

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE, VIRGINIA

KATE BENNIS, MICHAEL BEDNAR,)
SUMNER BROWN, ROSAMOND CASEY,)
NANCY DEUTSCH, BOB FENWICK, GREG)
JACKSON, BRIAN KEENA, ELIZABETH)
MARGUTTI, JO LAWSON, BOB MCKEE,)
GINGER MCKEE, HAL MOVIUS, JOE)
PEACOCK, MANDY PEACOCK, JON RICE,)
SHAWNEE WEST, BILL WYLIE, CAROLYN)
BELT, LITTLE HIGH NEIGHBORHOOD)
ASSOCIATION,)
Plaintiffs,)

v.)

CHARLOTTESVILLE CITY COUNCIL,)
NIKUYAH WALKER, HEATHER HILL,)
WES BELLAMY, KATHLEEN GALVIN,)
MICHAEL SIGNER,)
Defendants.)

Case No. 540CL18000368-00

PLEA IN BAR

COME NOW your Defendants, by counsel, and submit this Plea in Bar to the Complaint filed by the Plaintiffs in this action. Plaintiffs' claim for declaratory and injunctive relief is entirely barred by Virginia Code section 15.2-2285(F), which requires that "every action contesting a decision of the local governing body . . . granting or failing to grant a special exception shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision." Plaintiffs purport to challenge the Charlottesville City Council's grant of a Special Use Permit on July 5, 2017 for a building project at 1011 East Jefferson Street. A certified copy of City Council's July 5, 2017 decision is attached and incorporated herein. Section 15.2-2285(F) requires that any challenge to that

decision must be filed by August 4, 2017. The date of Plaintiff's appeal is beyond the thirty (30) day limit provided by statute. Thus, the jurisdictional time limit for noting an appeal expired prior to the Plaintiff's July 5, 2018 filing date in this Court. Accordingly, Plaintiffs' July 5, 2018 complaint is untimely and must be dismissed.

WHEREFORE, defendant prays that this action be dismissed.

Respectfully submitted,
CITY OF CHARLOTTESVILLE, VIRGINIA
CITY COUNCIL, et al.,

By counsel for the Defendants:

Allyson Manson Davies (VSB# 42996)
Deputy City Attorney
P.O. Box 911, 605 E. Main Street, 2nd Floor (City Hall)
Charlottesville, Virginia 22902
Tel. (434) 970-3131
Email: daviesa@charlottesville.org

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, 2018, pursuant to the provisions of Rule 1:12 of the Rules of the Supreme Court of Virginia, on or before the date of filing I served a true copy of the foregoing document, by U.S. Mail, first-class, postage pre-paid, to the pro se plaintiff, as follows:

Michael Bednar
and Elizabeth Lawson
1201 E. Jefferson Street
Charlottesville, VA 22902

Kate Bennis and Hal Movius
1109 E. Jefferson Street
Charlottesville, VA 22902

Sumner Brown
1107 E. Jefferson Street
Charlottesville, VA 22902

Rosamond Casey
1124 E. Jefferson Street
Charlottesville, VA 22902

Nancy Deutsch and Jon Rice
1144 Meriwether Street
Charlottesville, VA 22902

Bob Fenwick
901 E. Jefferson Street
Charlottesville, VA 22902

Gregory Jackson
1121 Little High Street
Charlottesville, VA 22902

Brian Keena
1126 E. Jefferson Street
Charlottesville, VA 22902

Elizabeth Margutti
1128 Little High Street
Charlottesville, VA 22902

Joe and Mandy Peacock
1120 Little High Street
Charlottesville, VA 22902

Shawnee West
1204 E. Jefferson Street
Charlottesville, VA 22902

Bill Wylie
1111 E. Jefferson Street
Charlottesville, VA 22902

Carolyn Belt
1011 Little High Street
Charlottesville, VA 22902

Bob and Ginger McKee
1114 E. Jefferson Street
Charlottesville, VA 22902

Signature: _____
Counsel for Defendants

COMMONWEALTH OF

VIRGINIA



CHARLOTTESVILLE CIRCUIT COURT

Civil Division

315 EAST HIGH STREET
CHARLOTTESVILLE VA 22902
(434) 970-3766

Summons

To: NIKAYUH WALKER
CITY COUNCIL CITY HALL
605 E. MAIN ST
CHARLOTTESVILLE VA 22902

Case No. 540CL18000368-OO

The party upon whom this summons and the attached complaint are served is hereby notified that unless within 21 days after such service, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, the allegations and charges may be taken as admitted and the court may enter an order, judgment, or decree against such party either by default or after hearing evidence.

