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From: Larry and Melissa Miller
Sent: Friday, October 04, 2002 7:41 PM
To: Town Council
Subject: My Serious Concerns Over Draft III of the Land Use Management Legislation

To: Honorable Mayor Kevin Foy and Chapel Hill Town Council
Chapel Hill, NC

Dear Mayor Foy and Town Council,

I have become increasingly alarmed to learn about certain elements of the proposed land use management legislation. My first concern is that this new ordinance appears to have been drafted with very little input from those affected by the new rulings. When planners were working on the Booker Creek Trail and the rezoning of the Kroger property on Franklin Street, we received a continual stream of communication from the Town. However, we have received no direct notification from the town on this critical ordinance, which will seriously impact my property.

I have serious reservations in several areas. First, I own property in Oxford Hills that backs up onto the Booker Creek Greenway. In fact, my structure is built right up to the current RCD line. Should the RCD be expanded, it would move the line into the middle of my home, thereby branding my property "non-compliant." This will have critical implications about the ability to re-sell, refinance, or upgrade my home. My reading of the ordinance is that a "40 year clock" could render my biggest investment valueless.

Secondly, most of the lots in the neighborhood, including mine, are built on significant slopes, which again places my property in non-compliance. Both this rule and the RCD extension could prevent me from re-building my home in the event of a natural disaster.

I was also surprised to read a proposed ruling that appears to restrict structural height to one story at setback lines. It seems that this would place 1000's of two story homes in non-compliance, including my own.

Please be assured that I have always supported Chapel Hill's efforts to create and maintain green spaces and preserve watersheds. I support the spirit of the legislation as it applies to new development. However, I consider making these rules retroactive to currently constructed properties unacceptable. In my opinion, the only acceptable solution is to bind property owners to the laws that were in place at the time of construction or structural expansion.

For example, my home was constructed in 1991. I have just completed a \$50,000 addition that the town approved. If this legislation passes, my new addition (not to mention my entire home) would become illegal only a few months after the town approved it. I consider this to be bordering on fraud to issue permits and then subsequently deem the structure illegal. I abided by the restrictive RCD rules when constructing the home on my lot in 1991 and commissioned a careful and expensive survey to assure compliance during construction of my recent addition. I feel the town should hold true to its contract in maintaining the legality of my structure. I consider anything less to be a usurpation of my property rights by the city government.

(39)

We have drafted a petition requesting action in this matter that is being signed by the entire Oxford Hills neighborhood. As I mentioned, I have been supportive of previous work of the council and the mayor's office. However, I feel that the council has not fully considered the negative ramifications of the new measure on virtually all residents of Chapel Hill. I hope that you will reconsider removing the retroactive nature of this new legislation. In addition, I hope that the town can find other ways to protect its natural resources without alienating the very people who are invested in the community.

Respectfully,

Dr. Larry R. Miller
206 Oxford Hills Dr.
Chapel Hill, NC 27514
967-9822

(40)

From: Terry Maguire
Sent: Saturday, October 05, 2002 9:39 AM
To: Town Council
Subject: Further consideratoin of 3rd draft - Land Use

What is the timetable for further consideration of the third draft? I received an unsigned piece of paper here in Southern Village telling us that the sky is about to fall and that we need to protest. Before that, I'd like to understand the proposal better and want to know how much time we have to do so.

Thanks,

Terry Maguire

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Terry MAGUIRE
Tel: 1-919-960-4503
Fax: 1-919-960-3659
Address: 143 Graylyn Drive, Chapel Hill, NC 27516 USA

(4)

From: Ryan Warwick
Sent: Sunday, October 06, 2002 6:40 PM
To: Town Council

Subject: Concern over third draft of land use ordinance

As residents of Chapel Hill and Southern Village we would like to express our concerns with the proposed Third Draft of Land Use Ordinance.

1. We are concerned about what we have heard regarding the Third Draft Land Use Ordinance regarding non-confirming features. Southern Village's topography, relatively small lot size and street set-backs create multiple nonconforming features in most Southern Villages homes and businesses.
2. Southern Village is one of the most successful and valuable communities in the Triangle precisely because of those non-conforming features.
3. Our property values (and tax base) need to be maintained by zoning NOT diminished.
4. It seems the requirements proposed will, at the very least, discourage future buyers and therefore reduce property values. By limiting additions and even placing restrictions on the cost of repairs made with-in a single calendar year over-restrictive zoning will unduly restrict property owners original rights.
5. For these reasons we request that pre-approved neighborhoods be exempt or "grandfathered".

Respectfully,

Greg Warwick, A.I.A.
Nancy Warwick, R.A.
500 Highgrove Drive
Chapel Hill, N.C. 27516

From: Sarah Bruce
Sent: Monday, October 07, 2002 11:32 PM
Subject: Oct. 7 meeting thoughts

I respect you all very much for sticking out those late council meetings. I left at 10:15, so please excuse anything I cover that was decided after that.

My immediate concerns from last night have to do with the proposed information session. Of course, it should be included in the mayor's memo of public events to do with the LUMO (has anyone come up with a cuter acronym for this yet?). It would be great if the people who are to speak at the information could put something brief together in writing and/or someone could take notes at the meeting for the benefit of citizens who can't come or don't find out about the meeting until too late. Maybe you could ask the people on your e-list to send questions as I have below. Papers to put the announcement in might include the Weaver St. Market newsletter, the DTH, and the Indy. Lastly, it should be scheduled as soon as possible so that we don't spend valuable workshop and hearing time bringing people (like myself!) up to speed.

Regarding content, there were several items that seem worth discussing in an info session:

- RCD/big riparian buffers (does one define the other, or are they totally separate?)
- why was the rooming house designation eliminated? seems like it might help the duplex issue.
- what are the impacts that people are concerned about with duplexes?
- what research is justifying the 150-ft buffer recommendation? how would it affect buildable land remaining in chapel hill? how much would it improve water quality more than, say, a 100-ft buffer? Are all intermittent streams covered, or just those over a certain catchment size?
- how would nonconforming uses be dealt with as we transfer to the new ordinance? what would it mean to give preliminary plans a vested right, if this is indeed an option? (I agree with Mr. Waldon that nonconforming uses is a useful and customary term.)

