



THE LAW OFFICE OF
HEIDI G. CHAPMAN

February 6, 2003

Cal Horton
Town Manager
Town Hall, Second Floor
306 N. Columbia Street
Chapel Hill, NC 27514

Dear Mr. Horton:

I am writing to you on behalf of the Kings Mill/Morgan Creek Neighborhood Association. Thank you for your attention at the Creekside public hearing on January 22. We appreciate the time the Council is spending to review this application and the request for additional information. We look forward to continuing the discussion on February 24.

As you know, we are not opposed to the Creekside development. The neighborhood has absorbed two recent infill developments, both on Morgan Creek, both of which were consistent with the neighborhood. We are simply trying to ensure that the Creekside development is also consistent in character and scale with the surrounding Kings Mill/Morgan Creek neighborhood. We urge the Council to do all within its regulatory power to help us maintain such consistency.

As Sally Greene pointed out in her presentation, we would have pursued Neighborhood Conservation District status by now if it were possible.

Further, as stewards of Morgan Creek, we applaud the strengthened environmental regulations of Land Use Management Ordinance. We want to work with the Town to ensure that these important directives are properly carried out.

The following are among the most important issues that still need to be addressed before the hearing reconvenes:

HEIDI G. CHAPMAN, CERTIFIED MEDIATOR

JOAN T. HUNT, LEGAL ASSISTANT

1. INTERMITTENT STREAM

Following up on the Council’s discussion and direction to the staff, we would like to see a re-evaluation of the entire western border of the property to see if the intermittent stream extends beyond the point where the engineering staff determined it ended. We would like to see the engineering staff’s detailed analysis of how this area does, or does not, fit the “intermittent stream field verification criteria” stated in the LUMO.

If this area is found to be an intermittent stream, we believe that the placement of the road needs to be reconsidered. According to the LUMO, see table 3.6.3-2, streets may not be placed within the RCD unless there is a “practical necessity.” There does not seem to be a practical necessity in this case; the road can easily be rerouted.

A finding of an intermittent stream could also seriously call into question whether the area now called Lot 1 can be built on. Additionally, a finding of an intermittent stream in this area would require changes in the applicant’s stormwater management plans.

2. PROTECTION OF RARE AND SPECIMEN TREES.

More study needs to go into the tree protection issue. On protecting rare and specimen trees on developing land, the draft LUMO, at § 5.7.6(c)(2). says the following:

Proposed development should be designed to maximize the preservation of rare and specimen trees. Where rare and specimen trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces and location of utilities should be pursued in order to save them.

We have pointed out to the Council the location, including critical root zones, of the many specimen trees on this land. Under this section, the Council clearly has the flexibility to adjust the proposed lots, and the location of the road and utility easements, so that preservation of these trees is maximized.

This section, in fact, requires that the design “maximize the preservation of rare and specimen trees.” Yet, as you can see by studying the attached site map, there is little if any indication that the design has taken into account the location of the many specimen trees. Note in particular the trees marked with an X, indicating that they will have to be cut to clear for the road. **Note that the largest tree on the site, a thirty-five inch oak, is among these trees.** Surely the road could be re-designed so that this tree does not have to be sacrificed.

At the January 22 hearing, a council member asked if the applicant would volunteer to create a hypothetical plat map with nine instead of eleven lots, in the interest of preserving more trees. The applicant declined to do so. We invite you to look at the attached map and think for yourselves about the difference a reduction of two lots could make in terms of the number of specimen trees saved.

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In the interest of complying with § 5.7.6(c)(2), we would like the council to consider alternative site plan options.

3. **DESIGNATION OF SIGNIFICANT TREE STANDS**

Additionally, as we have also pointed out, not enough attention has been paid to significant tree stands, as defined in § 5.7.7(b). On this issue, the draft LUMO says the following:

The Significant Tree Stand delineation shall be used during the design review process to determine the most suitable and practical areas for woodland conservation. To the extent practicable, Significant Tree Stands shall be preserved and incorporated into site design.

This regulation is important for this property, which is an evolving Piedmont hardwood forest. Significant tree stands should be preserved and incorporated into the site design, "to the extent practicable." There is no indication yet that they have been incorporated at all.

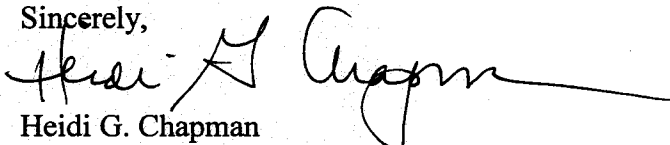
By telephone, a staff member said to me on Friday, Jan. 31, that it was possible that the whole site was a "significant tree stand," and if that were the case, then there was no point in an evaluation. That is not an acceptable response.

