

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE, VA

KIMBER HAWKEY, CHARLES GENDROT, KIMMIE BURKE-HARLOW)
KEVIN MURPHY, GRIER MURPHY, IVANA KADJIA, DEREN BADER,)
PAUL LYONS, M.D., TOMAS RAHAL, MARK KAVIT, TINA KAVIT,)
CAROL STARLING, CLARA MINCER, KAREN KATZ, DAVID KATZ,)
ROSEMARY EVANS, ALLISON RUFFNER, CHRISTINE PALAZZOLLO,)
EUGENE SCHETTINI, ALMA MILLS, JANET HATCHER, BILL EMORY,)
MARGARET PARSONS, MONTY PARSONS, BRIAN WIMER, JOHN)
MILLER, DEB JACKSON, FRANCIS BIASIOLLI, EVEYLN BIASIOLLI,)
AMY GARDNER, TRUDY NEOFITIS)

The citizen signatories to this action have legal standing to bring this petition)
As they either live in the designated Belmont-Carlton neighborhood and will)
Suffer the effects of this capricious and arbitrary decision to rezone 750 Hinton)
Avenue to Neighborhood Commercial Corridor (NNCC) and/or are citizens of)
Charlottesville, Virginia and fear the effects of a precedent set by this faulty)
rezoning decision.)

Plaintiffs, PRO SE

v.

CHARLOTTESVILLE CITY COUNCIL, NIKUYAH WALKER,)
HEATHER HILL, KATHLEEN GALVIN, MIKE SIGNER, WES BELLAMY,)

Defendants.

Pleading for Declaratory Relief and Injunctive Relief

Complaint

I. Contrary to the Code of Virginia § 15.2-2285. *Preparation and adoption of zoning ordinance and map and amendments thereto; appeal* Paragraph B which states: “The governing body shall publish a notice of the public hearing in a newspaper having general circulation in the locality at least two weeks prior to the public hearing date and shall also publish the notice on the locality’s website, if one exists.”

The specific facts are these:

The City has a history of failure to notify residents of zoning changes; this is in contradiction to both state law and local policy. There are various instances of capricious behavior in this matter.

A. Public Postings: The City has either failed to post signage in a timely manner or failed to post up-to-date signage so that residents are informed of meetings. Even after the last-minute cancellation of the first scheduled Planning Commission Meeting, the signage

continued to state that the meeting was slated for May 14, 2019. This violates the local municipal code -

https://library.municode.com/va/charlottesville/codes/code_of_ordinances?nodeId=CO_C_H34ZO_ARTIAD_DIV3ZOAM_S34-44ADPLORETNOCEAM

“Sec. 34-44. - Advertisement of plans, ordinances, etc.; notice of certain amendments.”

B. Legal Notices. The City has been capricious and arbitrary in its manner of publishing Legal Notices. This has prevented persons affected from being able to “appear and present their views” as required by the code.

1. Planning Commission Hearings.

- a. The first Planning Commission Hearing that was scheduled on May 14, 2019 (this was capriciously and arbitrarily canceled as per part C. below).
- b. The second Planning Commission Hearing on June 11. The notice for this meeting was June 3 – this did not give 2 weeks’ notice to residents.
- c. The June 11, 2019 Planning Commission Hearing was supposed to be a Joint Meeting with the City Council present. However, there was not a joint meeting as there was not a quorum of City Council.

2. City Council Meetings

- a. As required by law, City Council needed to have a public hearing about this matter. Because City Council failed to appear for the June 11 public hearing, the new public hearing was on July 1, 2019.
- b. Public Hearings are required by state law to be published in the newspaper legal notices.
- c. However, the July 1, 2019 public hearing was not advertised in the Daily Progress as required by law and as per normal city procedure.

C. There have been last-minute, improperly cancelled public hearings with failures to notify the public about public hearings with the required 2-week notification delay:

1. Cancellation late Monday night on May 13 for the May 14, 2019 Joint Planning Commission and City Council Meeting. NDS City Planner Brian Haluska capriciously tweeted out a last-minute announcement Monday night, May 13, 2019, that the Agenda Item 1. **ZM-19-00001 – (750 Hinton Avenue) (Hinton Avenue United Methodist Church)** slated for discussion during the Planning Commission meeting for Tuesday, May 14, 2019 was to be moved forward [see change noted here on the agenda - “This agenda item was deferred until June 11, 2019.”] :

<https://www.charlottesville.org/home/showdocument?id=65433>]

As of Monday May 13, 2019, there was no announcement on the City website of this change. There was no change noted until after the fact. This change could not be verified on the City Website because it did not appear and caused much confusion among the neighbors. It also prevented many neighbors from being able to show up

because we had already changed our schedules once to show up for the May 14 meeting. This type of last-minute change the evening prior to a meeting is unjust and puts undue expectations on citizens to change their schedules on a continual basis to suit either the Applicant's or the City's needs.