Finally, I had some suggestions regarding duplexes: As I mentioned, what specifically are the concerns? If parking is one, perhaps we can limit parking to say 2 vehicles per unit (half structure). This would enable families to share duplexes and still allow some students to share duplexes if they limit number of cars onsite. I like the idea of limiting floor areas, but to accomodate affordable housing needs of families I wonder if the max floor area should be set by number of bedrooms with say a max of three bedrooms/some appropriate square footage for that no of bedrooms. I also wonder if we really have to disallow duplexes in R-1, R-2, and R-3 (was this change suggested as temporary?). Is there any way to perhaps allow one duplex unit for every x number of single-family houses? It seems like a number of the concerns regarding duplexes may parallel those of rental housing more generally. I'd like to see us addressing those negative

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neighborhood impacts, which should not exempt single-family homes, rather than marginalizing what I consider to be a very functional and practical arrangement. (I live in the only duplex that I know of in the single-family neighborhood sandwiched between The Oaks and Glen Lennox; I am extremely fortunate to have both a nice neighborhood and cheap rent.)

Thanks so much for taking the time to read this. I hope that I can provide helpful feedback on the LUMO in the future as I become more familiar with its evolution.

Sincerely,
Sarah Bruce

Do you Yahoo!?

Faith Hill - Exclusive Performances, Videos & More
<http://faith.yahoo.com>

(44)

From: David Fargo
Sent: Monday, October 07, 2002 9:25 AM
To: Town Council
Subject: Land Use Ordinance

Oct. 7, 2002

Mayor and Town Council of Chapel Hill:

Please consider granting an exception for pre-approved and pre-existing homes when finalizing the language of the land use ordinance. As a resident of Southern Village, I fear that nearly all of the homes in the neighborhood will be "nonconforming" in topography or relative lot size. One of the reasons we chose to live in Southern Village was the small lot sizes and the look and feel of the hills. We worry that the inability to make even minor improvements to our home would negatively impact its long term value and decrease our ability to enjoy the property.

Thank you for considering "Grandfathering in" our neighborhood.

Sincerely,
David Fargo and Jennifer Biermann
406 Highgrove Dr.

(45)

From: Terry Crook
Sent: Tuesday, October 08, 2002 8:38 PM
To: Town Council

Subject: Proposed Zoning Bylaw changes

I attended the mid-September Council meeting and have read the various newspaper articles subsequently.

As a homeowner and an active local residential REALTOR with 15 years experience, mostly in suburban Boston (where I was a Town Meeting Member for 28 years), I am quite familiar with Planning & Zoning issues & processes.

Several aspects of the proposed revisions alarm me & should alarm you as well.

FAR ratio of 0.3 will make nearly ALL recent new construction in Southern Village, Meadowmont & several other subdivisions NONCONFORMING as they presently exist. Such a condition MUST be disclosed to any potential buyer.

The proposed height limitations and maximum lot slope will have a similar effect on most, if not all, of these same homes.

The absence of grandfathering-in-perpetuity, as is done in a great many communities around the country, will precipitate prompt reductions in resale value, potential mortgage financing problems, and limited replacement options in event of serious structural damage due to fire or natural disasters. Reduced valuation, as established by the market, will lead to valid abatement petitions & reduced tax revenues. These in turn will cause reduced municipal budgets and/or increased taxes. This would then be compounded by reduced appeal of Chapel Hill to home buyers, further depressing the existing home values, tax revenues, school and operating budgets.

The hazard of possible litigation by financially-injured homeowners must be considered as well. Even in the event of either judicial dismissal or a successful defense by the Town, the municipal legal costs would not be unsubstantial!

If these changes/restrictions are passed, in the declared effort to limit new construction & growth, provisions must be provided to readily allow variances or special permits for reasonable changes to existing/grandfathered homes. Examples would include finishing of basement or attic spaces, enclosing of decks as Florida rooms (heated), conversion of existing unheated floor area to living space, addition of dormers to 3rd floor spaces, etc.

As a homeowner, taxpayer, voter & real estate professional, I look forward to your coming deliberations and legislative actions.

Terry Crook, 405 Long Leaf Drive, Chapel Hill, NC 27517-3036

10/1/02

(46)

Subject: receipt of and comments on October 7th LUMO planning document

Ms. Andrews:

Thank you for forwarding the attached document to my wife, Barbara Bieszka. We have followed the land use ordinance closely, and we are glad that the voices of citizens are being heard. The recommendations of Mr. Horton are in the right direction, but we cannot rest easy until our concerns are addressed in writing in any draft being considered by town council.

As currently written, the third draft of the LUMO significantly impacts virtually every lot in the Mill Race subdivision, either because of the RCD restrictions, the slope restrictions, or both. At a minimum, I support grandfathering all existing structures (and those lots in our plat not yet built upon) and relaxing the non-conforming provisions in the LUMO.

In the end, citizens must be able to rebuild their homes following disasters, conduct remodelling, make expansions, and build on their lots -- without having to subject their desires to variances or special use permits that are both cumbersome and unlikely to realize success. Anything else would significantly diminish the value of our homes and the tax base of the town.

I have copied our home owners association officers and a few other interested citizens on this message. We would appreciate being informed of any developments on this issue in the weeks and months ahead.

Sincerely,

Keith Symmers
225 Mill Race Drive
Chapel Hill, NC 27514
919-969-8112

(47)

10/9/02

Subject: Proposed Amended Development Ordinances

We are sending this email to the Mayor of Chapel Hill, all City Council Members, the City Planning Office, and the City Attorney.

We reside with our two sons at 105 Red Bud Lane, Chapel Hill. We are long time residents of the town and have decided to remain here for the rest of our lives, including retirement.

