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BY EMAIL (phemminger@townofchapelhill.org) and REGULAR MAIL

Mayor Pam Hemminger
Members of the Chapel Hill Town Council
Town of Chapel Hill
Town Hall, Second Floor
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514-5705

RE: Opposition to Proposed LUMO Text Amendments to Eliminate Single
Family Zoning in Existing Single-Family Neighborhoods

Dear Mayor Hemminger, Mayor Pro Tem Stegman and Honorable Members of the Chapel Hill
Town Council:

We represent Derek and Louise Winstanly (our “Clients”) the owners of the home located at 104 N. Boundary Street in Chapel Hill (the “Property”). Our Clients are aware of the proposed text amendments to the Chapel Hill Land Use Management Ordinance (“LUMO”) which would eliminate single-family zoning in their neighborhood, as well as every other neighborhood in Chapel Hill. Our clients have retained us to advise them regarding these proposed changes, and to express to you their strong opposition to them, in the hope that you will reconsider and abandon the course you have taken on this issue. Our Clients’ immediate neighbors and many other homeowners in their historic district and other adjoining neighborhoods have read and support this letter. A list of the homeowner’s names and addresses of these homeowners is attached hereto as Exhibit A.

- A. The Property. The Property abuts the historic Horace Williams House and is identified as the “Milton and Carrie Hogan House” in the National Register of Historic Places. The Property originally was purchased from Horace Williams by Milton and Carrie Hogan. Our Clients’ house was built in 1927. Our Clients are only the third family to live on the Property. When the “Chapel Hill Historic District” was entered into the National Register of Historic Places in 1971, the Property was on the list of properties included. In 2015, the Chapel Hill Historic District boundary was increased, and additional information related to the properties in the district was listed with the National Register. At this time, the Property (i.e., the Milton and Carry Hogan House) specifically was identified as a historic property and described as follows: “The 1927 Milton and Carrie Hogan House

(104 North Boundary Street) is impressively detailed with a brick veneer, grouped windows with granite sills, a modillion cornice, and an entrance with a projecting, classical surround.” The Property also is a part of the “Franklin Rosemary Historic District” which was established by the Town in 1976, and as such is subject to the extra burdens of the Chapel Hill Historic District Design Principles & Standards Manual which sets high standards for construction, alterations, and demolition in the historic districts. Historic Chapel Hill, which is a collaboration between the UNC Department of History, the North Carolina State Historic Preservation Office, Preservation Chapel Hill, the Town and the Chapel Hill Historic District Committee lists The Milton and Carrie Hogan House as a significant property and includes several photographs of our Clients’ home. Many of the homes in the historic district and its surrounds share the same historic designation and age as our Clients’ home.

The neighborhood surrounding the Property consists of single-family homes. Our Clients, and their many neighbors, purchased their homes in this neighborhood because of its historic significance and its single-family residential character. They like others in the area have made significant investments of time, effort, and money in their homes, in good faith reliance upon the existing character of the neighborhood. That neighborhood character is one of historic homes on lots with mature trees which are well maintained by their owners. These homes and lots are expensive and carry with them the extra financial burdens of being in a historic district (to the benefit of the Chapel Hill tax base). Our clients and their neighbors are proud of their neighborhood and its character and are likeminded in their desire to preserve it.

- B. The Proposed Text Amendments. The upshot of the proposed text amendments to the LUMO that the Town is contemplating is the complete elimination of single-family zoning in residential zoning districts in Chapel Hill. The rationale for this proposal has been variously stated but seems to center on the notion that multifamily housing in traditional neighborhoods will lower housing costs and encourage people to walk rather than drive to UNC’s campus. In fact, a new word – “walkshed” – has been coined to describe the supposed distance people are willing to walk to their destination. The elimination of single-family zoning is the most recent in a long series of planning fads which have excited the imaginations of planning professionals over the past 40 years. From high-density vertically integrated mixed-use development (i.e., living over the shop) to traffic circles, these ideas which promise to be panaceas for all the ills of congestion and affordability come and go on an almost bi-annual basis. None of them has solved the “problems” they are designed to solve, mainly because the problems are the natural outcome of a community’s success. Chapel Hill has traffic issues and affordability issues precisely because it is a successful community. It is a place people want to live and work, and for so long as it is a place people want to live and work, real estate prices will be high and congestion will be an issue.

