

# VARIANCE OR APPEAL APPLICATION



TOWN OF CHAPEL HILL  
Planning Department  
405 Martin Luther King Jr. Blvd.  
phone (919) 969-5066 fax (919) 969-2014  
www.townofchapelhill.org

Parcel Identifier Number (PIN): 9788-41-9609 Date: November 8, 2018

## Section A: Project Information

Project Name: 111 Purefoy Road Site Plan Application - Purefoy Road Apartments  
Property Address: 111 Purefoy Road, Chapel Hill, NC Zip Code: 27514  
Existing Zoning District: Residential - 4 (R-4) and Mason Farm/Whitehead Circle Neighborhood Conservation District  
Project Description: Purefoy Road Apartments

## Section B: Applicant, Owner, and/or Contract Purchaser Information

### Applicant Information (to whom correspondence will be mailed):

Name: Ken Gorfkle, c/o LeAnn Nease Brown, his attorney  
Address: Brown & Bunch, PLLC, 101 N. Columbia Street  
City: Chapel Hill State: NC Zip Code: 27514  
Phone: (919) 968-1111 Email: lnease@brownandbunch.com

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: *LeAnn Nease Brown, attorney for Ken Gorfkle* Date: November 8, 2018

### Owner/Contract Purchaser Information:

☒ Owner

☐ Contract Purchaser

Name: Ken Gorfkle  
Address: 1436 Poinsett Drive  
City: Chapel Hill State: NC Zip Code: 27717  
Phone: (919) 942-1467 Email: kgorfkle@bellsouth.net

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: *Ken Gorfkle by LeAnn Nease Brown, his attorney* Date: November 8, 2018



**VARIANCE OR APPEAL APPLICATION  
SUBMITTAL REQUIREMENTS**  
TOWN OF CHAPEL HILL  
Planning Department

Variances and Appeals may be granted by the Board of Adjustment for dimensional regulations, water and sewer regulations, steep slope regulations, house size limitations, Resource Conservation District regulations, Jordan Buffer regulations, and Watershed Protection District regulations. The following must accompany your application. Failure to do so will result in your application being considered incomplete.

<input checked="" type="checkbox"/>	Application fee ( <a href="#">refer to fee schedule</a> )	Amount Paid \$	600.00
<input checked="" type="checkbox"/>	Digital Files – provide digital files of all plans and documents		
<input checked="" type="checkbox"/>	Mailing list of owners of property within 1,000 foot perimeter of subject property ( <a href="#">see GIS notification tool</a> )		
<input checked="" type="checkbox"/>	Mailing fee for above mailing list	Amount Paid \$	52.80
<input type="checkbox"/>	Written Narrative describing the proposal		
<input checked="" type="checkbox"/>	Statement of Justification – see below for additional information		
<input checked="" type="checkbox"/>	Recorded Plat or Deed of Property		
<input type="checkbox"/>	Stream Determination – necessary for all submittals		
<input type="checkbox"/>	Jurisdictional Wetland Determination – if applicable		
<input checked="" type="checkbox"/>	Reduced Site Plan Set (reduced to 8.5" x 11")		

Type of Variance or Appeal (Choose one of the following):

- ☐ Dimensional Variance      ☐ Water and Sewer Variance      ☐ Steep Slope Variance

Statement of Justification: Respond to parts 1-7 of Subsection 4.12.2(a) of the Land Use Management Ordinance.

- ☐ House Size Variance

Statement of Justification: Respond to parts 1-7 of Subsection 4.12.2(b) of the Land Use Management Ordinance.

- ☐ Resource Conservation District Variance

Statement of Justification: Respond to parts A-I of Subsection 3.6.3(j)(4) of the Land Use Management Ordinance.

- ☐ Jordan Watershed Riparian Buffer Variance

Statement of Justification: Respond to parts A-C of Subsection 5.18.8(d)(1) of the Land Use Management Ordinance.

- ☐ Watershed Protection District Variance

Statement of Justification: Respond to parts 1-4 of Subsection 3.6.4(h)(2) of the Land Use Management Ordinance.

- ☒ Appeal

Standing: Explain to the Board how the applicant is an aggrieved party (NC General Statute Sec. 160A-388(b1)(1))

Statement of Justification: Provide justification for decision that is being appealed.



**VARIANCE OR APPEAL APPLICATION  
SUBMITTAL REQUIREMENTS**  
TOWN OF CHAPEL HILL  
Planning Department

**Plan Sets (2 copies to be submitted no larger than 24" x 36")**

Plans should be legible and clearly drawn. All plan set sheets should include the following:

- Project Name
- Legend
- Labels
- North Arrow (North oriented toward top of page)
- Property Boundaries with bearing and distances
- Scale (Engineering), denoted graphically and numerically
- Setbacks
- Streams, RCD Boundary, Jordan Riparian Buffer Boundary, Floodplain, and Wetlands Boundary, where applicable

