

Filed  
9/25/19

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE**

**KIMBER HAWKEY, et al.,** )  
)  
**Plaintiffs,** )  
)  
v. )  
)  
**CHARLOTTESVILLE CITY** )  
**COUNCIL, et al.,** )  
**Defendants.** )

**Case No. CL 19-456**

**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.

**(1) The public hearing advertisement satisfied the requirements of Va. Code §15.2-2204**

Plaintiffs' Complaint alleges that the Defendants did not advertise public hearings in a newspaper of general circulation before the Charlottesville Planning Commission and the Charlottesville City Council conducted public hearings on a proposed rezoning at a property located at 750 Hinton Avenue, Charlottesville, Virginia. Virginia Code Section 15.2-2204 states,

“The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper... The term ‘two successive weeks’ as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication.”

The Defendants hereby attach and incorporate the official newspaper Affidavit of Publication provided to the City by the *Daily Progress* which documents the advertisement and advertisement dates for the Planning Commission and City Council meetings as **Exhibit A** to this Plea in Bar. The dates established by the *Daily Progress* Affidavit demonstrate that the Planning Commission and City Council meetings were held in accordance with the newspaper advertisement requirements contained in Virginia Code Section 15.2-2204.

2. **Written notice to landowners satisfied the requirements of Va. Code §15.2-2204**

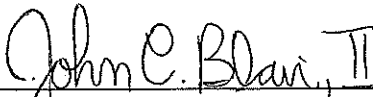
Additionally, Count II of the Plaintiffs' Complaint alleges that "adjacent and across-the-street residents did not receive the required 2 notices by registered or certified mail" pursuant to Virginia Code Section 15.2-2204(B). The Defendants hereby attach and incorporate the official Affidavits of Mailing for the Planning Commission and City Council public hearings regarding the rezoning of 750 Hinton Avenue, Charlottesville, Virginia as **Exhibit B** of this Plea in Bar.

**CONCLUSION**

WHEREFORE, the Defendants, by counsel, move this Court to sustain their Plea in Bar, to dismiss Count I(B) and (C) of the Complaint against them with prejudice and award their costs expended in this action.

Respectfully Submitted,  
CHARLOTTESVILLE CITY COUNCIL,  
NIKUYAH WALKER, WES BELLAMY, HEATHER  
HILL, MIKE SIGNER, AND KATHLEEN GALVIN,

By Counsel:  
Charlottesville City Attorney's Office

A handwritten signature in cursive script that reads "John C. Blair, II". The signature is written in black ink and is positioned above a horizontal line.

John C. Blair, II (VSB #65274)

[blairjc@charlottesville.org](mailto:blairjc@charlottesville.org)

Lisa A. Robertson (VSB #32486)

[robertsonl@charlottesville.org](mailto:robertsonl@charlottesville.org)

P.O. Box 911, 605 East Main Street

Charlottesville, VA 22902

Tel. (434) 970-3131

FAX (434) 970-3022

# The Daily Progress

Advertising Affidavit

Account Number

3373357

P.O. Box 9030  
Charlottesville, Virginia 22906  
(434) 978-7215

Date

June 04, 2019

NEIGHBORHOOD DEVELOPMENT/CITY OF  
CHVILLE  
POST OFFICE BOX 911  
CHARLOTTESVILLE, VA 22902



Date	Category	Description	Ad Size	Total Cost
06/04/2019	Legal Notices	NOTICE OF PUBLIC HEARING Notice is hereby given that th	2 x 86 L	1,506.40

## Publisher of the Daily Progress

This is to certify that the attached NOTICE OF PUBLIC HEARING was published by the Daily Progress in the city of Charlottesville, in the State of Virginia, on the following dates:

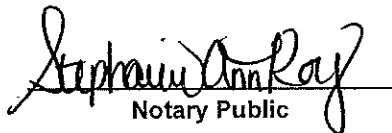
05/28, 06/04/2019

The First insertion being given ... 05/28/2019

Newspaper reference: 0000948795

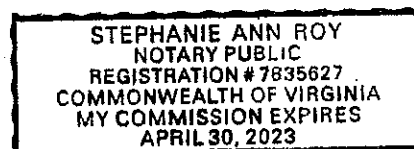
Sworn to and subscribed before me this

9/19/19 in Albemarle County, Va.

  
Notary Public

  
Supervisor

State of Virginia  
My Commission expires



THIS IS NOT A BILL. PLEASE PAY FROM INVOICE. THANK YOU

## NOTICE OF PUBLIC HEARING

Notice is hereby given that the Charlottesville Planning Commission and City Council will hold a Joint Public Hearing on **Tuesday June 11, 2019 beginning at 6:00 p.m. in the City Council Chambers at City Hall, 605 East Main Street, Second Floor, Charlottesville, Virginia.** The purpose of the public hearing is to give affected persons an opportunity to appear and present their views on the following applications.