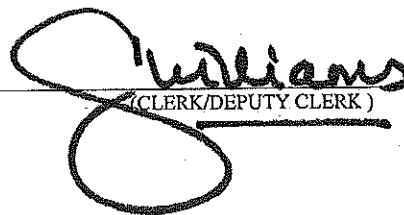
Appearance in person is not required by this summons.

Done in the name of the Commonwealth of Virginia on, Tuesday, July 10, 2018

Clerk of Court:
LLEZELLE AGUSTIN
DUGGER

by

NTS


(CLERK/DEPUTY CLERK)

ructions:

ATTACHMENTS Ins

Hearing Official: .

PRO SE Attorney's name:

COMMONWEALTH

OF VIRGINIA

CHARLOTTESVILLE
Civil Division
315 EAST HIGH STREET
CHARLOTTESVILLE VA



CIRCUIT COURT

22902

(434) 970-3766

Proof of Service

Virginia:

In the C HARLOTTESVILLE CIRCUIT COURT

case number: 540CL18000368-00

Service number: 001.

Service filed: July 05, 2018

served by: CHARLOTTESVILLE CITY Judge:

style of case: KATE BENNIS vs CHARLOTTESVILLE CITY COUNCIL

o Service n: NIKAWH WALKER
CITY COUNCIL CITY HALL
605 E. MAIN ST
CHARLOTTESVILLE VA 22902

Attorney: PRO SE

ATTACHMENTS

Instructions:

Returns shall be made hereon, showing service of Summons issued Tuesday, July 10, 2018 with a copy of the Complaint filed Thursday, July 05, 2018 attached.

Hearing date :

Service issued: Tuesday, July 10, 2018

For Sheriff Use Only

COVER SHEET FOR FILING CIVIL ACTIONS
COMMONWEALTH OF VIRGINIA

Case No. CL18-368
(CLERK'S OFFICE USE ONLY)

see attached list
Kate Bennis
PLAINTIFF(S)

City Council
see attached list
DEFENDANT(S)
Circuit Court

I, the undersigned ☐ plaintiff ☐ defendant ☐ attorney for ☐ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing ☐ attorney for ☐ plaintiff ☐ defendant hereby of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

GENERAL CIVIL

Subsequent Actions

- ☐ ☐ C Claim Impleading Third Party
☐ Defendant ☐ Monetary Damages
☐ ☐ No Monetary Damages
☐ ☐ C Counterclaim
☐ ☐ Damages ☐
☐ ☐ C Other General Tort Liability

Tort

- ☐ Asbestos Litigation
☐ Compromise Settlement
☐ Intentional Tort
☐ Medical Malpractice
☐ Motor Vehicle Tort
☐ Product Liability
☐ Wrongful Death

- ☐ Complaint — Contested*
☐ Complaint — Uncontested*
☐ Counterclaim/Responsive Pleading
☐ Reinstatement —
Custody/Visitation/Support/Equitable
Distribution
☐ Separate Maintenance
☐ Separate Maintenance Counterclaim
☐ Correct Erroneous State/Local
☐ Delinquent
☐ Vehicle Confiscation
☐ Voting Rights — Restoration
☐ Other (please specify)

☐ Damages in the amount of \$ 0 are claimed.

7/5/18
DATE

Kate Bennis
PRINT NAME

1109 E. Jefferson St Charlottesville, VA
ADDRESS/TELEPHONE NUMBER OF SIGNATOR
434-906-4142

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

☐ PLAINTIFF

☐ DEFENDANT

☐ ATTORNEY FOR

☐ PLAINTIFF
☐ DEFENDANT

*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.