Every successful city experiences high real estate prices and congestion, regardless of what planning concepts have been implemented. One need only look at Washington, D.C., and the surrounding areas in Maryland and Virginia to see the truth of this point. The Washington area is a model of high density mixed-use transit oriented development, has a mass transit system that will take you pretty much anywhere you want to go in the city, has

a highly sophisticated highway system, and has implemented just about every known form of traffic discouraging device, and it still has the worst traffic problem on the east coast, and some of the highest per square foot real estate values as well. Why is that the case? Because a large number of people and businesses want to live, work, or locate in or near the nation's capital for a variety of reasons. No amount of planning can mitigate the success of that city in drawing people to it.

The same is true of Chapel Hill. Our Clients and the other people who support this letter recognize the need to increase the supply of available affordable housing. However, increasing the number of housing units in Chapel Hill by eliminating single-family zoning so that the characters of traditional neighborhoods near campus are destroyed by duplexes, triplexes and townhomes will not lower housing prices. Location is what drives real estate prices, and therefore so long as any form of housing is in a desirable location (e.g., near campus) it will be priced accordingly. Frankly, the most likely market for multifamily housing in these areas are the wealthy parents of UNC students, who will buy these units for their children to live in as an alternative form of student housing. No doubt many developers are eagerly awaiting the opportunities for redevelopment in these neighborhoods that they hope this LUMO text amendment will create. The new units these developers want to build are not going to be "affordable" in any sense. Rather, they likely will be very expensive, and they likely will cater primarily to UNC students and their parents. One need look no further than the expensive condominiums which have been built along 15-501, in Lennox Gardens and similar areas in the Town to see that building more units near campus does not ensure that they will be "affordable". If the Town wants to increase the supply of what it defines as "affordable housing" it should develop some of the substantial quantity of vacant land that it owns for that purpose. In doing so, it can artificially suppress the rents charged to live in its own projects for as long as it chooses, or it can contract with private developers or management companies to do so.

Additionally, every person who lives in one of these new multi-family units is going to need and want a car, because no matter how walkable the area near campus may be, folks still need to go the grocery store and visit locations outside the immediate campus area, and will choose to drive rather than walk on hot, cold, or rainy days. Chapel Hill is decades away from having a comprehensive mass transit system - if it ever has one. Therefore, people in town and coming to town, are going to drive their cars to get where they want to go, and with traffic comes some congestion.

Greater density also has negative environmental impacts. The loss of mature trees, the increase in stormwater run-off, and the increase in localized air pollution which comes from the concentration of residents' vehicles and other emission sources all are damaging to the Town and its citizens.

Further, the impact of these LUMO changes upon Chapel Hill's traditional neighborhoods will be profound and entirely negative. Our Clients' neighborhood and specifically their Property have been designated as historic and are listed on the National Register of Historic Places. This designation is something that the residents worked hard to achieve, work hard to maintain, and of which they are justly proud. Preserving historic neighborhoods of this

type always has been supported by the Town in the past. Why has the Town decided to abandon these neighborhoods? Turning historic residences into duplexes and triplexes or tearing them down and subdividing their lots so that townhomes can be built instead will substantially detract from the historic quality of these neighborhoods, and they ultimately may lose their historic designations. It also will destroy the traditional, single-family character of this neighborhood of mature trees and carefully maintained homes in which our Clients and their neighbors have made substantial financial investments.

In short, from a policy perspective, the question is whether destroying the character of Chapel Hill's traditional neighborhoods, and the investments of the people who live there is a worthy goal in and of itself, because doing so will not solve the Town's congestion and affordable housing problems.