4. **PROTECTION OF STEEP SLOPE ABOVE BOTANICAL GARDEN FOUNDATION DEDICATION AREA.**

As was pointed out at the public hearing, the applicant is planning to deed approximately 1 acre on the creek to the Botanical Garden Foundation. This is a fragile area that hosts a rare species of anemone, among other things. We are pleased about this possible gift to the Foundation. We note, however, that the land proposed to be deeded goes only about halfway up a very steep slope. Any kind of land disturbance on the top half of the slope will have implications for the bottom half. The applicant has been encouraged to place conservation easements on the affected lots, but it appears unlikely that the applicant will do so. We ask the Council to consider what, if anything, can be done to protect this area in its entirety.

Thank you again for your attention.

Sincerely,

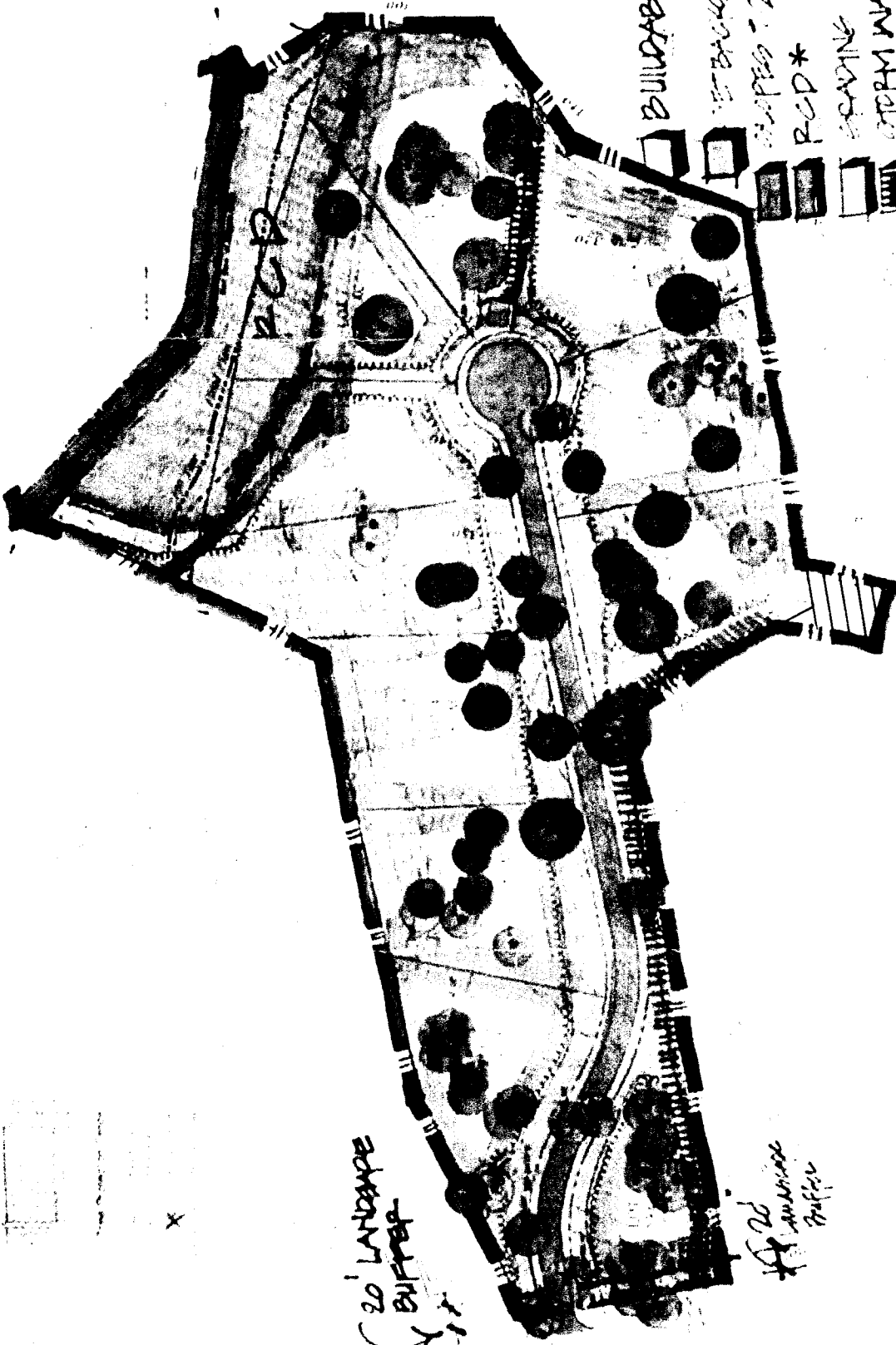


Heidi G. Chapman
President, Kings Mill/Morgan Creek
Neighborhood Association

Enclosure



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BUILDABLE AREA

BACKS

ROOFS 7 20%

RCD*

SEWING LIMIT

STORM WATER

SEWER BASEMENT

HARDWOOD TREE

PINE TREE

20' LANDSCAPE BUFFER

20' LANDSCAPE BUFFER

■ SITE ANALYSIS

* Does not include additional RCD identified by staff.