In January of this year a life-long dream came true when we purchased lake front property at 2014 North Lake Shore Drive, adjacent to Eastwood Lake in the heart of Chapel Hill. We have long dreamed of building a home on this beautiful lake. Prior to the purchase of this lakefront property, we carefully studied the then existing town zoning ordinances to ensure that we could tear down the existing structure and build a new modern home that fulfilled our needs, desires and expectations.

Our careful study of the existing zoning ordinances concluded that we could implement our plans without any worries or obstacles. You should also note that this investment in lake front property is the culmination of years of careful savings and investments, and therefore, represents a significant financial investment for our family.

Therefore, it should come as no surprise to any of you that we are extremely worried and concerned that the proposed changes in the zoning ordinances could not only destroy our long term plans and dreams, but dramatically reduce the value of our significant investment. To be perfectly blunt, we are very anxious and terribly worried that your proposed changes in the city's zoning ordinances will negatively impact our investment to the point where we would have never made this investment last January if the proposed ordinances were in effect at that time. In other words, you are proposing to "change the rules of the game" in a way that will substantially hurt homeowners such as ourselves.

We believe it is unconscionable if any of you, as elected officials, take any action whatsoever to destroy the hopes, dreams and significant financial investment in single family properties through this proposed ordinance. Therefore, as tax paying citizens of Chapel Hill, we request that you ensure that your proposed ordinances have virtually no effect on our current plans to build a new home at 2014 North Lake Shore Drive and no effect on the long-term value of this property. I trust you will listen to our concerns and the concerns

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of hundreds of citizens who are now aware of this horrific ordinance proposal and act in the best interests of individual homeowners who could be hurt by this action.

We request that you provide to us a reassurance that you will not enact any ordinances or regulations that will adversely impact our plans and investments. We look forward to hearing your response.

Sincerely,
George & Elin Abercrombie
105 Red Bud Lane, Chapel Hill
Phone: (919) 929-9596
Email: george.abercrombie@roche.com

cc: The Chapel Hill News

From: Joe Patterson
Date: Fri, 11 Oct 2002 15:31:29 -0400
Subject: Your memo of Oct.7th to the Mayor re the Third Draft etc.

Mr. Horton,

I have read the referenced memo with interest. While I strongly endorse your proposed modifications concerning the RCD, I believe you need to take similar actions in relation to the effect of the Steep Slope regulations on existing single family dwellings on steep lots.

I live on Cobb Terrace which was developed some 85 years ago. All of the houses on my side of the street were built on the side of a hill. Using the procedure outlined in the 3rd Draft, I calculate that all of the homes were built on lots that have a slope of 23% or more. Note that they were built using techniques and under building regulations that have been in existence for over 80 years, nothing specialized. I have attached some photos of the side of the house to illustrate how insignificant a slope this is.

As currently drafted, our houses would become and remain **nonconforming features**, though under under 7.3.1, they would be allowed to continue. This would negatively affect our property values and restrict our ability to arrange financing.

It appears to me that they could not be rebuilt if destroyed, nor could they realistically be expanded given the restrictions in Table 5.3-1. I had purchased the property with the intention of expanding. Now I can't. These are additional unintended (I believe) consequences of the proposed Ordinance.

Even if I were able to expand, the proposed requirements for the application for approval to build are unreasonably onerous. I have contacted an engineer who has indicated that production of all the required analyses would cost me \$5,000 to \$10,000. This is patently absurd when I have prima facie evidence (my existing home and the fact that it has safely stood for 80 years) that the lot is suitable for building.

I urge you to develop language similar to that in your memo for the RCD (Approaches to Existing Development, page 4) to insert into 5.3.2 that states that existing homes are not nonconforming, that they can be rebuilt and expanded, and that the Article does not apply to any such expansion. Otherwise, I imagine that much of your coming meetings and workshop will be devoted to addressing this issue.

On a broader note in relation to the Steep Slope regulations, I don't really understand their purpose. For hundreds of years, houses and buildings have been safely constructed on inclines dramatically steeper than 45%. Most of Aspen, CO, is built on slopes greater than that. I would submit that a substantial portion of the homes in Chapel Hill are on land with a slope in excess of 15%. I've heard of no instances of homes sliding off a hill

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or becoming a public nuisance. If the goal here is to limit erosion or run off, develop regulations to deal with that. Simply banning building on slight inclines to accomplish that goal is like banning babies because you're worried about what to do with dirty diapers.

Thank you for your time.

Sincerely,

Joe Patterson

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Joe Patterson
7 Cobb Terrace
Chapel Hill, NC 27514

Tel # (919) 933 5488
Fax # (919) 933 0266

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scan/e mail
to council 10/11/02
JF

Copy to Mayor and Council.

F.V.I.
Cal

(52)

Is Your Home Nonconforming?

...It could be after October 21 if the Town Council passes the draft of the development ordinance regulations they will be voting on at that Monday night meeting.

The proposed changes expand the current development ordinance in significant ways:

- Green space will be maintained within 150 ft. of a stream bank (currently 75 ft.) and intermittent streams will also be included in this restriction.
- No new duplexes are to be permitted in R-1, R-2, and R-3 zoning areas.
- On slopes of 10% rise, development of impervious surface will be limited to 10% of the area and if the lot slopes more than 25% no development is permitted without a variance.
- On any lot greater in size than 5,000 sq. ft., the owner will have to file a storm water management plan, tree protection plan and a slope analysis (all typically done by an engineer) for any new construction or renovation.

These and other new zoning regulations, if passed, will make many, many homes into non-conforming uses and interfere with additions, improvements and sale ability. The changes are available at www.townofchapelhill.org for further information. The significance of this proposed draft will not be apparent to us until we want to renovate our homes, add a screened porch or a garage...And have to get a variance because the size of our home or the slope of the lot or its proximity to a dry creek makes it non-conforming to the new ordinances. And just wait till you plan to sell! Your realtor must disclose to all buyers that your home is nonconforming ...and then the buyer has trouble finding a conventional loan at the prevailing market rate and has to pay a higher interest rate.