- C. Legal Issues with Proposed Text Amendments. Aside from the policy issues raised by the proposed LUMO amendments, they are legally problematic. The Town has chosen to accomplish this fundamental change in the zoning of its single-family residential neighborhoods through a text amendment process, rather than by rezoning those properties. This raises an interesting legal issue – namely, at what point is a text amendment to the permitted uses in a zoning district such a fundamental change to the purpose, character, and existing use of the properties in the district that it constitutes a *de facto* rezoning rather than a mere text amendment? Put another way, is a text amendment to permit commercial uses in residential zoning districts really a text amendment or is it in fact a rezoning of all the property in that district from a residential to a commercial designation? Although the case law on this issue in North Carolina admittedly is scant, the principle that such a fundamental change cannot be accomplished by a text amendment has been established in several other states. *See, e.g., Modak-Truran v. Johnson*, 18 So. 3d 206, 210 (Miss. 2009) (“[T]he labeling of an action as a ‘text amendment’ does not make it so if the City’s actions effectively rezone a residential plot for commercial use. This Court has recognized that the name given a municipal act does not dictate its nature.”); *Circleville Road Partners, LP v. Township of Ferguson*, 209 A.3d 1125, 1130-31 (Pa. Comwlth 2019) (“If the ordinance adds new uses that change ‘the entire nature’ of the existing zoning district such that it, in essence, creates a new land use category, then the ordinance represents a comprehensive zoning scheme, that is, a zoning map change.”).

The practical reason the text amendment approach in this case is legally problematic is because it is a clear attempt to slip this new zoning philosophy by most of the people who will be affected by it without them noticing. This is because the statutory notice requirements for text amendments are far more limited than those for zoning map amendments. *Compare* N.C. Gen. Stat. § 160D-601(a) *with* N.C. Gen. Stat. § 160D-602(a). Although our Clients and other folks who are paying attention to what is going on in Town Hall are aware of this threat to their Property, many hundreds of other families are not aware and will not become aware until the duplexes and townhomes are being constructed across the street from their houses. Most people are too preoccupied with raising their families and doing their jobs to pay close attention to what zoning text amendments are making their way through the Town administration – especially

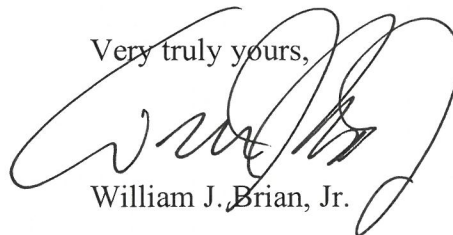
amendments as unexpected and far reaching as these proposed amendments are. If the Town was following the rezoning procedure to enact this fundamental change in residential zoning it would have to give all the people who own property in these districts specific notice and an opportunity to be heard. *See*, N. C. Gen. Stat § 160D-602(a). As it is, only those “in the know” are able to object. The vast majority of affected homeowners will not find out until it is too late.

For most people, their home is their primary asset in which most of their personal capital is invested. Regardless of whether the irregular procedure being followed by the Town to enact this text amendment leads to a lawsuit, it is not good government to make far-reaching and substantial changes to the LUMO which will have significantly negative impacts upon the value thousands of homes, without the full transparency of a formal rezoning process. The proper rezoning of thousands of parcels of land is not beyond the Town’s ability. The City of Raleigh went through a citywide rezoning process just a couple of years ago. If the Town were to follow such a process, the people affected would know what is going on, and – we predict – would let their thunderous opposition be known to the members of the Council.

- D. Conclusion. For the reasons stated above, the proposed text amendments will accomplish little good for the Chapel Hill community but will cause great harm and destroy the historic character of the Town. Our Clients strongly oppose the proposed text amendments and request that the Council abandon them entirely. At a minimum, our Clients request that the Town initiate a formal rezoning of all properties affected by the proposed text amendment to ensure that the owners of those properties have notice and an opportunity to be heard by the Council on this issue which has such a fundamental affect upon them.

We appreciate your time and attention to this letter. If you have any questions, or there is anything else that you would like to know from us, please let us know.

Very truly yours,



William J. Brian, Jr.