**1. ZM-19-00001 - (750 Hinton Avenue) (Hinton Avenue United Methodist Church)** - Hinton Avenue United Methodist Church (landowner) has submitted a rezoning petition to change the zoning district classification for a parcel of land located at 750 Hinton Avenue identified on City Tax Map 58 as Parcel 161 ("Subject Property"), having an area of approx. 0.76 acre. The rezoning petition proposes a change in zoning from the existing R-15 (low-density residential; small lot) to NCC (Neighborhood Commercial Corridor Mixed Use) subject to proffered development conditions. The purpose of the rezoning is to allow construction of a multifamily building containing up to 15 units (for a total density of 19.7 DUA). Within the current R-15 zoning district, multifamily dwellings are not permitted. The proffered conditions include: (i) **maximum residential density**: no more than 15 dwelling units shall be permitted on the Subject Property; (ii) **affordable housing**: a minimum of four residential units within multifamily dwelling building(s) on the Subject Property shall be restricted to residents with income at 80 percent or less of area median income for the Charlottesville Metropolitan Area; (iii) **resident safety**: access to all interior common areas serving residential units shall be controlled through the use of entry locks; (iv) **uses**: all non-residential uses other than educational facilities (non-residential) and day care facilities, which are not accessory to a house of worship or to residential uses located on the Subject Property, shall not be permitted on the Subject Property; (v) **access**: Permanent vehicular ingress and egress to the Subject Property shall be restricted to Rialto Street, provided that this restriction on vehicular access shall not take effect until such time as a building permit is issued for construction of any multifamily building; (vi) **height**: The maximum height on the property will be 38 feet; (vii) **streetwall**: Primary street frontage setback shall be six (6) feet minimum, ten (10) feet maximum. The Comprehensive Plan calls for Low Density Residential uses in this area (no greater than 15 units per acre). Information pertaining to this application may be viewed online at <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services> or obtained from the Department of Neighborhood Development Services, 2nd Floor of City Hall, 610 East Main Street. Persons interested in this Rezoning may contact NDS Planner Brian Haluska by e-mail ([haluska@charlottesville.org](mailto:haluska@charlottesville.org)) or by telephone (434-970-3186).

**SP19-00002 - 1201 Druid Avenue** - Landowner 1201 DRUID, LLC has submitted an application seeking a Special Use Permit for approximately (0.38) acres of land identified within City tax records as Tax Map and Parcel (TMP) 61-34 ("Subject Property") with frontage on Druid Avenue. Pursuant to City Code 34-740, the applicant is requesting a residential density of (26) Dwelling Units per Acres for a total of (9) dwelling units. In addition, the applicant is requesting a veterinary clinic, without pens/runs, pursuant to City Code 34-796. The applicant is proposing a mixed use building with (9) (1) and (2) bedroom dwelling units, a (2,524) square foot veterinary clinic, and (1,000) square foot of office space. The City's Comprehensive Land Use Map for this area calls for Mixed Use. Report prepared by Matt Affele, City Planner. Information pertaining to this application may be viewed online at <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services> or obtained from the Department of Neighborhood Development Services, 2nd Floor of City Hall, 610 East Main Street. Persons interested in this Rezoning may contact NDS Planner Matt Affele by e-mail ([affelem@charlottesville.org](mailto:affelem@charlottesville.org)) or by telephone (434-970-3636).

**ZM19-00002 - 209 Maury Avenue** - Landowner Southern Property, LLC has submitted an application seeking a rezoning of approximately (1.6) acres of land identified within City tax records as Tax Map and Parcel (TMP) 17-18, TMP 17-18.1, TMP 17-18.2, TMP 17-184, TMP 17-185, and TMP 17-186 (collectively, "Subject Property"). The Subject Properties have frontage on Maury Avenue and Stadium Road. The application is proposing changing the current zoning of the Subject Properties from R-2U (Two-family University) to R-3 (Multifamily) with no proffered conditions or development plan. The Comprehensive Land Use Map for this area calls for Low Density Residential (15 Dwelling Units per Acres). Information pertaining to this application may be viewed online at <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services> or obtained from the Department of Neighborhood Development Services, 2nd Floor of City Hall, 610 East Main Street. Persons interested in this Rezoning may contact NDS Planner Matt Affele by e-mail ([affelem@charlottesville.org](mailto:affelem@charlottesville.org)) or by telephone (434-970-3636).

Charlottesville City Council and the Charlottesville Planning Commission will jointly conduct a public hearing to receive public comment on the above-referenced zoning applications. The zoning application and related materials are available for inspection at the Charlottesville Dept. of Department of NDS, 610 East Market Street, Charlottesville, 22902. Tel. 434-970-3182.