If I can help you with more information on this pending ordinance revision, I am always available at OwensP@hpw.com or my direct line, 960-6316. You may choose to call a council member and let them know your feelings about this proposed ordinance changes:

Kevin Foy, 932-1925
Bill Strom, 933-2711
Flicka Bateman, 967-8358
Dorothy Verkerk, 932-6630
Pat Evans, 967-1366

Jim Ward, 929-7666
Ed Harrison, 490-1566
Edith Wiggins, 929-2071
Mark Kleinschmidt, 932-2810

This is just another example of overkill. To mitigate neighborhoods becoming overrun by students and their cars, this council wants to take a sledgehammer to pound a tack. Much more focused zoning decisions should be used rather than make our existing neighborhoods non-conforming.

Your realtor, *Pat Owen*

From: Woody Claris
Sent: Monday, October 14, 2002 2:52 PM (33)

Honorable Council Members-

I have owned a two (2) acre lot in Northside on Carver Street for 21 years. During that time I have paid for it and paid city taxes on it with the intention of building something on it as an investment to subsidize my retirement.

I have met over the years with staff regarding several proposals, and each time prevailing stringent zoning and planning ordinances have sent me back to the drawing board. Recently I came to agreement with JB Culpepper that a single duplex on a small portion of the land would be the best use of the property. Thereby leaving open the possibility for the remainder to be added to the existing green-way or added to Umstead Park. She suggested that because of the current push to eliminate duplexes from Chapel Hill, I would be wise to acquire my permit for the project, as my land could become useless for anything but open space should current ordinances and restrictions being considered come into effect.

I made my application last week in fear, quite honestly, of losing a valued asset that I had counted on for my future financial security. I am certain that there are others in my situation in Chapel Hill, who may or may not know what is possibly going to happen to them, should the plan to totally disallow duplexes actually come about.

I realize that examples of inappropriate, unattractive, poorly planned duplexes exist in Chapel Hill. That seems to be more an issue of poor enforcement of existing rules. What I don't understand is the wholesale elimination of much needed lower cost housing that is so vital to any town with a transient or college population.

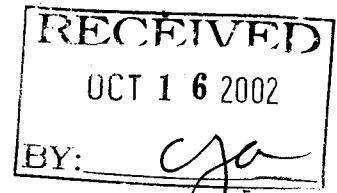
Nice examples of well maintained multi-family housing in appropriate neighborhood settings exist all over town. Often, like in my case, a duplex (or duplexes) is the best most efficient use of a property that does not lend itself to single family. (One living unit on 2 acres seems to be an unwise use in today's anti-urban sprawl city and land planning strategies.

I am convinced that my new building project will greatly increase surrounding property values, as opposed to being of negative impact. I am not altering or removing or adding to anything existing. I am simply trying to do something that will add to the community and the tax base, as well as creating something for my retirement that I have counted on for 21 years.

I strongly urge you to seriously re-consider not just the duplex issue, but all of the proposed ordinance changes, and how each change might adversely effect the property values of many tax paying citizens of this town. I am a strong advocate of the effective way in which the existing ordinances have controlled Chapel Hill development in the past. Certainly minor adjustments can always be made, but it appears that we are chasing a gnat with a sledge hammer with these new proposed ordinance changes and restrictions.

Woody Claris
202 Helmsdale Drive
Chapel Hill

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October 14, 2002

To the Honorable Members of the Chapel Hill Town Council,

I come to you as an appointed representative of the University of North Carolina's Graduate and Professional Student Federation (GPSF) regarding the serious issues of the Town's Comprehensive Plan and Land Use Management Ordinance, on which you will be holding a town forum this Monday, October 21. The GPSF supports many aspects of the Comprehensive Plan that will preserve many of the positive aspects of the Town while helping it prepare for the future; however, we have some concerns with seemingly contradictory methods of the Plan's implementation as detailed in the Land Use Management Ordinance. I urge all of you, in the strongest possible terms, to carefully consider the disparities between the two documents and the potential adverse impact on the student population in Chapel Hill as outlined below:

Comprehensive Plan – Housing: The increasing difficulty of finding affordable housing is noted in this portion of the plan, with particular emphasis on the fact that many Town and University employees cannot afford to live in Chapel Hill. The GPSF would also like to expand upon that assertion by noting that such is the case for many graduate and professional students as well.

The Town has made it clear that its tax base is becoming more affluent but with a constant annual growth, resulting in an "erosion" of diversity of housing options in the Town. Additionally, it is noted that as land for development is decreasing, the Town will need to increasingly lean on its existing housing stock to provide affordable housing for its residents. The GPSF supports the Council's acknowledgement of the relative lack of affordable housing and its effects on the Town, University, and students.

Comprehensive Plan – Relations with the University/UNC Health Care System: It is noted in this portion of the plan that "the Town should support UNC in constructing on-campus housing for students" so as to "help control student impacts on neighborhoods." Additional strategies to help control such impacts include "encouraging private developers to construct appropriately designed and located housing oriented toward students." The GPSF applauds the council's voice of support for increasing the availability of housing for students in the face of rising costs of living (as described in the previous section), as well as the acknowledgement that "UNC students are a vital part of the Chapel Hill community and contribute greatly to the local economy."

Comprehensive Plan – Community Character: The Town seeks to preserve "the older, more established neighborhoods surrounding the downtown and UNC campus" from such influences as the "demand for off-campus student housing and institutional development at the edges of campus." The GPSF supports this notion, as the charm and feel of the Town is enhanced by such neighborhoods, which contributes to the attractiveness of the University and the experience of its students. However, the point needs to be made that the "closing-in" of these residential neighborhoods will naturally have an adverse impact on the availability of housing to students *if steps are not taken beforehand to accommodate this transfer of student housing options on an appropriate timeline.*

Land Use Management Ordinance – Appendix A: Although the primary purpose for the Ordinance is to implement the Comprehensive Plan, the Ordinance in practice appears to run counter to the objectives of the Comprehensive Plan as detailed above. The most troublesome instance is the restriction of no more than two unrelated persons within a Single-Family Dwelling, Two-Family Dwelling, or Duplex Two-Family Dwelling. Such a restriction will seriously compromise the ability of students to secure affordable housing, even though the Comprehensive Plan has noted the erosion of housing diversity and the need for student-oriented housing. The restriction will effectively shunt

students to other housing options, which have not been increased to the extent that the new demand can be met. Other facets of the Ordinance that may run counter to the Comprehensive Plan include the zoning restrictions on duplexes and the limitations on the number of vehicles per dwelling.