2. The application on the agenda for the Planning Commission Meeting regarding this matter [ZM-19-00001 – (750 Hinton Avenue) (Hinton Avenue United Methodist Church)] was itself capricious and arbitrary as it was continually changing. The Staff report which is to be made part of the agenda was continually changing and the public was not given the required two weeks' notice of these changes. Example: There was a change in the proffers made to the application late on Friday afternoon of May 10, 2019 when the scheduled meeting was to be May 14, 2019. The general public was not aware of these changes.
- D. The Planning Commission failed to respect its own bylaws with these capricious and arbitrary changes. Besides the irregularities in Advertising as per 4.1, and despite written requests by citizens for official work sessions with City staff and officials on the issue of rezoning the parcel at 750 Hinton Avenue, Charlottesville, VA, there were no official, formal, or transparent efforts made by the City for "Citizen Advice and Participation" as per bylaw 4.2:

**BYLAWS OF THE CITY PLANNING COMMISSION
CHARLOTTESVILLE, VIRGINIA** The City Planning Commission (established pursuant to Sections 2-236 through 2-244 of the Charlottesville City Code and Sections 15.2-2212 through 15.2-2222 of the Code of Virginia) hereby adopts the following rules for the transaction of its business:

4. Community Participation

4.1 Advertising. All meetings of the Planning Commission will be advertised as required by Section 15.2-2204 of the Code of Virginia and with such additional advertising as the Commission may from time to time direct.

4.2 Citizen Advice and Participation. The Commission will make efforts to encourage participation of citizens of the community on matters affecting neighborhoods or with Citywide implications, and in pursuance thereof may appoint special task forces or committees to study and resolve specific issues, may order special notices or public hearings on particular matters and utilize similar devices to effect the purposes herein stated.

Due to the City's failure to provide official city work sessions with citizens, citizens were not encouraged. In fact, the lack of advice and guidance received discouraged citizen participation as neighbors became frustrated by the lack of clear answers to our questions on this rezoning issue. Indeed, citizens were continually left confused about the state and local codes applicable to this matter and by the ever-changing application. For that reason, citizens neither received advice nor was their advice on this matter heard by the City.

II. Contrary to the Code of Virginia § 15.2-2204. *Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments.*, adjacent and across-the-street residents did not receive the required 2 notices by registered or certified mailings.

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

III. Contrary to the Code of Virginia § 15.2-2285. *Preparation and adoption of zoning ordinance and map and amendments thereto; appeal* Paragraph C which states that "*the governing body may make appropriate changes or corrections in the ordinance or proposed amendment,*" when the Charlottesville City Council granted the Neighborhood Commercial Corridor (NCC) zoning status to 750 Hinton Ave., it exceeded its authority because they allowed for substantial changes to the lot.

- A. The change from R1S (residential) to NCC (commercial) is a substantial change both in density and in land use.
- B. This rezoning is capricious and arbitrary because it violates all current Comprehensive and Land Use plans in effect through the year 2025. It also violates the “Charlottesville Entrance Corridor Design Guidelines” Amendments adopted by City Council March 7, 2011. All of these documents state that this area is to remain R1 residential and that its established, residential, historic nature is to be respected and protected.
- C. These substantial changes, in fact, violate the NCC code itself as written. The NCC code states:

The intent of the Neighborhood Commercial Corridor district is to establish a zoning classification for the Fontaine and Belmont commercial areas that recognize their compact nature, their pedestrian orientation, and the small neighborhood nature of the businesses. This zoning district recognizes the areas as small-town center type commercial areas and provides for the ability to develop on small lots with minimal parking dependent upon pedestrian access. The regulations recognize the character of the existing area and respect that they are neighborhood commercial districts located within established residential areas.

