin Grove was approved there was no such ordinance in place and none of the homes at Franklin Grove are size restricted or affordable homes.
3. The town planning department interprets the definition of floor area in the Land Use Management Ordinance to include attics. However, nowhere in the definition does it mention attics, while specifically mentioning halls, lobbies, arcades, elevators shafts, and enclosed porches. In addition, attics are not excluded from the list of those things that do not count as floor area which specifically excludes garages, breezeways, and porches from floor area calculations. The definition of floor area in the Land Use Management Ordinance is certainly less than clear.
4. The North Carolina Residential Building Code, and the town's own inspection department, working under that building code, do not count the attics at Franklin Grove as floor area. We received twelve building permits from the inspections department where they did not count the attics as heated floor area. This was not a mistake but simply the way floor area has always been defined and continues to be defined under our states building code. The interpretation of the definition of floor area that the planning department proposes is clearly in conflict with the definition used by home builders here in Chapel Hill and across the state.

The point being that our belief that our unfinished attics would not count against our allowable floor area was reasonable. We understand and agree that the town needs to have the flexibility to interpret the Land Use Management Ordinance to address concerns as they arise. Stopping those who try to circumvent the town's provisions for affordable housing is a case in point. However, we think it is inherently unfair to have them applied retroactively to a project approved five years ago.

We are now at a point where we will have to stop selling homes at Franklin Grove and serious economic implications will result. One third of the project has not been built. Please support our request for 35,000 additional square feet of floor area to be used in the attics at Franklin Grove.

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I would request that at the point where this application becomes a resolution to the town council that the resolution be bifurcated. We would like to separate our proposal into;

1. Allowing the 35,000 square feet of additional floor area to be used only to allow the existing, unfinished attics to remain.

OR

2. Allowing the 35,000 square feet of additional floor area to be used to finish the attics into living space.

Allowing the additional square footage to be used only as unfinished attic space would get us back to the position we believed we were in when the project was approved. By allowing the attics to be finished as living space, you would be allowing the current homeowners to convert the attics into such uses as art studios, grandchildren's rooms, and recreation space, as well as storage. While we have little financial incentive to advocate that the attics be allowed to be finished as we do not do remodeling work the homeowners have unanimously requested we pursue this. We think that because nothing changes in the community except the finishes in the attic and the extension of utilities to them, that allowing the homeowners the flexibility to finish the attics is sensible. It seems to put the attics to their best use as determined by the homeowner with no negative implications for anyone.

Again it is extremely important that we be granted the floor area necessary to complete the community as it was designed. That is primary. We also think it would be proper to allow the homeowners the flexibility to finish them differently if they choose. Thank you for your consideration.

Sincerely,



Eric B. Chupp
Director of Development

Additional Items Addressed

1. Conforms with 4.5.6 Permitted Modifications of Regulations

We request this modification under section 4.5.6 of the development ordinance which empowers the Town Council to allow this type modification as long as "public purposes are satisfied to an equivalent or greater degree". We submit to you that this modification will improve Franklin Grove substantially from what it would be if the modification is not allowed.

1. If the modification is not allowed, we will have to stop construction now with 25-30% of the approved number of homes unfinished. This would forever leave an obvious gapping hole in an otherwise wonderful community. Permitting the modification would allow us to finish building Franklin Grove as it was approved.
2. The homeowners in Franklin Grove all support the idea as an improvement to the community and were present at the public information meeting to express that support. Several letters were also sent to the Planning Staff in support of the modification.
3. There has been no opposition to the modification and three sets of notices have been sent out informing the community of the modification specifics. In addition, we received the support from the Community Design Review Board with 9 of 11 voting to allow the increase in floor area not only to allow the attics but to allow them to be finished. The only two dissenting votes were in favor of allowing the additional floor area but simply had concerns about allowing that floor area to be finished into livable space.
4. Allowing the modification will help us expeditiously complete the construction of the community of Franklin Grove.

2. Orange Community Housing Letter

One of the stipulations of approval for Franklin Grove development plan was that Capkov Ventures Inc. renovate four single family ranch style homes along Milton Avenue and convey them to OCHC. The price that OCHC paid for the homes was to remain at or below that which one making 80% or less of the median income could afford. The renovations were completed essentially turning the homes into like new condition and OCHC sold them to four individual buyers.

The home at 111 Milton Avenue since that time has developed some settlement cracks in the foundation which raises problems for OCHC in reselling the home. The cost to fix the existing foundation would be cost prohibitive if added to the sales price for a new buyer or expect a new homeowner to take on after purchasing. This has led Robert Dowling of OCHC to investigate creative solutions to the foundation problem. One of these solutions is to move the single family home from the existing lot to another location and then maximize the intensity on the lot by building a two story duplex.

The homeowners at Franklin Grove however are concerned about the creation of additional homes that would be part of the subdivision in which they have purchased homes. One of the most positive attributes of the entrance into Franklin Grove is the

single family homes that line Milton Avenue, giving the community a mix of densities that feels right. To replace these homes with duplexes would jeopardize this.

In working with Robert on solutions, we came up with two possibilities that would eliminate the financial pressure to move the home at 111 Milton Avenue.

1. Capkov Ventures Inc. will commit to utilize its subcontractors to repair the foundation at 111 Milton Avenue and contribute the first \$10,000 worth of expenses incurred in its repair. Furthermore, where estimates from OCHC include over \$30,000 worth of repair work needed, we will cap OCHC's obligation at \$10,000, therefore committing to cover any cost above \$20,000 in addition to the initial \$10,000. We will repair the home in accordance with instructions and specifications from a North Carolina certified engineer who will sign off on the repair work at completion.

OR

2. Capkov Ventures will enter into an agreement with OCHC where Capkov Ventures, Inc. would assume the Milton Avenue residence from OCHC in exchange for other property that OCHC may deem more appropriate to further its long term goal of extending the stocks of affordable housing in Orange County.

At this point, it looks as if option 2 seems likely in that we have identified a potential parcel that fits OCHC's criteria and are negotiating the parcel's purchase. In either case OCHC has been relieved of its foundation concerns and will no longer be compelled to look at expansion of its single family home on Milton Avenue as necessary.

Construction Period

Stipulation (1) of the Special Use Permit specifies a construction period of three years from approval. Due to delays associated with initial construction document approval and the modifications before you, as a part of this application we will ask that the construction be allowed to continue for an additional 24 months after the determination of this modification.