This provision may have a particularly severe impact on graduate and professional students. Many graduate students commit to living in Chapel Hill for at least two years, but do not have the same on-campus living options as undergraduates and cannot afford to purchase a home in the Triangle area. Because many graduate and professional students have very limited incomes, which are often compounded by financial burdens that undergraduates generally do not face, living with more than one classmate or friend is often an absolute necessity.

In Section 3A-5 of its Comprehensive Plan, the Town lists initiating positive communication with student residents as a key step in "implementing a strategy to address the effects of neighborhoods of the conversion of owner-occupied residences to rental properties." The GPSF applauds the Town's effort and hopes that it will adopt the same approach in implementing a strategy of converting rental homes to affordable housing. *To this end, the GPSF asks that the Town consider the removal of the above departures of the Land Use Management Ordinance from the Town's Comprehensive Plan in light of the adverse effects they will have at this time on the student population, which is a large portion of the Town's residents. We also ask that the Town, University, students, and permanent residents are all included in future discussions on this issue and any possible alternatives.* The Town may solicit continued student participation by contacting the offices of Student Body President Jen Daum for undergraduates or Graduate and Professional Student Federation President Branson Page.

Sincerely,



Christopher S. Turner
Administrator
UNC – School of Medicine
Department of Pharmacology
University of NC at Chapel Hill

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From: David Lowery
Sent: Monday, October 14, 2002 7:13 PM
To: Town Council
Subject:

Mayor and Council Members: We live at 101 Mill Run Drive in Chapel Hill and also own the next lot on which we garden. Our address means that we would be profoundly influenced by your proposed decision to extend the RCD and impose new slope limits on defining buildable lots. Should this decision go through, we could not rebuild our home in the case of a fire, and our extra lot could not be sold as a buildable lot. This would cost us thousands of dollars and is profoundly unfair. We can only conclude that having failed to stop the big builders in Meadowmont, you've all decided to reestablish your "green" credentials by hitting the small fry. It won't work. And you should know that there will be a cost to bear for this mean spirited decision. We have voted for every one of you. If this proposal passes, we will not do so again, and we will do our best to make sure that you are never again put into a position of public trust.

Caryl Rusbult and David Lowery

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THE BROUGH LAW FIRM

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CHAPEL HILL, NORTH CAROLINA 27514
TEL (919) 929-3905 • FAX (919) 942-5742

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October 14, 2002

Mr. Ralph D. Karpinos
Chapel Hill City Attorney
306 N. Columbia Street
Chapel Hill, North Carolina 27516-2113

Re: Proposed Land Use Management Ordinance

Dear Ralph:

I represent CAZCO, Inc., the developer of the recently approved Larkspur Subdivision. Carol Ann Zinn, a principal in this company, has previously written to Council members and spoken at a public hearing about her concern that certain provisions of the proposed Land Use Management Ordinance will have a devastating impact on this development unless the draft ordinance is amended to grandfather Larkspur (and similarly situated subdivisions) from the impact of these provisions. A copy of her letter to Council members is enclosed. As you can see, the problematic provisions relate to floor area limitations, impervious surface limitations, and the expansion of the Resource Conservation District.

Carol Ann has informed me that, based upon the Council's reaction at the public hearing and her conversations with individual Council members, the Council seems sympathetic to the problem she has raised. One Council member suggested to her that she should have me contact you and propose some language that would deal with this issue, and that is the reason for this letter. I have reviewed the proposed draft and suggest that the following italicized language be added to the existing second paragraph of Section 1.4 of the new ordinance, so that the paragraph would read as follows:

"Except as otherwise specifically provided in this chapter, no land or structure shall hereafter be used or occupied, and no excavation, removal of soil, clearing of a site, or placing of fill shall take place on lands contemplated for development, and no structure, or part thereof, shall be constructed, erected, altered, renovated, or moved, except in compliance with all of the applicable provisions of this chapter. Notwithstanding the foregoing, the maximum floor area limitations, maximum impervious surface limitations, and Resource Conservation District regulations established by this chapter shall not be applicable to lots and common areas within single-family residential subdivisions for which preliminary plats were approved after January 1, 2002, but before the effective date of this chapter. Such lots and common areas shall, however, be subject to any maximum floor area limitations, maximum impervious surface limitations, and Resource

Mr. Ralph D. Karpinos
October 14, 2002
Page 2

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Conservation District regulations that were applicable on the date of approval of the preliminary plat for such subdivisions."

The proposed language is narrowly drafted to deal just with the special circumstances of a subdivision such as Larkspur, which was designed and approved in reliance on the provisions of the existing ordinance, and is presently under construction. The exemption established by this provision could be narrowed by establishing a "sunset" provision for this exemption of perhaps five to ten years. Alternatively, language could be crafted that would exempt a wider range of lots from the new provisions, should the Council be so inclined. However, the foregoing language deals with the issues raised by CAZCO.

I would be happy to discuss this with you further.

Sincerely,

THE BROUGH LAW FIRM



Michael B. Brough

MBB:las

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Dear Mayor Foy and Members of the Town Council:

Re: Larkspur Subdivision and Proposed Land Use Management Ordinance

I am writing as the developer of the Larkspur Subdivision and the builder of the homes in that subdivision. I have learned that several of the provisions of the proposed Land Use Management Ordinance will impose a very significant hardship on this development and those who buy lots and build homes within it. I am writing to ask you to consider "grandfathering" lots within approved subdivisions from these requirements.