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**Area Map**

- a) Overlay Districts
- b) 1,000 foot notification boundary

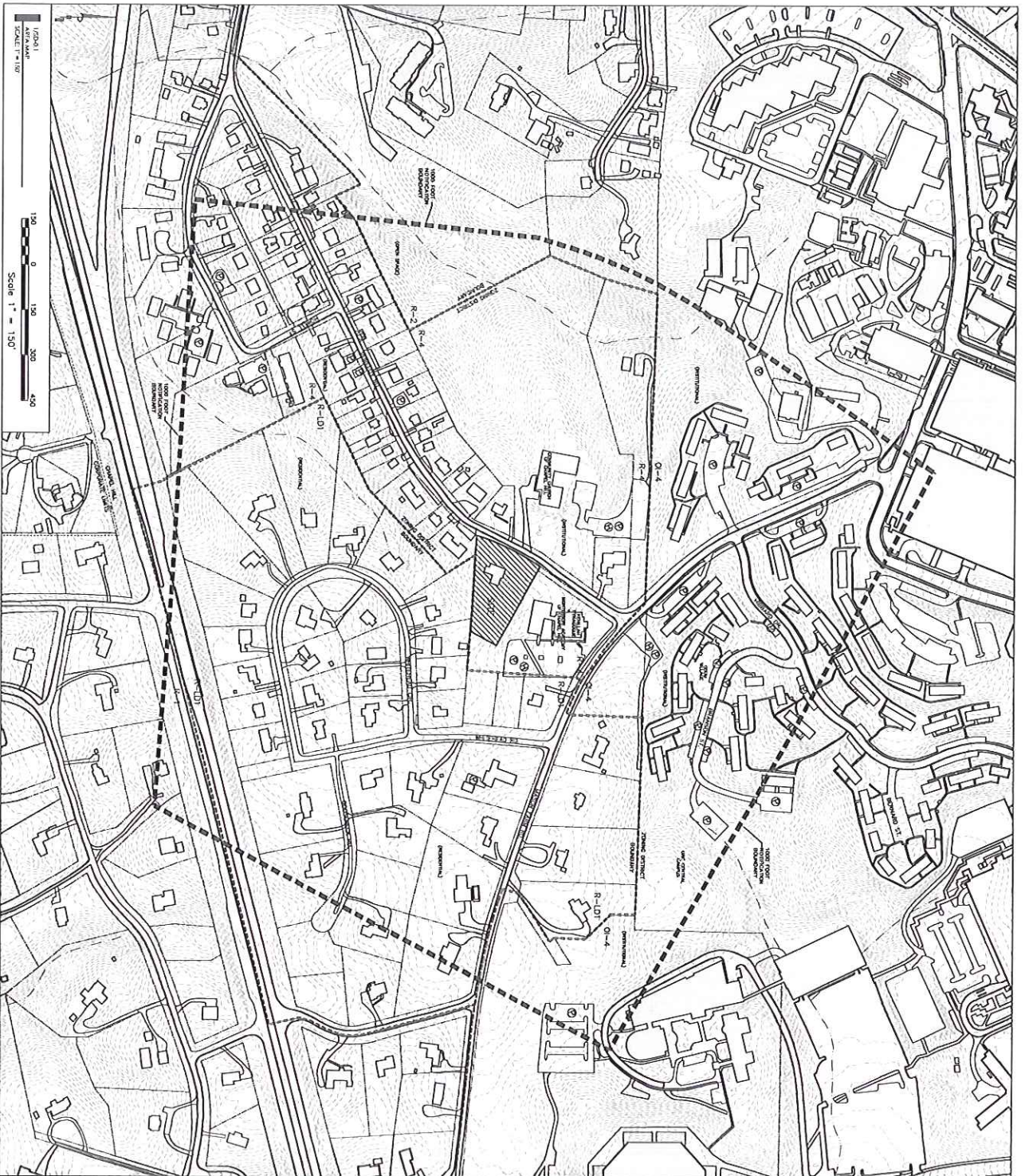
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**Detailed Site Plan**

9788318281	PARK NANCY	500 YORKTOWN DRIVE	CHAPEL HILL	NC	27516
9788319042	BAUCOM CAROLYN	P O BOX 2836	CHAPEL HILL	NC	27515
9788319276	NANCE RENTALS LLC	PO BOX 2836	CHAPEL HILL	NC	27514
9788327054	STATE OF NORTH CAROLINA	103 AIRPORT DR STE 128	CHAPEL HILL	NC	27599
9788400828	RUMFELT JAMES M	P O BOX 520	SNOW CAMP	NC	27349
9788400970	MAMO JOSEPH E III	1617 MARSH HARBOR LN	MOUNT PLEASANT	SC	29464
9788402618	CIG CHAPEL HILL LLC	150 BOUSH ST #505	NORFOLK	VA	23510
9788406982	ROSS JASON L	416 WHITEHEAD CIR	CHAPEL HILL	NC	27514
9788408810	NORTEN JOHN A	PO BOX 2208	CHAPEL HILL	NC	27515
9788409880	HARRIS MASON	420 WHITEHEAD CR	CHAPEL HILL	NC	27514
9788410004	MILLS NATHANIEL L	602 DAVIE RD	CARRBORO	NC	27510
9788410350	WHITTIER MARY E	PO BOX 3362	CHAPEL HILL	NC	27515
9788411111	SPALTENSTEIN ANDREW	4105 BREWSTER DR	RALEIGH	NC	27606
9788411324	MILLS NATHANIAL	PO BOX 676	CARRBORO	NC	27510
9788411397	MCLAMB IAN J	126 PUREFOY RD	CHAPEL HILL	NC	27514
9788412461	VAN WERT SALLY L	124 PUREFOY RD	CHAPEL HILL	NC	27514
9788413252	KILLEEN INVESTMENTS LLC	PO BOX 159	Carboro	NC	27510
9788413434	GIBSON LORENE M HRS	P O BOX 170437	ATLANTA	GA	303170437
9788413487	MILLS STEPHEN D	PO BOX 520	SNOW CAMP	NC	27349
9788413881	COMMUNITY CHURCH OF CHAPEL HILL	106 PUREFOY RD	CHAPEL HILL	NC	27514
9788414237	CLARK ROBERT B TRUSTEE	537 MARINE AVE	MANHATTAN BEACH	CA	90266
9788415333	MINCEY GREGORY	50 CHERRY HILL DR	PINEHURST	NC	28374
9788415547	INGOMAR PROPERTIES LLC	303 LINDSAY ST	CARRBORO	NC	27510
9788416018	VAN DONGEN ANTONIUS M	319 PROVIDENCE RD	CHAPEL HILL	NC	27514
9788416252	MACIEJEWSKI MATTHEW L	412 WHITEHEAD CIR	CHAPEL HILL	NC	27514
9788416430	SCHOPLER FAMILY LLC	8220 MORROW HILL RD	CHAPEL HILL	NC	27516
9788416603	TEFFERA GIZAW	4310 PEACHWAY DR	DURHAM	NC	27705
9788417416	STANCILL ROBERT	4208 CITY OF OAKS WYND	RALEIGH	NC	27612
9788417593	NEAR CAMPUS HOUSING INC	5429 THAYER DR	RALEIGH	NC	27612
9788418347	BARTRAM JAMES KNIVETON	410 WHITEHEAD CIR	CHAPEL HILL	NC	27514
9788419561	MOODY RICHARD J	406 WHITEHEAD CIR	CHAPEL HILL	NC	275144833
9788428087	RESIDENTIAL SERVICES INC	111 PROVIDENCE RD	CHAPEL HILL	NC	27514
9788501812	CERWIN ROBERT A JR	321 BURLAGE CIR	CHAPEL HILL	NC	27514
9788502825	CANADY JOSEPH R	424 WHITEHEAD CIR	CHAPEL HILL	NC	275144833