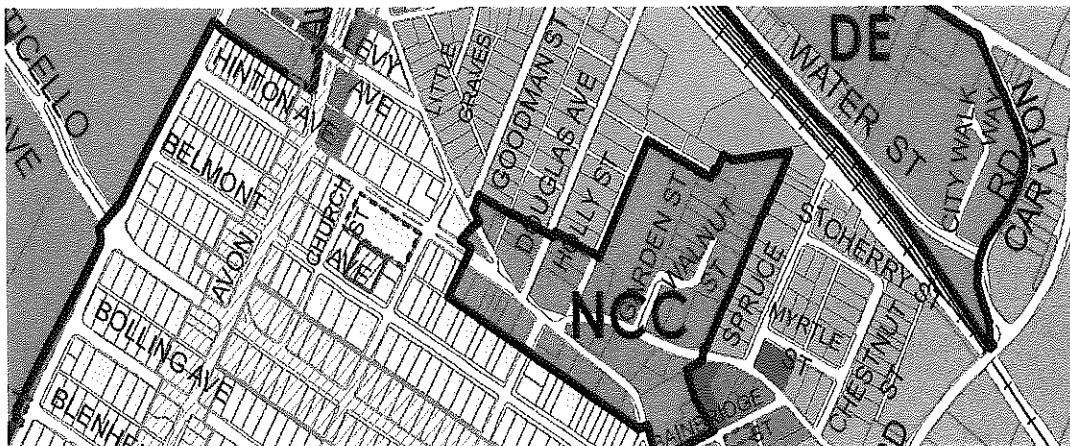
The NCC was developed to **protect the established, residential, historic** neighborhood from inappropriate commercial projects. This newly rezoned NCC-zoned parcel at 750 Hinton Ave is capricious and arbitrary in that it does not even follow the intent of the NCC code itself as written. According to the criteria of the Neighborhood Commercial Corridor code, an NCC designation is not even an appropriate zoning for the 750 Hinton Ave project because:

1. the NCC code stipulates that the project must be compact and on a small lot. However, the 750 Hinton Ave lot itself is 4-5 times larger than all the surrounding neighbors’ lots. Indeed, the 750 Hinton Ave lot is arguably larger than any R1/R1S lot in the North Belmont neighborhood.
2. The rezoning of the 750 Hinton Ave lot makes this is a commercial zoning of a large lot in an established, residential neighborhood with a historic designation. Additionally, the adjacent property 759 Belmont Ave. is a property listed in the National Register of Historic Places that is supposed to be protected [[https://en.wikipedia.org/wiki/Belmont_\(Charlottesville,_Virginia\)](https://en.wikipedia.org/wiki/Belmont_(Charlottesville,_Virginia))]. It is expressly stated that this original mansion at 759 Belmont Ave is to be protected:

Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and **protect** [bold added] America's historic and archeological resources.

<https://www.nps.gov/subjects/nationalregister/faqs.htm>

The City's own official land use map below shows that 759 Belmont Ave is on the national register as it is outlined in bold blue, i.e. the City has agreed and accepted the responsibility for protecting this historic and archeological national landmark. They have violated this responsibility by capriciously and arbitrarily rezoning the adjacent property into a commercial zone that threatens the future integrity of this site.



IV. The capricious and arbitrary nature of this decision is once again proven by the fact that there has been public admission by City Staff, The Planning Commission, and The City Council that the NCC zoning is not the appropriate zoning for this site and that the only reason why they had to use that zoning was because they did not have the appropriate tools with which to work.

- A. City Staff. Despite having advised the Hinton Methodist Church Applicant to apply for NCC rezoning in its application, City Planner Brian Haluska recommended denying the NCC rezoning application in the initial recommendation papers.
- B. Planning Commission. At minute 2.08.00 of the Planning Commission proceedings, Commissioner Jody Lahendro admits: "The NCC zoning is very clumsy..."
- C. City Council. As Heather Hill points out at 3:16:22: "As the director of NDS said [there is] "a waste basket of errors in our zoning."