The proposed requirements that are problematic are as follows:

- (1) *Floor Area Limitations.* Table 3.8-1 (Column L – Notes) establishes a maximum floor area ratio of .30 in all zoning districts for single-family and two family homes.
- (2) *Impervious Surface Limitations.* Table 3.8-2 (Column K – Notes) generally limits the maximum impervious surface on a lot to 24% of the lot area (in cluster subdivisions, the limitation is 24% of the lot area or the minimum lot size for the district, whichever is greater).
- (3) *Resource Conservation District Expansion.* Section 3.6.3 expands the width of the RCD from 150' wide when the subdivision was approved to 300' wide in the new ordinance. This will directly affect 20 proposed lots and the clubhouse/pool area just approved by the Planning Board.

Whatever the merits of these proposals may be, I urge you not to apply them to developments such as Larkspur that were approved by the Town under the existing ordinance. Larkspur was designed, planned, financed, and is being constructed in reliance upon the provisions of the current ordinance and the approval we obtained from the Council under that ordinance. The infrastructure, the amenities, the open space, and the affordable housing we are providing were all designed based upon our expectations, grounded in the existing ordinance, of the type of development, the number of lots, and the size of homes we intend to construct. The proposed restrictions threaten our entire development proposal in the following ways:

- (1) The floor area ratio limitations greatly limit the flexibility of potential owners of our lots, and thereby adversely affect the marketability of this development. Moreover, the proposal penalizes Larkspur for dedicating more open space (39%) than was required by the ordinance (12%). Had we been aware of this proposal, we could have enlarged some of the lots at the expense of common open space, thereby providing additional flexibility to those buyers that might prefer larger homes. In addition, the current third draft was just amended to provide that, in cluster subdivisions, the floor area ratio is applied to the greater of the actual lot size or the minimum lot size required in the district. Had we known about this provision, we could have

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substantially reduced the size of our clustered lots, thereby adding density and taking advantage of this "bonus" for small clustered lots that may benefit some cluster subdivisions but benefits Larkspur very little.

- (2) The impervious surface limitations create many of the same problems as the floor area limitations. Again, had we been aware of this proposal we could have designed the subdivision differently, altering the lot sizes and configurations to anticipate and minimize the practical problems this requirement will cause.
- (3) The expanded RCD will simply destroy twenty of our lots, plus our clubhouse and pool. The RCD severely restricts floor area, prohibits buildings and driveways, and prohibits most impervious surfaces. The new RCD provision will render 20 of the proposed 86 lots virtually unbuildable. The impact of this provision alone is obviously devastating for the economic viability of this development. I recognize that the ordinance provides for the *possibility* of obtaining a variance from the Board of Adjustment, but such a theoretical remedy still leaves these lots unmarketable as a practical matter. Furthermore, this would require 21 separate, extensive variance hearings from the Board of Adjustment. The cost and time involved would be prohibitive and the chances for success are problematic at best.

If the proposals described above are enacted, I respectfully request that you exempt from their application any subdivision for which preliminary plat approval has been granted prior to the effective date of the new ordinance. Section 7.6 of the proposed ordinance, which applies to Watershed Protection Districts, already carries over from the existing ordinance the language which exempted approved subdivisions from the watershed regulations. Certainly, protection of the water supply watershed is at least as important an objective as any of the objectives the new proposals are designed to serve, and yet the Council has recognized that, in fairness, those who have relied on one set of regulations to develop a subdivision should not have new regulations retroactively applied. I urge you to follow a similar approach with respect to the proposed requirements discussed above.

Alternatively, and at the very least, please consider amending Subsection 3.8.8(d) to provide greater equity in the way this section treats different types of cluster subdivisions. As mentioned above, this subsection was only added to the third draft, and now provides that the floor area ratios and impervious surface limitations "shall be calculated using the gross land area of the lot or the minimum lot size for the zoning district, whichever is greater." For cluster subdivisions that have greatly reduced their lot sizes and maximized their density, this produces a substantial bonus, but for subdivisions like Larkspur that have chosen not to reduce their lot sizes to maximize density, little advantage is gained. I recommend that this section be amended to create at least two categories of cluster subdivisions and to equalize the "bonuses" provide to both types in terms of floor area and impervious surface allowed.

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I appreciate your consideration of my requests, and I look forward to discussing this further with you.

Carol Ann Zinn
CAZCO, Inc.
Sept. 10, 2002

From: Michael Brough [brough@broughlawfirm.com]
Sent: Monday, October 14, 2002 11:51 AM
To: Ralph Karpinos
Cc: 'cazinn@zinndesignbuild.com'; 'azinn@zinndesignbuild.com'
Subject: Proposed modification to Land Use Management Ordinance

Follow Up Flag: Follow up
Flag Status: Flagged

Ralph:

With respect to the letter I sent you this morning and the suggested language change that would deal with the problems faced by the Larkspur Subdivision, it has been brought to my attention that another provision in the new ordinance that will be problematic is the reduction in the maximum height limitation for single-family homes to twenty feet. Therefor, if the language I drafted is provided to the Council, please add "maximum building height limitations" to the other three types of regulations with respect to which previously approved subdivisions would be grandfathered.

Thanks.

Mike



TOWN OF CHAPEL HILL

October 16, 2002

Mr. Michael B. Brough
The Brough Law Firm
1829 E. Franklin Street
Chapel Hill, NC 27514

Dear Mr. Brough:

You have sent a letter to Town Attorney Ralph Karpinos, dated October 14, 2002, and also on October 14 faxed us a copy of a letter that your client, Carol Ann Zinn, wrote to the Mayor and Town Council (letter dated September 10, 2002). You also sent an email message to Mr. Karpinos on October 14, offering information supplemental to your letter to him. I would like to offer a response to several of the issues that are raised in these three documents. I would appreciate your forwarding this letter to Ms. Zinn as well.