# The Daily Progress

Advertising Affidavit

Account Number

3373340

P.O. Box 9030  
Charlottesville, Virginia 22906  
(434) 978-7215

Date

June 24, 2019

CITY CLERK FOR COUNCIL/CITY OF CHVILLE  
PO BOX 911  
CHARLOTTESVILLE, VA 22902

Date	Category	Description	Ad Size	Total Cost
07/03/2019	Legal Notices	NOTICE OF PUBLIC HEARING Notice is hereby given that Cf	2 x 67 L	1,195.80

## Publisher of the Daily Progress

This is to certify that the attached NOTICE OF PUBLIC HEARING was published by the Daily Progress in the city of Charlottesville, in the State of Virginia, on the following dates:

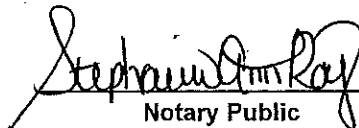
06/17, 06/24/2019

The First insertion being given ... 06/17/2019

Newspaper reference: 0000958677

Sworn to and subscribed before me this

9/19/19 in Albemarle County, Va.

  
Notary Public

  
Supervisor

State of Virginia  
My Commission expires

STEPHANIE ANN ROY  
NOTARY PUBLIC  
REGISTRATION # 7835627  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES  
APRIL 30, 2023

THIS IS NOT A BILL. PLEASE PAY FROM INVOICE. THANK YOU

## NOTICE OF PUBLIC HEARING

Notice is hereby given that Charlottesville City Council will hold a Public Hearing on **Monday July 1, 2019 beginning at 6:30 p.m. in the City Council Chambers at City Hall, 605 East Main Street, Second Floor, Charlottesville, Virginia.** The purpose of the public hearing is to give affected persons an opportunity to appear and present their views on the following applications.

**1. ZM-19-00001 – (750 Hinton Avenue) (Hinton Avenue United Methodist Church)** – Hinton Avenue United Methodist Church (landowner) has submitted a rezoning petition to change the zoning district classification for a parcel of land located at 750 Hinton Avenue identified on City Tax Map 58 as Parcel 161 ("Subject Property"), having an area of approx. 0.76 acre. The rezoning petition proposes a change in zoning from the existing R-1S (low-density residential, small lot) to NCC (Neighborhood Commercial Corridor Mixed Use) subject to proffered development conditions. The purpose of the rezoning is to allow construction of a multifamily building containing up to 15 units (for a total density of 19.7 DUA). Within the current R-1S zoning district, multifamily dwellings are not permitted. The proffered conditions include: **(i) maximum residential density:** no more than 15 dwelling units shall be permitted on the Subject Property; **(ii) affordable housing:** a minimum of four residential units within multifamily dwelling building(s) on the Subject Property shall be restricted to residents with income at 80 percent or less of area median income for the Charlottesville Metropolitan Area; **(iii) resident safety:** access to all interior common areas serving residential units shall be controlled through the use of entry locks; **(iv) uses:** all non-residential uses other than educational facilities (non-residential) and day care facilities, which are not accessory to a house of worship or to residential uses located on the Subject Property, shall not be permitted on the Subject Property; **(v) access:** Permanent vehicular ingress and egress to the Subject Property shall be restricted to Rialto Street, provided that this restriction on vehicular access shall not take effect until such time as a building permit is issued for construction of any multifamily building; **(vi) height:** The maximum height on the property will be 38 feet; **(vii) streetwall:** Primary street frontage setback shall be six (6) feet minimum; ten (10) feet maximum. The Comprehensive Plan calls for Low Density Residential uses in this area (no greater than 15 units per acre). Information pertaining to this application may be viewed online at <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services> or obtained from the Department of Neighborhood Development Services, 2nd Floor of City Hall, 610 East Main Street. Persons interested in this Rezoning may contact NDS Planner Brian Haluska by e-mail ([haluska@charlottesville.org](mailto:haluska@charlottesville.org)) or by telephone (434-970-3186).

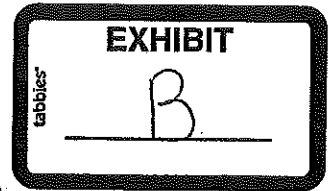
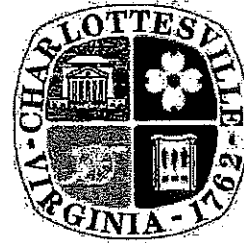
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Charlottesville City Council will conduct a public hearing to receive public comment on the above-referenced zoning applications. The zoning application and related materials are available for inspection at the Charlottesville Dept. of Department of NDS, 610 East Market Street, Charlottesville, 22902. Tel. 434-970-3182.

CITY OF CHARLOTTESVILLE  
"A World Class City"

Department of Neighborhood Development Services

City Hall Post Office Box 911  
Charlottesville, Virginia 22902  
Telephone 434-970-3182  
Fax 434-970-3359  
[www.charlottesville.org](http://www.charlottesville.org)



AFFIDAVIT OF MAILING

In the matter of a Rezoning Petition: Hinton Avenue United Methodist Church has submitted a Rezoning petition for the following property: Tax Map and Parcel (TMP) 58-161 (Subject Property). Pursuant to City Code 34-41, a rezoning application has been submitted requesting rezoning the Subject Property from R-1S Residential to NCC (Neighborhood Commercial Corridor). The applicant is proposing a 15 unit apartment building on the Subject Property, which would not be permitted under the current zoning regulations applicable to the property. The Subject Property is approximately 0.75 acres and has road frontage on Hinton Avenue, Church Street and Rialto Street. The Comprehensive Land Use Map for this area calls for Low Density Residential.