9788503827 ALLEN JOHN RICHARD	426 WHITEHEAD CIR	CHAPEL HILL	NC	27514
9788504940 WEINERT MYCHAL	428 WHITEHEAD CIR	CHAPEL HILL	NC	27514
9788505912 PUBLIC SERVICE COMPANY OF N C INC	PO BOX 1398	GASTONIA	NC	280531398
9788510224 MCKENNA KATIE E	407 WHITEHEAD CIR	CHAPEL HILL	NC	275144831
9788510233 MILEWSKI BROTHERS LLC	126 JAMES CREEK RD	SOUTHERN PINES	NC	28387
9788510592 GAYEK PETER W	404 WHITEHEAD CR	CHAPEL HILL	NC	27514
9788510886 CHAPEL HILL KEHILLAH	1200 MASON FARM RD	CHAPEL HILL	NC	27514
9788511048 KANG ALFRED A	419 WHITEHEAD CIR	CHAPEL HILL	NC	275142648
9788511102 FAMA ROBERT D	21 ABERNATHY DR	Chapel Hill	NC	27517
9788511218 HARRAWOOD BRIAN P	405 WHITEHEAD CIR	CHAPEL HILL	NC	27514
9788511592 BRYANT JEFF D	402 WHITEHEAD CIR	CHAPEL HILL	NC	275144833
9788512161 CONGER RICHARD B	421 WHITEHEAD CIR	CHAPEL HILL	NC	27517
9788512229 SZOSTAK PROPERTIES LLC	1013 TUSCANY DR	HILLSBOROUGH	NC	27278
9788513193 BABCOX ELIZABETH SCOTT	2686 WICKLOW RD	SHAKER HEIGHTS	OH	441201334
9788513340 ALEXANDER HERBERT MARION	401 WHITEHEAD CR	CHAPEL HILL	NC	27514
9788513521 BURRIS MICHELE K	400 WHITEHEAD CIR	CHAPEL HILL	NC	275144833
9788513751 BLANCHARD LUCIUS TRUSTEE	2023 SHADOWBROOK WAY	HENDERSON	NV	89074
9788513860 VARANASI RAVIKANT V	350 WHITEHEAD RD	CHAPEL HILL	NC	27514
9788513971 JOFFE ZALMAN	1007 JOHN JONES RD	BAHAMIA	NC	27503
9788515246 MCILWAIN DAVID LEE	8 GOOSENECK RD	CHAPEL HILL	NC	275144600
9788515423 BAREFOOT BARTLEY L	503 WHITEHEAD RD	Chapel Hill	NC	27514
9788515638 PAYNE BRIAN K	1300 MASON FARM RD	CHAPEL HILL	NC	275144604
9788516043 MADDOX PAUL S	2 GOOSENECK RD	CHAPEL HILL	NC	275144600
9788516682 WEATHINGTON JOHN C	1302 MASON FARM RD	CHAPEL HILL	NC	27514
9788517302 KIRKPATRICK JAMES	6 GOOSENECK RD	CHAPEL HILL	NC	27514
9788518063 NACH JAMES P	7404 VENICE STREET	FALLS CHURCH	VA	220433215
9788518350 FARMER THOMAS W JR	1223 LANE DRIVE	CARY	NC	27511
9788524027 STEELE DIANA W	1207 MASON FARM RD	CHAPEL HILL	NC	275144842
9788543697 UNIVERSITY OF N C	PROPERTY OFFICE UNC	CHAPEL HILL	NC	27599
9788610320 WHITE MICHAEL E	413 GOOSENECK RD	CHAPEL HILL	NC	275144613
9788611541 FELDMAN MARYANN P	1306 MASON FARM RD	CHAPEL HILL	NC	27514





- LEGEND**
- NOTIFICATION BOUNDARY
  - ZONING DISTRICT BOUNDARY
  - CHANEL HILL CORPUSCULE LIMITS
  - PROPERTY LINES
  - STREETS
  - ADJ. PARKING
  - VEHICULAR PARKING
  - BIKE PARKING

NOTE: AREA MAP ASSUMED USING LINE WORK FROM 1998 OF CHANEL HILL CORP.

CHANEL HILL CORP.