FORM CC-1416 (MASTER) PAGE ONE 07/16

No Monetary Damages ross

Claim

☐ Interpleader

☐ Reinstatement (other than divorce or
•ving privileges)

☐ Removal of Case to Federal Court

Business & Contract

☐ Attachment

☐ Confessed Judgment

☐ Contract Action

☐ Contract Specific Performance

☐ Detinue

☐ Garnishment

Property

☐ Annexation

☐ Condemnation

☐ Ejectment

☐ Encumber/Sell Real Estate

☐ Enforce Vendor's Lien

☐ Escheatment

☐ Establish Boundaries

☐ Eminent Domain/Tenant

Unlawful Detainer

☐ Mechanics Lien

☐ Partition

☐ Quiet Title

☐ Termination of Mineral Rights

ADMINISTRATIVE LAW

☐ Appeal/Judicial Review of Decision of
(select one)

☐ ABC Board

☐ Board of Zoning

☐ Compensation Board

☐ DMV License Suspension

☐ Employee Grievance Decision

☐ Employment Commission

☐ Local Government

☐ Marine Resources Commission

☐ School Board

☐ Voter Registration

Other Administrative Appeal

DOMESTIC [FAMILY]

☐ Adoption

☐ Adoption —

Foreign ☐ Adult

Protection

☐ Annulment

☐ Annulment — Counterclaim/Responsive
Pleading

☐ Child Abuse and Neglect — Unfounded
Complaint

☐ Civil Contempt

☐ Divorce (select one)

WRITS

☐ Certiorari

☐ Habeas Corpus

☐ Mandamus

☐ Prohibition

☐ Quo Warranto

PROBATE/WILLS AND TRUSTS

☐ Accounting

☐ Aid and Guidance

☐ Appointment (select one)

☐ Guardian/Conservator

☐ Standby Guardian/Conservator

☐ Custodian/Successor Custodian
(UTMA)

☐ Trust (select one)

☐ Impress/Declare/Create

☐ Reformation

☐ Will (select one)

☐ Contest

☐ Contested

MISCELLANEOUS

☐ Amend Death Certificate

☐ Appointment (select one)

☐ Church Trustee

☐ Conservator of Peace

☐ Marriage Celebrant

☐ Approval of Transfer of Structured
Settlement

☐ Bond Forfeiture Appeal
☒ **Declaratory** Judgment
☐ Declare Death
☐ Driving Privileges (select one)
☐ Reinstatement pursuant to §
46.2427
☐ Restoration — Habitual Offender or
3 Offense

☐ Expungement
☐ Rights — Restoration
☐ Forfeiture of Property or Money
☐ Freedom of Information
☐ Injunction
☐ Interdiction
☐ Interrogatory
☐ Judgment Lien-Bill to Enforce

☐ Law Enforcement]Public Official Petition
☐ Name Change
☐ Referendum Elections
☐ Sever Order
☐ Taxes (select one)

18-3(e9

Virginia:

In the Circuit Court for the City of Charlottesville, Virginia

Michael Bednar

Jo Lawson

Carolyn Belt

Kate Bennis

Bob McKee

Sumner Brown

Ginger McKee

Rosamond Casey

Hal Movius

Nancy Deutsch

Joe Peacock

Bob Fenwick

Mandy Peacock

Greg Jackson

Jon Rice

Brian Keena

Shawnee West

Elizabeth Margutti

Bill Wylie

Representing Little High Neighborhood Association (LI-NA) and its individual residents. The citizen signatories to this action have standing to bring this suit because each one lives in the neighborhood designated as Little High Street Neighborhood in very close proximity to the project in question.

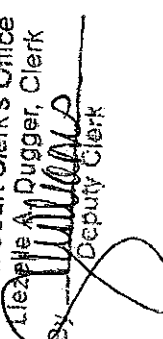
Plaintiffs, PRO SE

City of Charlottesville, Virginia City Council

Nikayuh Walker Heather Hill wes Bellamy Kathleen Galvin Michael
Signer

Defendants

Pleading for Declaratory Relief and Injunctive Relief

FILED
7-5-2018 @ 12:55pm
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Lizelle A. Dugger, Clerk
By  Deputy Clerk

Complaint

Contrary to the Code of Virginia Section 15.2-2285 Paragraph C, which states "the governing body may make appropriate changes or corrections in the ordinance or proposed amendment," the Charlottesville City Council exceeded its authority and granted substantial changes to the Special Use Permit (SUP) application of the Applicant, Jefferson Medical Building Limited Partnership, without proper process; Charlottesville City Council therefore did not fulfill its duty to ensure that governmental actions are decided in a manner consistent with applicable codes and ordinances.

Additionally, Paragraph C states that, "Before approving and adopting any zoning ordinance or amendment thereof, the governing body shall hold at least one public

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hearing thereon, pursuant to public notice as required by § 15.2-2204." However the rules of the public hearing were changed during the hearing of the City Council hearing of July 5th 2017 without any advance notice to the public. The time to speak was reduced from the standard three minutes to two minutes. This limited our right to petition our government for redress of our grievances. The citizens were wrongly prejudiced by this action of the City Council, and thus the required public hearing was invalid.