V. Lack of Oversight and Failure to Enforce Proffers in the Belmont NCC district.

- A. As Heather Hill admits at 3:15:55, the city has had “a lot of precedent set very poorly with enforcing proffers historically and how we are handling things even operationally”. Indeed, The City has a 15-year history of lack oversight of the abusive business practices in the Belmont Center NCC area – building code violations, “operating as a dance hall” violations, noise violations, parking issues and public drunkenness violations that caused dangerous situations for neighbors due to conflicts between restaurant clientele and police. Besides an undue burden on the police force, the City’s failure to ensure that these businesses adhere to the NCC code and local laws has put the onus for policing and reporting these infractions on the neighbors. The City has had a history of not acting until after multiple complaints and reports have been filed by neighbors regarding these illegal activities.
- B. False promises that proffers will protect citizenry. Proffers have not been enforced by the City, and local police do not have the power to enforce proffers.
1. Citizens cannot enforce proffers; we must rely on local government to do so. However, City Staff is unavailable to enforce proffers, and the City Police refuse to enforce proffers claiming that it is outside of their authority.
 2. In 2019, the City Council rezoned 814 Hinton Avenue, Charlottesville, VA (an R1 residential home) to NCC despite concerted neighborhood outcry. The City Council declared that this property was the “logical endpoint” of the NCC for the Belmont neighborhood and stressed that flipping this property would not set a precedent from flipping other properties in the future. Additionally, the City put in place specific proffers that were meant to protect the neighborhood from the pressing issues outlined above in part II. A. This property came to be known as “The Southern Crescent” and “The Southern Crescent Galley & Bar”.

However, as soon as the NCC rezoning took effect, both the City Council and The Southern Crescent violated all of the official promises and proffers that were set in place to protect the neighborhood. Additionally, since 2009, the City has repeatedly failed to enforce proffers and the terms by which 814 Hinton Avenue’s rezoning was granted. This means that the City has allowed The Southern Crescent to operate illegally ever since it’s opening.

The three specific proffers that have been continually violated are: (1) no amplified music, (2) maintaining S3 vegetative buffers, and (3) not to expand past the building’s existing footprint. Indeed, from Day 1 of operations, The Southern Crescent held and advertised amplified music concerts on social media sites. As well, they ripped out the existing buffer rather than adding to it to meet the requirements of the strict S3 buffer. Finally, The Southern Crescent progressively expanded the building’s footprint.

The City Council allowed The Southern Crescent to violate the terms of their application with impunity by failing to uphold all of the proffers as well as all of the stated, official promises made to the community during public hearings.

3. During official Planning Commission proceedings, the attorney representing the City Attorney's office who was present stated that the City "didn't like to enforce SUPs or proffers"; however, it is their duty to do so.

4. Citizens have expressed concern regarding proffers because it has been stated that when proffers are not voluntary that not enforceable under Virginia code. Seeing as proffers are done under pressure, neighbors have maintained that proffers are not sufficient to protect the neighborhood.

5. Problematic proffers and future financial concerns.

a. Seeing as zoning remains with the property if sold. This zoning could have long range implications to this residential neighborhood.

b. The unclear and unsecured financing of this project has caused great concern from the very beginning. The representatives for the Applicant (Hinton Methodist Church) have provided unsure and contradictory answers regarding financing from the very start. Pastor Lewis mentioned "investors". When neighbors were surprised at the use of that word, he said that he had misspoken and that he should have said "benefactors". When asked if they would offer more housing to those with disabilities as well as to the elderly, he responded "we will not bankrupt the church" for this project. He, again, later said that he had misspoken. All of this has caused concern. Kim Crater of the Hinton Methodist Church has also been unsure in her answers regarding funding. All of this is alarming because if this project does not materialize, and new NCC zoning is in place, what then?

c. Finally, we were told that the Applicant had partnered with the Community Housing Services group and that this would allow them to apply for \$32 million in government housing credits. However, news reports have come out indicating deep federal cuts starting in 2020 to the 811 Program housing funding credits that they plan on using:

<https://www.cbpp.org/research/federal-budget/cuts-to-low-income-assistance-programs-in-president-trumps-2020-budget-are>

"The budget provides \$644 million to the Section 202 Housing for the Elderly program, a \$34 million decrease from this year's funding level. It also reduces funding for the Section 811 Housing for People with Disabilities program to \$157 million, \$27 million less than the FY19 level. At these levels, the budget request will likely not provide sufficient funds

to renew all existing contracts.” <https://nlihc.org/resource/analysis-president-trumps-fy2020-budget-request>

If these credits will not be enough to fund existing contracts, then there will not be enough for new projects such as the 750 Hinton Avenue Methodist Church project known as “Rachel’s Haven”.