**Coulter  
Jewell  
Thames**

111 West Main Street  
Durham, N.C. 27701  
P 919.832.2008  
F 919.832.2008  
WWW.CJTHAMES.COM



**PURSEY  
ROAD  
APARTMENTS**

111 PURSEY ROAD  
CHANEL HILL, NC 27514  
CHANCE COUNTY NC

CHANCE COUNTY

CHANCE COUNTY

CHANCE COUNTY

CHANCE COUNTY

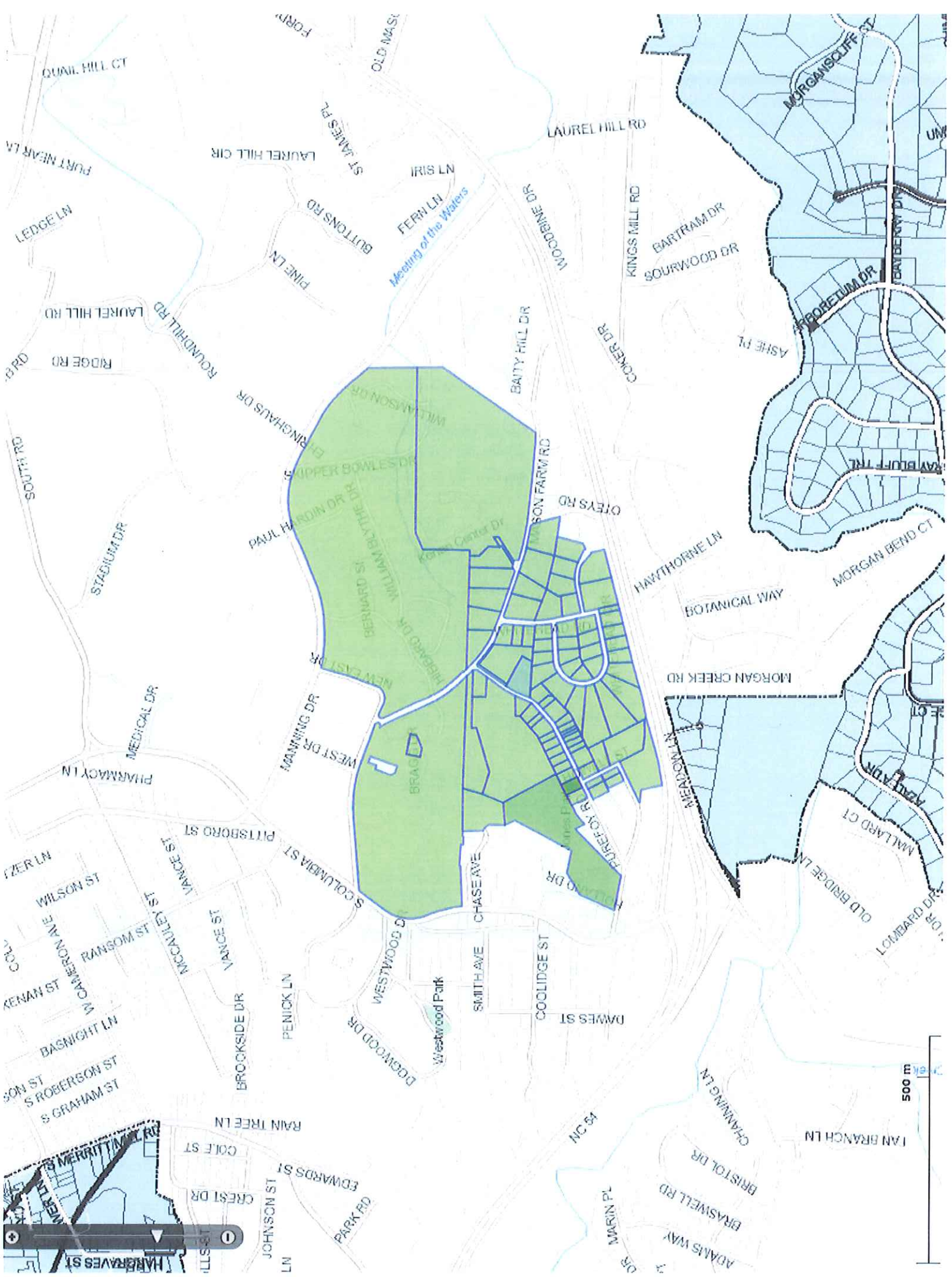
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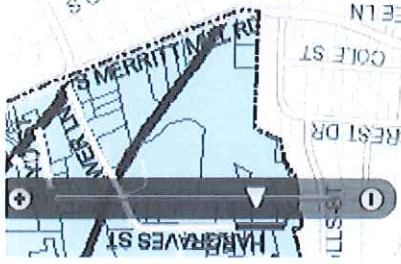
CHANCE COUNTY

SD-0-1





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## STATEMENT OF JUSTIFICATION

Under N.C.G.S. §160A-388, §160A-393 and Land Use Management Ordinance of the Town of Chapel Hill ("LUMO"), generally, and §§4.7, 4.10 and 4.12, property owner, Ken Gorfkle ("Appellant"), appeals the Town of Chapel Hill Planning Commission's ("Commission") October 16, 2018 denial of an Application for Site Plan Review for 111 Purefoy Road to the Board of Adjustment of the Town of Chapel Hill. The written notice of the decision was provided by letter dated October 24, 2018 to Andrew Porter of Coulter, Jewell, Thames, P.A. A copy of the letter and the Commission's written decision is attached as Exhibit A. This appeal is made within the latter of 30 days of filing the decision being appealed or the delivery of the required written notice of the decision to the property owner.

The Appellant is represented in this appeal by LeAnn Nease Brown, Brown & Bunch, PLLC, 101 N. Columbia Street, Chapel Hill, NC 27514, Telephone: (919) 968-1111, Email: lnease@brownandbunch.com.

### Decision Being Appealed.

The decision being appealed is the October 16, 2018 denial by the Commission of Appellant and Andrew Porter of Coulter, Jewell, Thames, P.A.'s Application for Site Plan Review for the Purefoy Road Apartments.

### Standing.

Appellant is the owner of the property at 111 Purefoy Road. See, Deed recorded at Book 6152, Page 52, Orange County Registry attached as Exhibit B. As owner of the property, Appellant has standing to appeal the decision of the Commission to the Board of Adjustment. See, N.C.G.S. §160A-388(b1(1) and §393(d)(1)a and LUMO Section 4.10.1.

