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VIA ELECTRONIC MAIL

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Chapel Hill Town Council
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BRAXTON SCHELL
(1924-2008)

Re: Briarcliff, Ridgefield, and Colony Woods Residents' Concerns Regarding
Housing Choices for a Complete Community Text Amendment

Mayor Hemminger and Town Councilors:

Our firm has been engaged by twelve families who reside in the Briarcliff, Ridgefield, and Colony Woods neighborhoods on the east side of Chapel Hill. They have engaged our firm to help understand the nature of the changes being proposed to the Town's Land Use Management Ordinance ("**LUMO**") as part of the proposed "*Housing Choices for a Complete Community Text Amendment*" (the "**Proposed Amendment**"). They have also asked for our assistance to analyze the recorded restrictive covenants for these three neighborhoods for how those restrictions will interact with the proposed zoning changes, and finally, to help communicate their concerns regarding the potential results of the proposed upzoning to the Town.

As a preliminary matter, our clients understand that Chapel Hill has a housing issue. The Town does not have sufficient housing to accommodate anticipated new arrivals in the coming years, and the median home price in Chapel Hill is currently one of the highest in the State. We acknowledge that there are social justice and inclusivity issues at play in the community conversation regarding access to housing.

That being said, it has been suggested, publicly by some local proponents of the Proposed Amendment, that opposition to this measure is inherently exclusionary and racist, and that the concept of "neighborhood character" is merely code for keeping people out. As a commercial real estate attorney, I believe that position is flawed and deeply unfair. Our client's homes and the neighborhoods in which they are located represent a major aspect of their daily lives. Many of the residents of Briarcliff, Ridgefield, and Colony Woods have lived in their homes for more than 30 years and have chosen to remain there due to the quiet, peace, and serenity that those communities provide. Given the tumultuous times that we currently live in, we should not make light

of homeowner anxiety over proposed governmental action that could have an impact on their daily lives, particularly when the results of the Proposed Amendment are unknown, as the Planning Staff has admitted.

While we understand and acknowledge the historical and systemic barriers to home ownership that have existed over the past several decades, not every attempt to maintain the status quo of a neighborhood is an attempt to keep people out. “Neighborhood character” is not a euphemism for exclusion or exclusivity. The Town implicitly acknowledges the concept of neighborhood character by way of its Conservation and Historical Districts. A simple stroll down the streets of Ridgefield vs. Meadowmont reveals obvious differences. Neighborhoods like Briarcliff, Ridgefield, and Colony Woods, by design (and supported by zoning) have small houses located on large lots. This design affords privacy, quiet, and access to nature, a dearth of birds and other animals and less light pollution; characteristics which cannot be found in more dense developments. Residents of the Town’s denser neighborhoods understood those communities would have a distinct character when they bought homes there. Those residents sought the activity, the close proximity, and the access to commercial centers that come with dense development. Density is character.

Not everyone wants to live in a dense community like Meadowmont or Southern Village, however. Residents of less intensive neighborhoods like Briarcliff, Ridgefield, and Colony Woods chose to live in those places because of those differences, not in spite of them, and that choice, and the defense of it, should not be vilified. The threat to neighborhood character posed by the Proposed Amendment is real and citizens deserve better than to be cast as racists for defending what is a crucial fixture in their lives and in most cases, their most valuable financial asset.

In light of the foregoing, we offer the following reasons why our clients request that the Town cease pursuit of the Proposed Amendment, or at the least, delay any additional action towards it at the present time.

The Proposed Amendment places the burden for new housing on established neighborhoods, rather than new development, and will significantly alter neighborhood character without any substantial increase in available housing.

As Madame Mayor and the Councilors are certainly aware, Chapel Hill is a notoriously difficult town to build in. The long and arduous entitlement process, the numerous advisory committee reviews, and extensive fee schedule provide a substantial barrier to entry for developers of new homes or apartments, and as a result, Chapel Hill’s housing shortage is now well-documented. Rather than address the procedural hurdles and costs that currently stifle housing development in Chapel Hill however, by this Proposed Amendment, the Town is putting this housing burden on its established neighborhoods, risking the critical character of its neighborhoods in an effort to give the appearance of equity and addressing the housing shortage.

Town Staff has indicated that they do not estimate the number of additional housing units that will result from the Proposed Amendment will do much to address the housing issues in Chapel Hill. In fact, due to the existence of restrictive covenants in neighborhoods

throughout the Town and the exclusion of numerous neighborhoods on conservation or historic grounds, the actual number of new units which may result from the Proposed Amendment will likely be insignificant in the face of the Town's housing needs. However, at the same time, the impact on those neighborhoods which are not subject to special zoning categories for neighborhood conservation or historical preservation will be magnified.

In addition, as Council is aware, North Carolina, and the Triangle in particular, have been rated as some of the top destinations for families to relocate for a number of years now. As a result, a thriving micro-economy of developers and builders has arisen in the Triangle to serve this potent demand. Despite the barriers to entry for developers in Chapel Hill, this zoning change will have the effect of turning established neighborhoods into potential profit zones for developers, at the cost of those qualities which make these neighborhoods desirable places to live. For neighborhoods like Briarcliff, Ridgefield, and Colony Woods which are located on the Town bus lines, the lots will serve as ripe fruit for development of dense housing for students. Both the developers and the students are not invested in the quality of life provided by these neighborhoods, their time in the area is limited. They have no skin in the game. Once the character of the neighborhood is lost, however, it cannot be regained.

As a result of the uncertainty of effect of the Proposed Amendment, coupled with the substantial risk to established neighborhoods, our clients request you drop this Proposed Amendment and look for other ways to increase housing in the Town.

Recent NC law changes cast doubt on the efficacy of older restrictive covenants.

At several of the public meetings and hearings on the Proposed Amendment, Council and staff have pointed out that the presence of recorded restrictive covenants for many neighborhoods will pre-empt the zoning changes in the Proposed Amendment. While this statement is generally correct, as restrictive covenants operate as a body of law completely separate from the Town's zoning authority, a recent ruling by the N.C. Supreme Court this past December, C Investments 2, LLC v. Auger, et al., upends 50 years of "settled law" regarding restrictive covenants and their exclusion from the Marketable Title Act. As a result of this recent ruling, the status of many older sets of restrictive covenants, like those in place for Briarcliff, Ridgefield, and Colony Woods are now in doubt. This Supreme Court ruling will have a substantial impact on many older neighborhoods throughout the State, and the proposed changes to the LUMO could not come at a more vulnerable time for these neighborhoods. If Council is unwilling to refrain from adopting the Proposed Amendment, our clients request a delay in the vote on this matter to ensure that the residents have an opportunity to "shore up" their covenants before the Proposed Amendment takes effect. As you can imagine, the process of organizing neighbors can take time, thus we ask for a delay of at least one (1) year before the Town takes any action on this matter.

As Madame Mayor and the Councilors have undoubtedly noted, this Proposed Amendment has invigorated the Town's electorate. The costs of this Proposed Amendment are already being borne by the residents of the Town, as represented by my firm's engagement. It is our hope that the Town will reconsider the Proposed Amendment in light of its questionable effect and potential harm to its existing neighborhoods.

Respectfully,



William B. Aycock II