- d. Given this dire news regarding the financial uncertainty with LIHTC funding and absolutely no Plan B in place, residents cannot trust that this project will materialize as claimed. See quote regarding “no plan B” from Kim Crater at minute 1:42:30 City Council 1st Reading proceedings from July 1, 2019 video - http://charlottesville.granicus.com/MediaPlayer.php?view_id=2&clip_id=1374
- e. For these concrete reasons, we are quite worried about the realization of this project, and a rezoning to NCC appears even more capricious and arbitrary. With their lack of a clear business plan, the uncertainty of these credits, and the fact that they are 5 years out on a build, the rezoning to NCC is very premature and precarious.
- f. Finally, the NCC rezoning was not necessary to move forward with the funding, a different appropriate residential rezoning could have been amended or a new zoning could have been created. However, again, the Applicant was under the gun to meet a financial deadline for applying for LIHTC credits. See quote from Pastor Lewis admitting that their “initial partner fell through way back thanks to cuts, to threatened, cuts to Medicare and so forth...if zoning is a no-go is that it’s back to square one. For LIHTC funding, we need the site and the funding.” [See quote regarding need for rezoning + federal financing from Pastor Lewis at minute 3.14.50 of City Council 1st Reading proceedings from July 1, 2019 video - http://charlottesville.granicus.com/MediaPlayer.php?view_id=2&clip_id=1374
- g. When citizens provided these reports about projected cuts putting this project in jeopardy, Councilor Galvin responded in writing that Councilors could not take finances into consideration when making their decisions and that they could not, therefore, use that as a rationale to deny a rezoning to NCC. However, it appears that there are no explicit guidelines forbids the City Council from considering the financials of a project. Additionally, if such is the case, then why has the City Council made a concerted effort of discussing the financials of development projects a matter for discussion, especially Councilor Signer during the 1st Reading City Council meeting on July 1 2019? Additionally, if it is true that City

Council may not take financials into consideration when approving a rezoning, then the City Council violated that rule because they did, in fact, take the Church's financial pressures into consideration by prematurely pushing through the rezoning. As per Part (e) above, it is clear that zoning was granted at this time to benefit the Applicant who needed to meet the deadline for applying for federal funding.

- h. The fact is that if the Church is unable to raise necessary funds to build their housing project that they now have a more valuable piece of land that they will be able to use for other projects or that they will be able to sell off at a higher price to another developer who could use it for other projects. These future projects could even be used for commercial endeavors that have been proffered out because we have already seen that proffers are being challenged as "unreasonable" by new owners who are suing municipalities to change them.

Case in point: reports concerning Wendel Woods, Albemarle County:

<https://www.cvilletomorrow.org/articles/county-says-developer-wendell-wood-owes-150000-for-bus-service/>

https://www.dailyprogress.com/news/dispute-over-hollymead-town-center-transit-proffer-returns-to-court/article_d7cfd056-832c-11e9-a045-5fc3cb7ba796.html

<https://www.nbc29.com/story/32284330/hollymead-town-center-developer-sues-albemarle-county>

VI. Faulty Planning Commission Proceedings - absence of Lead Commissioner Lisa Green, and personal bias of Planning Commissioners.

- A. During the PC meeting, Lead Commissioner Lisa Green was absent from the proceedings. Her absence meant that there was a lack of leadership to ask important questions and a failure to get answers. The other Commissioners are not professional planners; thus, their decision-making abilities are based purely on personal perception and beliefs.
- B. Indeed, 2 members had considerable personal bias: (1) Commissioner Heaton is himself a Methodist Church Minister and, therefore, a member of the same who is the Applicant here, and (2) Commissioner Stolzenberg had publicly made statements both at planning meetings and online that mocked and shamed neighbors who opposed this rezoning. Given their known bias, citizens petitioned to have these two members removed from this decision; however, the City refused to do so.

For all of these reasons, we maintain that the City has acted capriciously and arbitrarily in granting the NCC rezoning to the 750 Hinton Avenue Applicant. We, therefore, are petitioning this Court to review this action and find that the City Council's decision to rezone this parcel of land to NCC is contrary to the code and the governing ordinances of the Commonwealth of Virginia and the City of Charlottesville. We also ask that the Court either order an adherence to all current governing ordinances and guidelines for this parcel or that the City apply an appropriate residential zoning to this parcel that respects the established, residential and historic nature of the neighborhood.

Finally, with the court's permission, we would like to reserve the right to amend this petition.