### Background.

111 Purefoy Road is an approximately 1.3 acre site zoned R-4, medium density residential. The property is located in the Mason Farm/Whitehead Circle Neighborhood Conservation District (CD-5). The property is currently improved with a one-story, 2,470 square foot structure. Applicant filed a Site Plan Review Application for the Purefoy Road Apartment Project on February 9, 2018. The Application proposed constructing two multi-family structures on the property; Building 1 to the south proposed as three dwelling units, totaling 4,512 gross square feet and including 12 bedrooms and Building 2 to the north proposed to be four dwelling units, totaling 6,016 gross square feet and including 16 bedrooms. The overall proposed building area is 10,528 gross square feet consisting of seven dwelling units, containing 28 total bedrooms.

Town Staff received the Application, reviewed it and recommended the Commission adopt Resolution A approving the Site Plan Review



Application with noted stipulations. Town Staff noted that the proposed Application, with the proposed conditions met all regulations and standards in LUMO and in the Mason Farm/Whitehead Circle Neighborhood Conservation District ("NCD"). Evaluation of compliance with the NCD is based on compliance with the procedural and dimensional requirements of LUMO and the standards in the NCD. Staff provided to the Commission a project summary which contained a checklist of the regulations and standards which the Application must comply and noted compliance with each.

On September 26, 2018, the Commission discussed the Site Plan Review Application and sought additional information regarding the interaction between the NCD and underlying zoning district. Continued review was referred to its October 16, 2018 meeting.

On October 12, 2018, Town Attorney, Ralph D. Karpinos, provided a memorandum to Michael Sudol, Planner II, Planning and Development Services, responding to questions raised by the Commission. A copy is attached as Exhibit C. The letter addressed the Commission's question as to whether the NCD was intended to prevent the type of development proposed. The Commission also asked whether the Site Plan Review could be denied based on the "intent" of the NCD even if the Application met the letter of the Ordinance. The Town Attorney provided a detailed analysis of the standards and noted, "Thus, the clear intent of the ordinance is to set out the special standards for the NCD and, as set out in those special standards, to state that, otherwise, the underlying zoning standards (in this case the underlying density standards of R-4 zoning) apply." Exhibit C, p. 5. The Town Attorney further opined, "Accordingly, it is my opinion that the question posed is based on a premise (that the application violates the intent of the NCD Ordinance) that is not supported by a review of the ordinance itself." Exhibit C, p. 6.

Despite Town Staff's analysis of the Application's compliance with LUMO and despite the Town Attorney's analysis regarding the NCD, the Commission denied the Application for Site Plan Review at its October 16, 2018 meeting. Its denial was based on three findings: that the definition of "dwelling units" in LUMO is "ambiguous," that the Commission has authority to exercise discretion to interpret the intent of the NCD, and that the Town erred in removing a bedroom to common area ratio provision from the NCD due "to a misinterpretation of Senate Bill 25."

Appellant timely appealed to the Board of Adjustment.

The Commission is established in Section 8.2 of LUMO and is empowered to "review site plans with land development regulations in accordance with Section 4.7," LUMO Section 8.2.4(n). Section 4.7.2(b)(2) of LUMO requires the Commission's decisions on site plan application approval "be based solely on findings as to compliance" with LUMO.

Errors.

1. The Commission erred by basing its decision on errors of law, including its flawed interpretation of LUMO.
2. The Commission erred by acting outside the scope of the powers granted to it by LUMO.
3. The Commission erred in attempting to usurp the legislative powers of the Chapel Hill Town Council to adopt LUMO provisions.
4. The decision of the Commission was arbitrary and capricious.
5. The Commission denied Appellant due process of law by making a discretionary decision in an administrative, non-quasi-judicial process.

Reservation of Rights to Raise Additional Issues.

Under N.C.G.S. §160A-388(b)(8), Appellant is not limited at the hearing of this appeal to matters stated in this notice. Appellant reserves all rights to raise additional issues at the hearing.

Prayer for Relief.

Appellant respectfully requests the Board of Adjustment review the decision of the Commission, reverse and vacate the decision, and remand this matter to the Commission with instructions it grant Appellant's Application for Site Plan Review Approval.

13583\01\m\003Statement of Justification



TOWN OF CHAPEL HILL  
Planning & Development Services  
405 Martin Luther King Jr. Blvd.  
Chapel Hill, NC 27514-5705

phone (919) 969-5066  
[www.townofchapelhill.org](http://www.townofchapelhill.org)

October 24, 2018

Andrew Porter, Coulter Jewell Thames, PA  
111 West Main Street  
Durham, NC 27701

Subject: 111 Purefoy Road (Purefoy Road Apartments) – Denial of Site Plan Review Application  
(Orange County PIN: 9788-41-9609; Reference #16-106)

Dear Mr. Porter:

On October 16, 2018, the Chapel Hill Planning Commission denied the application for a Site Plan Review to create a multi-family development at 111 Purefoy Road that you filed on behalf of Ken Gorfkle. The vote for denial was 7 – 2; Resolution B denying the Site Plan review application and a copy of the Commission's action in this matter are both attached.

You have the right to appeal this decision. Pursuant to Section 4.6.4.2(e) of the Town's Land Use Management Ordinance ("LUMO"), the decision may be appealed to the Board of Adjustment in accordance with the provisions of Section 4.10 of the LUMO. Section 4.10.1(b) of the LUMO states that an application for appeal shall be filed with the Town Clerk, within thirty (30) days of the filing of the decision being appealed or the delivery of any required written notice of the decision, whichever is later.

If you have further questions, please feel free to contact me at 919-969-5068 or via email [msudol@townofchapelhill.org](mailto:msudol@townofchapelhill.org).

Sincerely,

A handwritten signature in black ink, appearing to read "MSudol", written over a horizontal line.