COMMONWEALTH OF VIRGINIA,

City of Charlottesville, to-wit:

This day, Kari L. Spitler, personally appeared before me, a notary public in and for the City of Charlottesville, Virginia, and made oath on May 24, 2019.

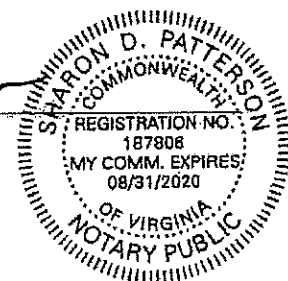
- (A) For Notification of a Rezoning Petition she mailed written notice of the above-referenced letter by U.S. mail, first-class, postage pre-paid, to the last known address(es) of: the owner(s), or their agent(s), of **each parcel of land involved** ("Affected Property"); submitted by Brian Haluska, City Planner.
- (B) She also mailed 121 written notices to the last known addresses of the owner(s), or their agent(s), of parcels of the Affected Property on May 24, 2019, and
- (C) She is the individual assigned by the Planning Commission of the City of Charlottesville to mail such notices, and to make this affidavit.

Kari Sp  
Kari Spitler

Taken, subscribed and sworn to before me this 24 day of May 2019.

My commission expires: August 31, 2020

Sharon D. Patterson  
Notary Public

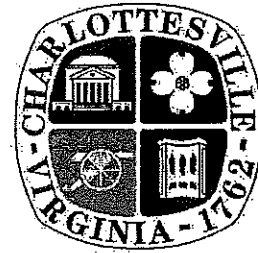




CITY OF CHARLOTTESVILLE

Department of Neighborhood Development Services

City Hall Post Office Box 911  
Charlottesville, Virginia 22902  
Telephone 434-970-3182  
Fax 434-970-3359  
[www.charlottesville.org](http://www.charlottesville.org)



May 21, 2019

Dear Adjacent Property Owner(s)/Applicant(s)/Interested Persons:

According to the tax map records maintained by the City of Charlottesville, you are the owner of record of a piece of property located within or adjacent to the area that may be affected by an action being considered by the Charlottesville Planning Commission and the Charlottesville City Council.

Hinton United Methodist Church (750 Hinton Avenue) – Hinton Avenue United Methodist Church has submitted a Rezoning petition for the following property: Tax Map and Parcel (TMP) 58-161 (Subject Property). Pursuant to City Code 34-41, a rezoning application has been submitted requesting rezoning the Subject Property from R-1S Residential to NCC (Neighborhood Commercial Corridor). The applicant is proposing a 15 unit apartment building on the Subject Property, which would not be permitted under the current zoning regulations applicable to the property. The Subject Property is approximately 0.75 acres and has road frontage on Hinton Avenue, Church Street and Rialto Street. The Comprehensive Land Use Map for this area calls for Low Density Residential.

City Staff contact: Brian Haluska 434-970-3186 or [haluska@charlottesville.org](mailto:haluska@charlottesville.org)  
Applicant contact: Sue Woodson 434-293-7049 or [church@hintonavenueumc.org](mailto:church@hintonavenueumc.org)

**A Public Hearing at Planning Commission for this item is tentatively scheduled for June 11, 2019.**

This timeline is **subject to change** at any time and we encourage you visit our website at <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services/development-ordinances/city-planning-commission/agendass> to review the Planning Commission meeting agenda. Once a public hearing is scheduled, you will receive an additional notification by mail with further details.

Any person may appear at the public hearing to express their views in favor of or against this request. Written and/or verbal comments may be provided to city staff in advance of the meeting. The Planning Commission will take action in the form of a recommendation to City Council. City Council generally takes final action at their regularly scheduled meeting in the month following the Joint Public Hearing.

We are here to assist residents in understanding applications and are available to meet with you to review application materials. Information pertaining to the above may be obtained from or viewed at the Department of Neighborhood Development Services, 2<sup>nd</sup> Floor of City Hall, 605 East Main Street, Charlottesville, VA 22902, phone number (434) 970-3182.

Sincerely,

Brian Haluska, AICP  
Principal Planner

CITY OF CHARLOTTESVILLE

Office of the Clerk of City Council  
P.O. Box 911 • Charlottesville, VA 22902  
Telephone (434) 970-3113



**AFFIDAVIT OF MAILING**

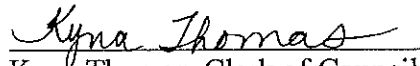
In the matter of a Rezoning Petition: **Hinton Avenue United Methodist Church** has submitted a Rezoning petition for the following property: Tax map and Parcel (TMP) 58-161 (Subject Property). Pursuant to City Code 34-41, a rezoning application has been submitted requesting rezoning the Subject Property from R-1S Residential to NCC (Neighborhood Commercial Corridor). The applicant is proposing a 15 unit apartment building on the Subject Property, which would not be permitted under the current zoning regulations applicable to the property. The Subject Property is approximately 0.75 acres and has road frontage on Hinton Avenue, Church Street and Rialto Street. The Comprehensive Land Use Map for this area calls for Low Density Residential.