Regarding your October 14 letter

You offer language to include in the introductory article of the proposed Land Use Management Ordinance, which would state that any new floor area limitations, impervious surface limitations, and new Resource Conservation District regulations not be applicable to lots and common areas within single-family residential subdivisions for which preliminary plats were approved after January 1, 2002. I offer the following observations:

- Our regulations, current and proposed, do not contain any reference to a "single-family residential subdivision." The act of subdivision in our regulations is to create multiple, smaller zoning lots out of larger zoning lots, or to reconfigure existing lots. The process for achieving this, in our regulations, does not refer to what uses might be made of the resulting lots. The Council may approve a preliminary plat that allows creation of new lots, and those lots might be used for single-family dwellings, two-family dwellings, schools, places of worship, etc. We do not have a category called "single-family residential subdivision."
- Regarding proposed floor area limitations: The Third Draft includes a provision that would apply a floor area ratio of .30 to single-family and two-family dwellings. In the Larkspur Subdivision, for example, where all lots are considered to have a lot size of at least 10,000 square feet, the size of new single-family dwellings on many lots would be limited to 3,000 square feet. Several speakers at recent public hearings have suggested that this is too restrictive. Alternate proposals will be brought to the

Council which would suggest a .40 floor area ratio (which would allow 4,000 square foot houses in Larkspur), or no limitation at all for single-family and two-family dwellings. This topic will next be considered by the Council on October 28, and you or your client may want to address the Council on this point.

- Regarding impervious surface limitations: The Third Draft proposes that, for a subdivision such as Larkspur, impervious surface be limited to 24%. That limitation could go as high as 50% if permanent stormwater retention were to be provided. I believe there are few subdivisions in Chapel Hill of the type proposed for Larkspur that have impervious surfaces in excess of 24%, and I do not believe that this would present much of a constraint for Larkspur. This issue will next be considered by the Council on October 28.
- Regarding the Resource Conservation District: There are two possibilities in your suggestion. The first is that any changes in the RCD boundary not apply to recently-approved developments (i.e., whatever land was within the RCD at the time of approval of the development, should remain constant). The second component of your suggestion is that any changes in RCD regulations not apply to recently-approved developments (i.e., what someone can do within the RCD might be more permissive for a recently-approved development than what is allowed within the RCD everywhere else in Town). I believe that a stronger argument can be made for the first of these two components, regarding the boundary. This issue will be considered by the Council on October 21.

Regarding your October 14 Email Message

- You state that the Third Draft proposes a maximum 20' height limit for single family homes. This is not accurate. The Third Draft proposes that the primary height limit in all residential zoning districts be 20'. The primary height limit refers to how tall a structure can be at the setback line. A structure can be 1' taller than the primary height limit for each 2' it is further set back from a property line. The maximum height limit for a single family house would be 40' in the Residential-1 district, 50' in the Residential-2 district, and 60' in the Residential-3 district.
- It has been suggested that 20' is too low, even at the minimum setback line. An alternate proposal is to suggest 23' or 24' or another height, which would more clearly permit a two-story structure at the setback line. This issue will be discussed on October 28.

Regarding Ms. Zinn's September 10 Letter

- Regarding the proposed floor area ratio, Ms. Zinn's letter suggests that Larkspur is penalized for dedicating open space in the context of a cluster subdivision. She then

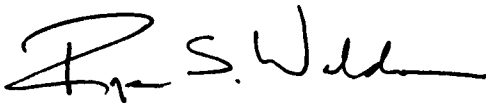
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goes on to describe the Town Manager's proposal to include language that would avert this penalty. I agree with these facts. I believe that the Town Manager suggested this additional language on September 18 specifically to avoid such a penalty. Ms. Zinn then goes on to describe how the Manager's recommended adjustment would actually provide a "bonus" for clustering that Ms. Zinn says she could have taken advantage of "had we known about this provision." I believe that the Manager's suggested provision does not provide a "bonus", but merely avoids a penalty. I also point out that, throughout the review of the Larkspur Subdivision application, from the time of first submittal, we made the applicant aware of the fact that the Council was considering ordinance changes, and we could not offer any certainty about what might be changed. This applicant, as did others, decided to go ahead with processing of the application with full knowledge of this uncertainty.

- Regarding the impervious surface ratio: As I mention above, I do not believe that this proposed requirement poses a serious constraint for Larkspur. I also note again, in response to the statement, "Had we been aware . . ." that this applicant had full knowledge that new ordinance language was being considered.
- Regarding the proposal for an expanded RCD: I have reviewed the Larkspur plan, and I do not see how it is possible that the proposed expansion of the RCD would "simply destroy twenty of our lots," rendering "20 of the proposed 86 lots virtually unbuildable." If the RCD is set at 100', I believe that all 86 lots are buildable. If the RCD is set at 150' there may be 6-8 lots that would be severely impacted. I note that a proposal being considered by the Council on October 21 would make any change in the RCD boundary inapplicable to developments such as Larkspur, as you have suggested.

We will include your materials and this response in the packets that are prepared for the Town Council for both the October 21 and the October 28 meetings. You will see some of your suggestions incorporated into the Manager's recommendations, and we thank you for offering these ideas.

Sincerely,



Roger S. Waldon
Planning Director

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10/15/02

Mr. Mayor et al:

Thank you for your open letter concerning the Land Use Management Ordinance (LUMO) recently published in the local papers. I was pleased to see an effort is being made to exempt existing structures from the new restrictions. Unfortunately, I do not believe this stand goes far enough.

I live along Bolin Creek in the Mill Race subdivision. Of our 24 lots, 11 are directly affected by the proposed RCD expansion. And of the 24 lots, all but one are directly affected by the proposed steep slope requirements (most of which exceed 15% slope, and at least six are on parcels > 25% slope). Of our 24 lots, three have yet to be built upon. They are owned by homeowners in the neighborhood, not a developer.