The specific facts are these:

- On October 11, 2016 the Planning Commission of the City of Charlottesville denied approval of the SUP for the building project at 1011 East Jefferson Street to quadruple the zoned density resulting in a four-story building.
- Subsequently, on July 5, 2017, the Applicant submitted the SUP for a vote by City Council after substantial changes to the project had been made. These changes significantly shifted the massing of the building resulting in a five-story height over the strong objections of the Little High Neighborhood Association and leaders of other neighborhood associations, which have objected to the unreasonable scale of the project. During the council meeting, the Applicant confirmed that these changes were substantial; and the applicant stated in its 1011 SUP packet that a change in elevation of the building requires an SUP modification. Also, during the council meeting, citizens were also informed that their time to speak had been cut from the standard three minutes to two minutes each.

e The City Council voted on July 5, 2017 to approve the building project.

Wrongful Actions

This process was a clear violation of the SUP approval process. The project should have gone back to Planning Commission as a Special Use Permit Modification, but instead was submitted directly to the City Council for a vote. And, the citizens should have been granted the standard three-minutes of speech per speaker during the public hearing.

Damages (Prayer For Relief)

We therefore ask this court to review this action, find that the conduct of the City and City Council was contrary to the code and governing ordinances of the Commonwealth of Virginia and the City of Charlottesville, Virginia, and order an adherence to the applicable city ordinances governing such projects by returning the project to the Charlottesville Planning Commission for review.

Further, that Jefferson Medical Building Limited Partnership be enjoined from any further action in this matter until the process is brought into compliance with applicable ordinances and codes.

2

EXH 1

IT Ps

12/14/16

Dear Ashley,

Thank you so much for meeting with us. This letter is to help clarify our interests, which as whole are aimed at ensuring that any new building at 1011 Jefferson will conform to current and future zoning requirements in word and spirit.

We are referencing the current zoning and the proposed SIA form-based code as guidelines to assess the appropriate building massing, density, etc., for 1011 East Jefferson Street.

Zoning for B1:

B-1: The B-1 business district is established to provide for service-type businesses and office uses of a limited size, which are open primarily during daytime hours. The intent of the B-1 regulations is to provide a transitional district between residential areas and other commercial areas of the city. The uses permitted within this district are those which will have only minimal traffic impacts, and only minimal noise, odors, smoke, fumes, fire or explosion hazards, lighting glare, heat or vibration.

SIA across 10th towards downtown is zoned Urban Neighborhood Transect T4:

Buildings in the T4 transect would be two to three and a half stories tall, low-rise townhouses, multiplexes, private frontages (storefronts, stoops, porches), ground-floor retail frontages (secondary office, service retail).

SUP:

We feel that the land is zoned appropriately in terms of density.

Development at 1011 East Jefferson Street

We believe that the community would accept a plan that doubles the B1 by-right density if that plan included other elements that benefit our community. As there is concern that plans/agreements might change if an SUP were granted, we would also look for meaningful mechanisms to ensure

that commitments are both reflected in forthcoming designs and actually implemented (substantial set-aside in escrow).

We would support an SUP for 2X the density provided that the design were to adhere to these parameters:

Massing:

- 3 story max mixed-use building on 10th side (of alley alignment), ground floor street frontage service retail, business/office, planted urban landscape with plazas, benches, courtyard?, etc.
- 2 story max 'detached' type multi-unit residential on 11th side (of alley alignment), stoops, porches, yard type landscape, trees

Traffic:

- No vehicular access on 11th, at least one on 10th.
- Parking for residents only
- Pedestrian oriented design attributes/character throughout, public/civic feel

Impact:

(noise, emission, smells, light, visual, etc.)

- Low impact design and infrastructure - Best practices with measurable standards such as BUGS, LEED, etc.
- Best practices landscape design and plantings.
- Small public pocket park

Use:

- Mixed use as described above and/or as in SIA recommendations

We would be happy to elaborate on any of this and to engage further with you or your team if you feel that your client would be genuinely interested in further conversation or collaborating together on reaching a solution that meets these parameters.

Thank you,

Kate Bennis
President Little High Neighborhood Association

1/12/17

Dear Ashley,