WJB
Attachment

cc: Karen Stegman, Mayor Pro Tem (kstegman@townofchapelhill.org)
Jessica Anderson, Council Member (janderson@townofchapelhill.org)
Camille Berry, Council Member (cberry@townofchapelhill.org)
Paris Miller-Foushee, Council Member (pmiller-foushee@townofchapelhill.org)
Tai Huynh, Council Member (thuynh@townofchapelhill.org)
Amy Ryan, Council Member (aryan@townofchapelhill.org)
Michael Parker, Council Member (mparker@townofchapelhill.org)
Adam Searing, Council Member (asearing@townofchapelhill.org)

Homeowners Joining in Support of Letter to Mayor and Town Council Dated March 10, 2023

Ritch Allison	609 North Street, Chapel Hill, 27514
Susan Allison	609 North Street, Chapel Hill, 27514
Jeff Allred	510 Hooper Lane, Chapel Hill, 27514
Jennifer Allred	510 Hooper Lane, Chapel Hill, 27514
Rachel Baum	353 Tenney Circle, Chapel Hill, 27514
Linda Brown	214 North Boundary Street, Chapel Hill, 27514
Joseph (Joe) M. Buckner	313 North Boundary Street, Chapel Hill, 27514
Jim Bullard	510 North Street, Chapel Hill, 27514
Melissa Bullard	510 North Street, Chapel Hill, 27514
David Clemmons	349 Tenney Circle, Chapel Hill, 27514
Kathy Clemmons	349 Tenney Circle, Chapel Hill, 27514
Charles Coble	109 Rose Lane, Chapel Hill, 27514
Diana Coble	109 Rose Lane, Chapel Hill, 27514
Colter DeBree	507, 509, 511, 513, 515 North Street, 27514
Henrik Dohlman	508 North Boundary Street, Chapel Hill, 27514
Robert Epting	707 East Franklin Street, Chapel Hill, 27514
Jennifer Halsey Evans	516 East Franklin Street, Chapel Hill, 27514
Maria Fernandez	514 North Street, Chapel Hill, 27514
Bill Ferris	1 Mint Springs Drive, Chapel Hill, 27514
Marcie Cohen Ferris	1 Mint Springs Drive, Chapel Hill, 27514
Ina Fishbeyn	309 Lone Pine Road, Chapel Hill, 27514
Greg Fitch	208 Glenburnie Street, Chapel Hill, 27514
Mary Flanagan	708 East Franklin Street, Chapel Hill, 27514
Mary Flynn	400 Bowling Creek Road, Chapel Hill, 27514
Eric Formeister	353 Tenney Circle, Chapel Hill, 27514
Frances C. Gravely	103 South Boundary Street, Chapel Hill, 27514
Susan Gravely	377 Tenney Circle, Chapel Hill, 27514
Arnold Grossblatt	505 North Street, Chapel Hill, 27514
James Gruden	214 Hillsborough Street, Chapel Hill, 27514
Bill Grumbles	350 Tenney Circle, Chapel Hill, 27514
Julia Grumbles	350 Tenney Circle, Chapel Hill, 27514
Anna Hayes	515 Senlac Road, Chapel Hill, 27514
Aida Hyde	2 Mint Springs Lane, Chapel Hill, 27514
Stephen Hyde	2 Mint Springs Lane, Chapel Hill, 27514
Louise Johnson	312 Lone Pine Road, Chapel Hill, 27514
Stacy Johnson	312 Lone Pine Road, Chapel Hill, 27514
Steve Jones	303 Lone Pine Road, Chapel Hill, 27514
Lisa Jones	303 Lone Pine Road, Chapel Hill, 27514
Katherine Kopp	501 East Rosemary Street, Chapel Hill, 27514
Vincent Kopp	501 East Rosemary Street, Chapel Hill, 27514
Kimberly Kyser	107 Battle Lane, Chapel Hill, 27514
Kristina (Kristy) Lee	511 East Rosemary Street, Chapel Hill, 27514
Don Liner	360 Tenney Circle, Chapel Hill, 27514
Marvin Livingston	3 Mint Springs Lane, Chapel Hill, 27514