**COMMONWEALTH OF VIRGINIA**  
**City of Charlottesville, to-wit:**

This day, Kyna Thomas, personally appeared before me, a notary public in and for the City and Commonwealth aforesaid, and made oath on September 20, 2019, that:

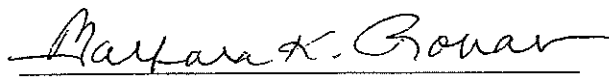
(A) For Notification of the above-described Rezoning Petition, she mailed written notice, by letter dated June 12, 2019, a copy of which is attached hereto, of a public hearing on the Rezoning Petition, by U.S. mail, first-class, postage pre-paid, to the last known address(es) of the owner(s), or their agent(s), of each parcel of land affected ("Affected Property") by the rezoning, for a total of 121 notices mailed on June 13, 2019; and

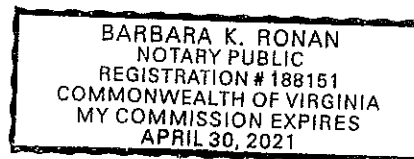
(B) She is the individual assigned by the City Council of the City of Charlottesville to mail such notices, and to make this Affidavit.

  
Kyna Thomas, Clerk of Council

Subscribed and sworn before me on this 20<sup>th</sup> day of September, 2019.

My commission expires: April 30, 2021

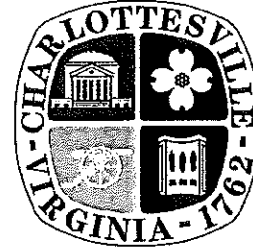
  
Notary Public  
Registration #: 188151



CITY OF CHARLOTTESVILLE  
"A World Class City"

Department of Neighborhood Development Services

City Hall Post Office Box 911  
Charlottesville, Virginia 22902  
Telephone 434-970-3182  
Fax 434-970-3359  
[www.charlottesville.org](http://www.charlottesville.org)



**NOTICE OF PUBLIC HEARING**

**Rezoning**

Application Number:

ZM19-00001

«Owner»  
«Address\_2»  
«City\_State» «ZIP»

Property Address: «Property\_Address»

DATE of Public Hearing:

July 1, 2019

FROM: *City Council*

**YOU ARE HEREBY NOTIFIED**, on behalf of the Charlottesville City Council of a **PUBLIC HEARING** on the date referenced above. **TIME:** the public hearing agenda will begin at **6:30 p.m.** **LOCATION:** City Hall, Second Floor City Council Chambers, 605 East Main Street, Charlottesville, Virginia. **PURPOSE:** The purpose of the public hearing is to provide affected persons an opportunity to appear and present their views with respect to the zoning amendment proposed by the above-referenced Application. Upon request, reasonable accommodations will be provided for individuals with disabilities.

**REVIEW OF APPLICATION MATERIALS:** Copies of the proposed plans, ordinances or amendments that are the subject of this Application may be examined at the Office of Neighborhood Development Services, 610 East Market Street, Charlottesville, Virginia, 22902. Office telephone: 434.970.3182.

**STAFF CONTACT (Name, title, e-mail and telephone):**

Brian Haluska, Principle Planner [haluska@charlottesville.org](mailto:haluska@charlottesville.org) 434-970-3186

**GENERAL USAGE AND DENSITY RANGE OF THE PROPOSED AMENDMENT:**

General usage proposed is construction of a multifamily building containing up to 15 units (for a total density of 19.7 DUA)

**GENERAL USAGE AND DENSITY RANGE, IF ANY, SET FORTH IN THE COMPREHENSIVE PLAN:**

General usage contemplated by the Comprehensive Plan calls for Low Density Residential uses in this area (no greater than 15 units per acre)

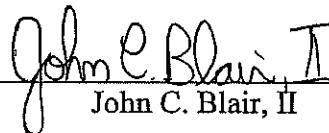
## DESCRIPTIVE SUMMARY OF PROPOSED ACTION:

- 1. ZM-19-00001 – (750 Hinton Avenue) (Hinton Avenue United Methodist Church)** – Hinton Avenue United Methodist Church (landowner) has submitted a rezoning petition to change the zoning district classification for a parcel of land located at 750 Hinton Avenue identified on City Tax Map 58 as Parcel 161 (“Subject Property”), having an area of approx. 0.76 acre. The rezoning petition proposes a change in zoning from the existing R-1S (low-density residential, small lot) to NCC (Neighborhood Commercial Corridor Mixed Use) subject to proffered development conditions. The purpose of the rezoning is to allow construction of a multifamily building containing up to 15 units (for a total density of 19.7 DUA). Within the current R-1S zoning district, multifamily dwellings are not permitted. The proffered conditions include: **(i) maximum residential density:** no more than 15 dwelling units shall be permitted on the Subject Property; **(ii) affordable housing:** a minimum of four residential units within multifamily dwelling building(s) on the Subject Property shall be restricted to residents with income at 80 percent or less of area median income for the Charlottesville Metropolitan Area; **(iii) resident safety:** access to all interior common areas serving residential units shall be controlled through the use of entry locks; **(iv) uses:** all non-residential uses other than educational facilities (non-residential) and day care facilities, which are not accessory to a house of worship or to residential uses located on the Subject Property, shall not be permitted on the Subject Property; **(v) access:** Permanent vehicular ingress and egress to the Subject Property shall be restricted to Rialto Street, provided that this restriction on vehicular access shall not take effect until such time as a building permit is issued for construction of any multifamily building; **(vi) height:** The maximum height on the property will be 38 feet; **(vii) streetwall:** Primary street frontage setback shall be six (6) feet minimum, ten (10) feet maximum. The Comprehensive Plan calls for Low Density Residential uses in this area (no greater than 15 units per acre). Information pertaining to this application may be viewed online at <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services> or obtained from the Department of Neighborhood Development Services, 2nd Floor of City Hall, 610 East Main Street. Persons interested in this Rezoning may contact NDS Planner Brian Haluska by e-mail ([haluska@charlottesville.org](mailto:haluska@charlottesville.org)) or by telephone (434-970-3186).

### CERTIFICATE OF SERVICE

I hereby certify that, on Sept. 25, 2019, a paper copy of the foregoing document was mailed by U.S. mail, first class, postage pre-paid, to the Plaintiffs whose addresses are known to Defendants' counsel, at the addresses given below:

Name of Owner	Plaintiffs' Addresses
Kimber Hawkey & Charles Gendrot	709 Hinton Ave, Charlottesville, VA
Kimmie Burke-Harlow and William Harlow	628 Hinton Ave, Charlottesville, VA
Raman Pfaff	733 Hinton Ave, Charlottesville, VA
Ivana Kadjia	712 Graves St, Charlottesville, VA
Deren Bader & Paul Lyons	5 Gildersleeve Wood, Charlottesville, VA
Tomas Rahal	Address Unknown
Mark and Tina Kavut	400 Altamont St. Charlottesville, VA
Pam Bracey	724 Northwood Ave, Charlottesville, VA
Carol Starling	Address Unknown
Clara Mincer	953 Locust Ave, Charlottesville, VA
Elaine Oakey	1926 Ivy Road, Charlottesville, VA
Eugene Schettini/Christine Paazzolo	214 Douglas Ave, Charlottesville, VA
Janet Hatcher	228 Douglas Ave, Charlottesville, VA
Amy Gardner	753 Belmont Ave, Charlottesville, VA
Trudy Neofitis	Address Unknown
Monty and Margaret Parsons	702 Hinton Ave, Charlottesville, VA
John Miller and Deb Jackson	210 Douglas Ave, Charlottesville, VA
Francis and Evelyn Biasioli	813 Belmont Ave, Charlottesville, VA
Stuart and Kimberly Taylor	710 Hinton Ave, Charlottesville, VA
Nancy Jane and John Hampson	520 Avon St, Charlottesville, VA
Rosemary Evans	1128 St. Clair Ave, Charlottesville, VA
Alma Mills	1020 Tufton Ave, Charlottesville, VA

  
John C. Blair, II

Filed  
9/25/19

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE**

**KIMBER HAWKEY, et al.,** )  
, )  
                  **Plaintiffs,** )  
                                  ) )  
**v.** )  
                                  ) )  
**CHARLOTTESVILLE CITY** )  
**COUNCIL, et al.,** )  
                  **Defendants.** )

**Case No. CL 19-456**

**DEMURRER**

**COME NOW**, Defendant City of Charlottesville Council and Defendants City Councilors Walker, Hill, Galvin, Signer, and Bellamy (collectively, “Defendants”), by counsel, and pursuant to Virginia Code Section 8.01-273 and Rule 3:8 of the Rules of the Supreme Court of Virginia, and in Response to the Plaintiff’s Complaint, make their Demurrer to the Complaint as follows:

**A. Standard of Review**

A demurrer tests if a pleading states a cause of action or whether the pleading states sufficient facts upon which the relief demanded can be granted. A demurrer may not simply state conclusions of law. A demurrer tests “...whether the amended motion for judgment alleged sufficient facts to constitute a foundation in law for the judgment sought, and not merely conclusions of law.” Hubbard v. Dresser, Inc., 271 Va. 117, 122 (2006). *See also* Kitchen v. City of Newport News, 275 Va. 378 (2008).

“To survive a challenge by demurrer,” however, factual allegations “must be made with ‘sufficient definiteness to enable the court to find the existence of a legal basis for its judgment.’” Squire v. Virginia Hous. Dev. Auth., 287 Va. 507, 514 (2014).