Michael Sudol  
Planner II

Enclosure



# Planning Commission Action

10/16/18



## PLANNING COMMISSION

*The charge of the Planning Commission is to assist the Council in achieving the Town's Comprehensive Plan for orderly growth and development by analyzing, evaluating, and recommending responsible town policies, ordinances, and planning standards that manage land use and involving the community in long-range planning.*

## ACTION OF THE PLANNING COMMISSION

October 16, 2018

**Action:** The Planning Commission denied a Site Plan Review application to allow the construction of a multi-family development at 111 Purefoy Road.

**Motion:** Commissioner Bench moved and Commissioner Roberts seconded to approve Resolution B, denying the Site Plan Review application.

**Vote:** 7-2

**Ayes:** Neal Bench, Michael Everhart, Melissa McCullough, Kathy Roberts, Amy Ryan, Buffie Webber, and Stephen Whitlow

**Nays:** Chair John Rees, Whit Rummel

**Prepared by:** Michael Sudol, Planning and Development Services Staff

**RESOLUTION B**  
(Denying Application)

**A RESOLUTION DENYING AN APPLICATION FOR A SITE PLAN REVIEW  
APPLICATION FOR 111 PUREFOY ROAD (File No. 16-106)**

BE IT RESOLVED by the Planning Commission of the Town of Chapel Hill that it finds that the 111 Purefoy Road Site Plan Application, proposed by Andrew Porter of Coulter Jewell Thames, PA on the property identified as Orange County Property Identification Number 9788-41-9609, if developed according to the plans dated October 10, 2016 and last revised April 18, 2018, and the conditions listed, would not comply with the provisions of the Land Use Management Ordinance:

These findings are based on the following:

- The definition of "dwelling units" in the Town of Chapel Hill's Land Use Management Ordinance is ambiguous, and can be interpreted to include a combination of dwelling units on a single lot as it pertains to multi-family residential. The Mason Farm/Whitehead Circle Neighborhood Conservation District increases the setbacks for dwelling units that exceed 6,500 square feet to 50 feet at the interior lot line and 100 feet at the street, which this application would not meet using the aforementioned interpretation of the ordinance.
- Since ambiguity exists in the legality of the application, the Planning Commission must exercise discretion to interpret the intent of the Neighborhood Conservation District. The Planning Commission finds that the intent of the ordinance is to prevent multi-family dwelling units and large development projects, so as to protect the character of the neighborhood.
- The Planning Commission also finds that the Bedroom-to-Common Area Ratio provision of the Mason Farm/Whitehead Circle Neighborhood Conservation District was removed in error by the Town, due to a misinterpretation of Senate Bill 25. Application of this provision would limit the scale of the project.

BE IT FURTHER RESOLVED that the Planning Commission hereby denies the application for the 111 Purefoy Road Site Plan.

This the 16<sup>th</sup> day of October, 2018.

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mb

1/2



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20160707000140220 DEED  
 BK:RB6152 Pg:52  
 07/07/2016 03:36:32 PM 1/3

FILED Mark Chilton  
 Register of Deeds, Orange Co., NC  
 Recording Fee: \$25.00  
 NC Real Estate TX: \$860.00

## NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$860.00

Parcel Identifier: 9788419609 *ghw*

Mail/Box to: Grantee at address below

This instrument was prepared by: Richard Bircher, Attorney at Law, 200 N. Greensboro St., Ste D-2, Carrboro, NC 27510

Brief description for the Index: 111 Purefoy Road

THIS DEED made July 5, 2016

GRANTOR	GRANTEE
UNC PROPERTIES 7, L.L.C., a North Carolina Limited Liability Company	KENNETH M. GORFKLE
1611 Ferncliff Road Charlotte, NC 28211	1436 Poinsett Dr. Chapel Hill, NC 27517

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid to them by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all of that certain lot or parcel of land situated in Orange County, North Carolina and more particularly described as follows:

AS DESCRIBED IN EXHIBIT A, ATTACHED HERETO AND INCORPORATED HEREIN.

Property address is 111 Purefoy Road, Chapel Hill, NC 27514

Said property does \_\_\_\_ does not x include the primary residence of at least one of Grantors.

The property hereinabove described was acquired by Grantor by instruments recorded in Book 5988, Page 168.

A map showing the above described property is recorded in Plat Book 3 Page 40





TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple; And the Grantor covenants that the Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions: Real Property Taxes for 2016 and subsequent years, and all easements, rights-of-way and restrictive covenants of record.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.  
 UNC PROPERTIES 7, L.L.C., A NC LIMITED  
 LIABILITY COMPANY

BY: \_\_\_\_\_  
 X Greg White  
 Greg White, Member/Manager

X \_\_\_\_\_

X \_\_\_\_\_

USE BLACK INK ONLY

X \_\_\_\_\_ (SEAL)

X \_\_\_\_\_ (SEAL)

X \_\_\_\_\_ (SEAL)

X \_\_\_\_\_ (SEAL)

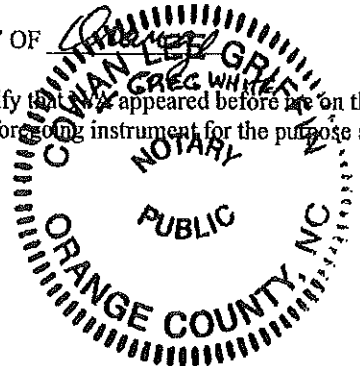
USE BLACK INK ONLY

STATE OF NORTH CAROLINA, COUNTY OF \_\_\_\_\_

I, the undersigned Notary Public, hereby certify that \_\_\_\_\_ appeared before me on this date and acknowledged the execution of the foregoing instrument for the purpose stated therein and in the capacity indicated.