Anne Lyerly	300 Tenney Circle, Chapel Hill, 27514
Kim Lyerly	300 Tenney Circle, Chapel Hill, 27514
Julie Lunsford	357 Tenney Circle, Chapel Hill, 27514
Tom Lunsford	357 Tenney Circle, Chapel Hill, 27514
Scott Magness	507, 509, 511, 513, 515 North Street, 27514
Alice May	519 Senlac Road, Chapel Hill, 27514
Lisa McCubbin	329 Tenney Circle, Chapel Hill, 27514
Peter McCubbin	329 Tenney Circle, Chapel Hill, 27514
Alison McNamara	111 Lone Pine Road, Chapel Hill, 27514
Dennis McNamara	111 Lone Pine Road, Chapel Hill, 27514
Karla McPherson	505 North Street, Chapel Hill, 27514
James Moeser	505 North Boundary Street, Chapel Hill 27514
Susan Moeser	505 North Boundary Street, Chapel Hill 27514
Susan Moffatt	7 Lone Pine Road, Chapel Hill, 27514
Mary Moore	223 Hillcrest Circle, Chapel Hill, 27514
Thaddeus (Ted) Moore	223 Hillcrest Circle, Chapel Hill, 27514
Claude Thomas Nuzum	213 N. Boundary Street, Chapel Hill, 27514
Lou Oshea	401 Bowling Creek Road, Chapel Hill, 27514
Mike Oshea	401 Bowling Creek Road, Chapel Hill, 27514
Stewart Parker	500 East Rosemary Street, Chapel Hill, 27514
Ed Preston	517 North Street, Chape Hill, 27514
Nancy Preston	517 North Street, Chape Hill, 27514
Jane B. Preyer	307 East Rosemary Street, Chapel Hill, 27514
John Reynolds	201 Mint Springs Lane, Chapel Hill, 27514
Staci Reynolds	201 Mint Springs Lane, Chapel Hill, 27514
Ryan Reynolds	345 Tenney Circle, Chapel Hill, 27514
Margo Reynolds	345 Tenney Circle, Chapel Hill, 27514
David Reeve	309 Lone Pine Road, Chapel Hill, 27514
Margaret Rich	602 East Rosemary Street, Chapel Hill, 27514
Sandra Rich	603 East Franklin Street, Chapel Hill, 27514
Stephen Rich	603 East Franklin Street, Chapel Hill, 27514
Bill Ross	377 Tenney Circle, Chapel Hill, 27514
Jim Sasser	111 Battle Lane, Chapel Hill, 27514
Mary Sasser	111 Battle Lane, Chapel Hill, 27514
Randall Sather	206 North Boundary Street, Chapel Hill, 27514
Sally Sather	206 North Boundary Street, Chapel Hill, 27514
Jonathan Schoolar	204 Glenburnie Street, Chape Hill, 27514
Marika Steele Schoolar	204 Glenburnie Street, Chape Hill, 27514
Jason Shropshire	518 North Street, Chapel Hill, 27514
Janet F. Smith	108 Rose Lane, Chapel Hill, 27514
Susan Seehusen	607 East Rosemary Street, Chape Hill, 27514
John Wood Sweet	208 Glenburnie Street, Chapel Hill, 27514
Patricia Sylvester	510 East Franklin Street, Chapel Hill, 27514
Steven Sylvester	510 East Franklin Street, Chapel Hill, 27514
Kathleen C. Thomas	516 North Street, Chapel Hill, 27514
Camilla Tulloch	360 Tenney Circle, Chapel Hill, 27514

Joseph S. Viscomi	514 North Street, Chapel Hill, 27514
Conrad Weiden	525 North Street, Chapel Hill, 27514
Pamela (Pam) Weiden	525 North Street, Chapel Hill, 27514
Catherine Williams	3 Mint Springs Lane, Chapel Hill, 27514
Rob Williams	3 Mint Springs Lane, Chapel Hill, 27514
Christianna Williams	508 North Boundary Street, Chapel Hill, 27514