**B. Arguments in support of Defendants’ Demurrer(s)**

**(1) Plaintiffs lack standing to bring this suit**

(a) The Plaintiffs' Complaint requests this Court to declare the Council's August 5, 2019 rezoning of property located at 750 Hinton Avenue, Charlottesville, Virginia (hereinafter "750 Hinton") arbitrary and capricious pursuant to Virginia Code Section 15.2-2285.

(b) The Virginia Supreme Court recently addressed the standing requirements for an action pursuant to Virginia Code Section 15.2-2285 in which the plaintiffs do not possess an ownership interest in the property subject to the rezoning. In Friends of the Rappahannock v. Caroline County Board of Supervisors, the Court detailed a two part test for a complainant to establish standing to bring an action pursuant to Virginia Code Section 15.2-2285.

(c) First, the complainant must own or occupy "real property within or in close proximity to the property that is the subject of the land use determination, thus establishing that it has a direct, immediate, pecuniary, and substantial interest in the decision." Friends of the Rappahannock v. Caroline Cnty. Bd. of Sup'rs, 286 Va. 38, 48 (2013) (citing Virginia Beach Beautification Comm'n v. Bd. of Zoning Appeals, 231 Va. 415, 420 (1986)).

(d) Second, the complainant must "allege facts demonstrating a particularized harm to 'some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.'" Friends of the Rappahannock v. Caroline Cnty. Bd. of Sup'rs, 286 Va. 38, 48, 49 (2013) (citing Virginia Marine Res. Comm'n v. Clark, 281 Va. 679, 687 (2011)). In order to establish standing, it is not sufficient to plead that a change in the zoning classification or a general harm that does not apply to the Plaintiffs' specific properties.

(e) The Plaintiffs' Complaint does not provide the definiteness required by the Friends of the Rappahannock opinion to establish standing. First, the Plaintiffs fail to specifically allege

where each plaintiff lives and whether each plaintiff lives in close proximity to 750 Hinton. Additionally, there is not one allegation that provides a specific particularized harm to a property owned by a Plaintiff that is not shared by the general public. The Plaintiffs do not have an ownership interest in 750 Hinton, therefore, pursuant to Friends of the Rappahannock, the Plaintiffs have not plead sufficient facts to establish standing to bring their claims.

**(2) Plaintiffs have failed to sign their complaint.**

The Plaintiffs have failed to sign the Complaint. Pursuant to Virginia Code Section 8.01-271.1, the Court should dismiss the Complaint for lack of the requisite signatures.

**(3) The named city councilors have statutory immunity under Va. Code §15.2-2285.**

(a) The appropriate defendant to an action pursuant to Virginia Code Section 15.2-2285 is the governing body of a locality, not its individual members. The Supreme Court has stated:

“In drafting Code § 15.2-2285(F), the General Assembly employed plain language in providing a right of appeal from various zoning decisions of a local ‘governing body.’ The statute fixes a 30-day period from the date of the decision by the local ‘governing body’ for filing an action in the circuit court contesting such decision. The complete absence of any language in Code § 15.2-2285(F) referring to a ‘locality’ indicates a legislative intent that only the ‘governing body,’ the entity that rendered the contested decision, be a required party defendant in an action challenging that decision.”

Miller v. Highland Cnty., 274 Va. 355, 365-366 (2007). See Friends of Clark Mountain Foundation, Inc. v. Bd. of Sup’rs, 242 Va. 16, 21 (1991).

The Plaintiffs have named the governing body of the City of Charlottesville, the Charlottesville City Council, as the proper defendant in this action. The Plaintiffs have initiated an action pursuant to Virginia Code Section 15.2-2285 alleging that the 750 Hinton Avenue rezoning is arbitrary and capricious. The Plaintiffs do not seek damages in the instant case, rather their request for relief is limited to requesting this court to void the City’s August 5, 2019



750 Hinton Avenue rezoning. The Plaintiffs do not allege any specific acts by any individual councilor which constitutes a cause of action upon which relief may be granted.

(b) Virginia Code Section 15.2-1405 provides that Charlottesville City Council members are immune from suit for their discretionary actions except in cases of the unauthorized appropriation or misappropriation of funds or in cases of intentional or willful misconduct or gross negligence. The Complaint does not contain allegations of unauthorized appropriation or misappropriation of funds. Absent a request for damages and sufficient allegations that individual councilors acted with gross negligence or willful misconduct, Virginia Code Section 15.2-1405 requires this Court to remove the individual Councilors as Defendants from this action.

**(4) Count I fails because public notice and procedural requirements were satisfied.**

(a) The Plaintiffs' Complaint Section I.A. states that the City failed to adhere to the signage posting requirements contained in Charlottesville City Code Section 34-44. However, Charlottesville City Code Section 34-44(b)(3) states, "The requirement of posting signs in connection with a petition is a measure prescribed by council as an extra level of public notice; under no circumstances shall this requirement be deemed or construed as a prerequisite to the authority of the planning commission or city council to review or act upon any proposed amendment." No provision of the Code of Virginia establishes a requirement for signage to advertise a zoning map amendment. The Plaintiffs have failed to allege sufficient facts to establish a cognizable claim pursuant to Virginia law.