This x 6 day of x July, 2016

x Cocoran Lee Huff (SEAL)  
 Notary Public COWAN LEE HUFF  
 My Commission Expires: x 3/18/17



USE BLACK INK ONLY

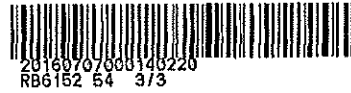
State of North Carolina, County of \_\_\_\_\_

I, the undersigned Notary Public of the County and State aforesaid, certify that the following person(s) personally appeared before me on this date and acknowledged that he/she executed the foregoing instrument for the purpose stated therein and in the capacity indicated: GREG WHITE

This x \_\_\_\_\_ day of x \_\_\_\_\_, 2016.

x \_\_\_\_\_ (SEAL)

Notary Public  
 My Commission Expires:



## EXHIBIT A

Beginning at an iron found in the eastern right of way line of Purefoy Road, said iron being located South 32 degrees 44'37" West 342.87 feet from the intersection of the centerlines of Purefoy Road and Mason Farm Road, said beginning point being at the northwest corner of the property herein conveyed and the southwest corner of the "Church Lot" as shown on Plat Book 47, Page 46, Orange County Registry, to which plat reference is hereby made for said Beginning Point; and running thence along and with the southern line of the aforesaid "Church Lot" South 59 degrees 57'00" East 318.33 feet to an iron found; thence South 29 degrees 41'27" West 100.98 feet to an iron found; thence North 85 degrees 42'43" West 324.14 feet to an iron found; thence North 00 degrees 33'45" East 63.53 feet to a calculated corner on the eastern right of way line of Purefoy Road; thence along the arc of a clockwise circle with a radius of 753.00 feet a distance of 133.74 feet to a calculated corner; thence North 34 degrees 59'10" East 53.20 feet to an iron found at the point and place of beginning, all as shown on survey entitled "Property of James R. Cherney," by Freehold Land Surveys, dated March 26, 1997, to which survey reference is hereby made, and being all of Lot 11, Mason Farm Road Development as shown on Plat Book 3, Page 40, and as conveyed in Deed Book 133, Page 203, Orange County Registry, SAVE AND EXCEPT that land conveyed in Deed Book 209, Page 727, Orange County Registry and that land shown as Lot B on Plat Book 47, Page 46, Orange County Registry and containing 1.30 acres, more or less; subject to the following exceptions:

- (1) Restrictive and Protective Covenants of record.
- (2) Right-of-Way in favor of the NC Department of Transportation, if any.
- (3) Any easements which may now exist in favor of any Public Utility Company.
- (4) City and County zoning ordinances.
- (5) Ad valorem taxes for the year 2007 not yet due and payable.
- (6) Any other matters as shown on said plats.

MEMORANDUM

TO: Michael Sudol, Planning and Development Services

FROM: Ralph D. Karpinos, Town Attorney

SUBJECT: Mason Farm/Whitehead Circle Neighborhood Conservation District

DATE: October 12, 2018

As a follow-up to the meeting of the Planning Commission on September 26, 2018, and, based on the Commission's discussion of a Site Plan Application for 111 Purefoy Road, you forwarded to me the following question:

The NCD appears to be intended to prevent this type of development, and the parcel in question was intentionally included within the NCD. As such, can the application be denied based on the fact that it violates the "intent" of the NCD, even if it meets the letter of the ordinance? (The "intent" of the NCD is to prevent multi-family development.)

Background

State Law

North Carolina General Statute Section 160A-382(a) authorizes the Town to establish zoning districts to regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; **overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; . . .**

(Emphasis added.)

Land owned by the State is not subject to any overlay zoning district (other than a historic district) without the consent of the State. (N.C.G.S. 160A-392; 160A-400.9)

Town Overlay District

The Town of Chapel Hill has five types of overlay zoning districts set out in Section 3.6 of the Town's Land Use Management Ordinance, including 3.6.5 Neighborhood Conservation District. Under 3.6.5, separate ordinances are required to designate each neighborhood conservation district (NCD).

Under LUMO Sec. 3.6.5 (b)(1):

Neighborhood conservation districts are designed as overlays to the regular zoning districts. Property designated within these districts must also be designated as being within one (1) of the general use districts. Authorized uses must be permitted in both the general use district and the overlay district. Property designated as a



neighborhood conservation district may have additional designations. Such property shall comply with all applicable use restrictions.

Under LUMO Sec. 3.6.5(b)(2)(c):

In the event of a conflict between the provisions of a specific neighborhood conservation district ordinance and the general use district regulations, the provisions of the neighborhood conservation district ordinance shall control.

Section 3.6.5 (e) sets out types of standards which may be included as part of a NCD plan.

(e) *Zoning standard.*

(1) The conservation plan approved as part of the zoning ordinance creating a neighborhood conservation district may include zoning standards for new construction or placement of any building, structure, foundation, sign, public art or outdoor apparatus or equipment (including visible utility boxes or mechanical equipment; trucks; lawn or landscaping equipment, but not including lawnmowers or hand tools; playground equipment; or sports equipment), and any additions, alterations, relocation of existing buildings, structures, foundations, sign, public art, or outdoor apparatus or equipment.

(2) The conservation plan, and requisite design standards shall not apply to those activities which constitute ordinary repair and maintenance, i.e., using the same material and design.

(3) In addition, the zoning standards may include the following elements governing the features of all property (public or private) within the proposed district:

- A. Building orientation;
- B. General site planning (primary, ancillary structures);
- C. Density;
- D. Floor area ratio;
- E. Signage;
- F. Buffering and screening;
- G. Entrance lighting;
- H. Driveways and sidewalks;
- I. Satellite dishes, utility boxes;
- J. Street furniture;
- K. Public art;
- L. Demolition (see subsection (f)).

### The Mason Farm/Whitehead Circle NCD

The adopted NCD plan for the Mason Farm Whitehead Circle Neighborhood Conservation District is included in the LUMO as Division 5 of Appendix B and includes a map of the properties included within the overlay district.