To be brief, I would like to recommend the following:

1. At the October 21st hearing, adopt language in the draft LUMO that excludes all existing buildings and developed lots from all new restrictions (including RCD, steep slope, floodplain/watershed, etc.). Not only should existing homeowners be able to rebuild, renovate, and expand their homes, but lots in subdivisions already approved by the planning process should also be allowed to be constructed. Any effort to take this right away would severely diminish the value of those lots.
2. Be more specific in the steep slope restrictions. While the 20' and rise over run examples are helpful, it is unclear whether this applies only to the footprint of the building, to the lot as a whole (on average), or some other scheme. Please see my attachment for an example of the confusing interpretations that may develop. For structures costing less than \$5,000 to build and denied variances, these must be torn down. The draft ordinance does not mention the effect on structures worth more than \$5,000. While a reasonable person would not expect requirements to tear down our homes, having unclear ordinances on the books could dissuade potential buyers and prohibit gaining title insurance, thereby precluding home refinancing and mortgages for buyers. Permits for rebuilding (following a fire) and renovating (revamping that kitchen) are also in question, and expansions (room additions, etc.) are clearly prohibited. This certainly would have an impact on our home values.
3. Relax the restrictions in the tree policy. My reading is that you need a permit to remove any non-dead tree. I do not believe this is the intention, but since it can be read this way, I'd recommend language to clarify this. Please reference section 5.7.2.a.(1)
4. Define "impervious" in the glossary.
5. Give yourselves and the town citizens more time to consider this draft and its implications. While I understand this ordinance has been in the works for several years, only recently have affected homeowners begun to analyze the draft and attempt to grasp its meaning. Citizens should be able to read and comprehend any "grandfathering" language before it is voted on by the Town Council. In general, I believe the decision should be pushed off until 2003, rather than rushing to vote on November 25.

I do believe that any benefits to the community at large contemplated in the

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third draft are greatly outweighed by the significant impact that will be borne by individual home and lot owners -- unless the above recommendations are adopted.

Thank you for your consideration.

Keith Symmers
225 Mill Race Drive
Chapel Hill, NC 27514
919-969-8112

Steep Slope restrictions

The latest revision of the draft is found at:

http://www.townofchapelhill.org/planning/third_draft_changes_devord.htm

Article 5.3 deals with slope restrictions. Article 7 deals with non-conformities. These are very complex regulations, but I'll try to share my interpretation of the draft as it is read. [Note that 1 acre = about 44,000 sq. ft; and most Mill Race lots are between 1/5 and 1/2 acre.]

Of interest is table 5.3-1 in the draft ordinance. For areas with 10% to 15% slope, only ten percent of this area can be covered by impervious surfaces (home, driveway, patio, etc.). Similarly, for those areas between 15% and 25% slope, only five percent of this area can be covered. And for those areas with greater than 25% slope, no land disturbance is allowed. [While provisions for variances are made, the reality is that these are almost never granted.]

Let's use my house (225 Mill Race Drive) as an example, which is a comparatively flat lot. The house is situated on the steepest part of the lot, with the top floor facing the road at the top of a hill, and the bottom floor facing Bolin Creek at the bottom of the hill. The house is situated on a piece of land with a 22% slope (the lot rises 10 feet across a 45-foot stretch at the exact location of the house). That sloped area (the footprint of the house) covers about 0.1 acres, or 4400 sq. ft.

Per the draft ordinance, only 5% of that sloped area (220 sq. feet) could be covered with impervious material. Since each floor of my house is about 1700 sq. feet, I'd be in "non-conformity" of the restriction. Specifically, it's a non-conforming feature (as opposed to a non-conforming lot or use, which have different regulations; the definitions of which are detailed in section 7.3 of the ordinance draft).

As the draft is written (see Article 7.3), I can continue use of the house as long as the total impervious surface area of the entire lot does not exceed fifty-five percent (55%). Since my whole lot is about 22,000 sq. ft., 55% of the lot is 12,100 sq. ft. So the driveway (about 1000 sq. ft.), house foundation (1700 sq. ft), and patio (1050 sq. ft.) – a total of 3750 sq. ft. – cannot exceed the 55% area (without a variance). So I can continue the use of the house, but I cannot expand it. With respect to renovations, remodeling, rebuilding (following fires, disasters, etc.), these are not mentioned. The lack of clarity, and specifically the lack of allowing these changes, causes me concern. The draft ordinance also doesn't address what happens if a property is beyond the limits and a variance is not granted.

Those lots with greater than 25% slope (about one-third of the homes in the Mill Race neighborhood) are outright non-conforming without a variance. Again, continued use is allowed, expansion is prohibited, and other changes (rebuild, renovate, etc.) are not addressed.

Simply being "non-conforming" puts a dark cloud over the market value of the property. Why would someone buy my house when a conforming one of similar attributes is available? Beyond this general fear, the specific fear is that non-conforming properties

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may be prohibited from renovating, remodeling, or rebuilding can pose a significant impact over the property values.

It is interesting that the planning board estimates that 2800 homes are affected by the RCD change, but no estimate is made for the number of homes affected by the steep slope draft. My estimate is the fraction is close to 75% of the homes in Chapel Hill (it is a hill, after all).

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From: Larry Logan
Sent: Wednesday, October 16, 2002 1:08 PM
To: Town Council
Subject: Proposed Land Use Management Ordinance

Ladies and gentlemen:

After reading Mayor Foy's letter to the community in the Chapel Hill News, I am still surprised to see that the Ordinance appears no make no mention of water resources. My understanding of the purpose of the Ordinance is that it is designed to reduce water pollution, storm runoff etc. It would appear to be some major oversight not to include some provision about the availability of water resources for all these new developments, including the University. Since we are still experiencing drought condtions, how can we continue to build more and more houses etc in town without some plan to increase reservoir size or new water sources? It seems the height of folly to continue to build on every available space in town and be totally oblivious to the need for more secure water resources. Perhaps there should be some type of assessment on developers to help pay for improved water resources.

Yours truly,
W Lawrence Logan