Most of the district carries an underlying zoning of R-LD1, a zoning district for low density residential development.

Two parcels are zoned R-4, which permits higher density residential development. One of these is presently used as a place of worship. The second parcel is the subject of the current application before the Planning Commission and has a single family residence and accessory apartment.

### Special Design Standards for Mason Farm/Whitehead Circle NCD

Section 5.3 of Division 5 establishes the special design standards for all development within the Mason Farm/Whitehead Circle NCD. These standards

replace/supersede general provisions in the land use management ordinance where such standards differ. For standards that are not specifically identified in this plan, provisions of the underlying zoning district for a particular parcel shall apply." *Id.*

The special design standards are included in a box insert in Sec. 5.3 as follows:

#### **Mason Farm/Whitehead Circle Neighborhood Conservation District Plan**

Regulation	Standard for Mason Farm/Whitehead Circle*
Minimum lot size	1 acre
Minimum street setback	50 feet
Minimum interior setbacks	25 feet
Minimum setbacks for dwelling units 6,500 square feet or larger	Street and interior setbacks are doubled: Street Setback: 100 feet Interior Setback: 50 feet
Maximum floor area ratio for single-family dwelling (or single-family dwelling with accessory apartment)	.15
Maximum secondary building height	30 feet
Maximum percent of front yard used for parking	25%

Regulation	Standard for Mason Farm/Whitehead Circle*
Single-family zoning compliance permit notification	Property owners within 100 feet must be notified through the town if an increase in floor area is proposed or if garages are proposed.
Application of overlay district	The provisions of this Mason Farm/Whitehead Circle neighborhood conservation district are to apply to the residential use of property and accordingly shall not apply to property whose principle use is a place of worship, a child day care facility, an elementary or secondary school, or a public cultural facility.

The asterisk in the first line of the table refers to a footnote which reads as follows:

\*For the Mason Farm/Whitehead Circle neighborhood conservation district, these standards replace/supersede general, otherwise applicable provisions in the land use management ordinance where such standards applicable to the property differ. For standards that are not specifically identified in this plan, provisions of the underlying zoning district for a particular parcel shall apply.

(Emphasis added)

#### Proposed Development

The application proposes demolition of an existing single family residence with an accessory apartment and construction of two multi-family buildings, for a total of 7 dwelling units. One of the buildings is proposed to hold 3 dwelling units and total 4,512 square feet. The other building is proposed to hold 4 dwelling units and a total of 6,016 square feet.

#### **Analysis**

#### Proposal Complies with the Standards of the Ordinance

In this case, the design standards adopted for the Mason Farm/Whitehead Circle NCD set out regulations which establish the design standards which would otherwise apply to the property within the NCD with respect to:

Minimum Lot Size

Minimum Street Setback

Minimum Interior Setback

Minimum Setbacks for dwelling units 6,500 feet or larger

Maximum floor area for single family dwellings

Maximum Secondary Building Height

Maximum Percent of Front yard used for parking

There are no special design standards set out in this NCD which prohibit the use of this R-4 property within the district for multi-family dwelling purposes. Thus, the proposed use of the property as included within the current application meets the letter of the ordinance.

Proposal complies with the Intent of the Ordinance

In determining the intent and meaning of any ordinance or regulation, the first task is to consider the plain language contained therein.

In *Lanvale Properties, LLC v. County of Cabarrus*, 366 N.C. 142, 731 S.E.2d 800 (2012), the North Carolina Supreme Court held:

... 'Statutory interpretation properly begins with an examination of the plain words of the statute.' ... 'If the language of the statute is clear and is not ambiguous, we must conclude that the legislature intended the statute to be implemented according to the plain meaning of its terms.' ... Thus, "[w]hen the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning." Therefore, "a statute clear on its face must be enforced as written.

*Lanvale* (Internal citations omitted)

Only where there is some ambiguity do our Courts advise that one can look behind the words of the statute to determine legislative intent. "The primary rule of statutory construction is that the intent of the legislature controls the interpretation of a statute. In seeking to discover this intent, the court should consider the language of the statute, the spirit of the act, and what the act seeks to accomplish." *Stevenson v. City of Durham*, 281 N.C. 300, 188 S.E.2d 281 (1972) (citations omitted). "The best indicia of that intent are the language of the statute or ordinance, the spirit of the act and what the act seeks to accomplish." *Coastal Ready-Mix Concrete Co., Inc. v. Board of Com'rs of Town of Nags Head*, 299 N.C. 620, 265 S.E.2d 379 (1980) (citations omitted). However, as the Court held in *Lanvale*, "[w]hen the language of a statute is clear and unambiguous, there is no room for judicial construction, and the courts must give it its plain and definite meaning." *Id.*

As noted above, the ordinance itself, after listing the special design standards applicable within the Mason Farm/Whitehead Circle NCD, specifically says:

For standards that are not specifically identified in this plan, provisions of the underlying zoning district for a particular parcel shall apply.

Thus, the clear intent of the ordinance is to set out the special standards for the NCD and, as set out in those special standards, to state that, otherwise, the underlying zoning standards (in this case the underlying density standards of R-4 zoning) apply. This view is further supported by a review of other Neighborhood Conservation Districts in the LUMO. In other NCDs, specific design standards are set out restricting duplexes. See the Northside NCD, the Pine Knolls NCD, the Glen Lennox 8A NCD and the Glen Lennox 8B NCD.

Accordingly, it is my opinion that the question posed is based on a premise (that the application violates the intent of the NCD ordinance) that is not supported by a review of the ordinance itself. I believe the intent of the ordinance is to set out some specific special standards and to affirm that the underlying zoning standards continue to apply. This includes, in this case, an underlying zoning standard allowing multi-family dwellings on this R-4 lot.

I do not find any language in the ordinance indicating an intent to prevent multi-family development.