(b) Section I.C of the Plaintiffs' Complaint alleges that the City's cancellation of a May 14, 2019 Joint Planning Commission and City Council meeting as well as amendments to the City's staff report for the May 14, 2019 meeting constitutes a claim that the rezoning is arbitrary

and capricious. No provision of the Code of Virginia establishes a timeframe to cancel a public hearing for a land use matter, and Virginia law does not recognize a cognizable claim for the cancellation of a public hearing upon which relief may be granted.

(c) Section I.D of the Plaintiffs' Complaint alleges that the Planning Commission "failed to respect its own bylaws." "Ample authority exists for the principle that '[m]ere failure to conform to parliamentary usage will not invalidate [an] action when the requisite number of members have agreed to the particular measure.'" County of Prince William v. Rau, 239 Va. 616, 620 (1990) (Citing 4 E. McQuillin, *The Law of Municipal Corporations* § 13.42a ((3d ed. 1985 & Supp. 1989)); see also 1 J. Sutherland, *Statutes and Statutory Construction* § 7.04 ((4th ed. 1985 & Supp. 1989))). Virginia law does not recognize a cognizable claim for a Planning Commission's failure to adhere to its own bylaws.

**(5) Count II fails because written notice requirements were satisfied.**

(a) Count II does not allege facts sufficient to establish a cognizable claim. In order to establish a cognizable claim for failure to comply with Virginia Code Section 15.2-2204, the Plaintiffs must allege that a specific land owner or occupant lives within the geographic boundaries established by that code section and that the landowner did not receive the required notice. The Complaint contains a generalized statement that adjacent and across-the-street residents did not receive written notice of certain amendments.

(b) Additionally, the Complaint must allege that the individual resident deprived of written notification did not actively participate in the public hearing conducted for the 750 Hinton rezoning. Virginia Code Section 15.2-2204 states that participation in proceedings related to a rezoning waives the right of the party to challenge the validity of the proceeding due to failure of the party to receive written notice prescribed by the code section. The Complaint

fails to satisfy the pleading requirements established by Squire, supra, 287 Va. 507 at 514.

Count II's conclusory statements of law do not establish the legal foundation upon which a cause of action for relief can be established; a demurrer does not admit the correctness of a pleader's conclusions of law. Bell v. Saunders, 278 Va. 49, 53, 677 S.E.2d 39 (2009).

**(6) Count III fails because Plaintiffs have not met their burden to overcome the presumption of reasonableness of City Council's decision.**

A City Council's action on a rezoning petition is a "legislative action" which is "presumed reasonable." "Legislative action is reasonable if the matter in issue is fairly debatable. An issue is fairly debatable if, when measured by quantitative and qualitative tests, the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions." City Council v. Wendy's of W.Va., 252 Va. 12, 14-15 (1996). When a zoning decision is fairly debatable, "Under such circumstances, it is not the property owner, or the courts, but the legislative body which has the prerogative to choose the applicable classification." Board of Sup'rs v. Jackson, 221 Va. 328, 335 (1980).

*(a) Allegations of changes to the lot*

Count III of the Complaint cites Virginia Code Section 15.2-2285(C) and states that the City "exceeded its authority because they allowed for substantial changes to the lot." Virginia Code Section 15.2-2285 (C) does not address lot size or changes to a lot. Rather, Virginia Code Section 15.2-2285(C) discusses the public notice requirements for a zoning map amendment. The plaintiffs' citation of Virginia Code Section 15.2-2285(C) is inapplicable to the City's reasonableness in its rezoning of 750 Hinton and therefore fails to allege sufficient facts to establish a cognizable claim pursuant to Virginia law upon which relief may be granted.

Count III(A) simply states that the City's rezoning of 750 Hinton is a substantial change in density and in land use. This is the allegation of a truism rather than an allegation of an arbitrary and capricious rezoning. This allegation does not allege sufficient facts to state a claim upon which relief may be granted.

(b) Allegations of inconsistency with the Comprehensive Plan

Count III(B) states that the City's rezoning of 750 Hinton Avenue is arbitrary and capricious because it is inconsistent with the City's Comprehensive Plan (including the Comprehensive Plan's land use plan. A Comprehensive Plan is a guideline for developing a zoning ordinance and does not carry the authority of a zoning ordinance. Board of Sup'rs v. Snell Construction Corp., 214 Va. 655, 660 (1974). The Comprehensive Plan is a set of "guidelines and not requirements" which a legislative body is free to apply or to follow another reasonable approach in arriving at its legislative decision on a rezoning application. Board of Sup'rs v. Lerner, 221 Va. 30, 37 (1980). Clearly, an allegation that a legislative body failed to adhere to its Comprehensive Plan is not sufficient to establish a claim upon which relief may be granted.

(c) Plaintiffs' contradictory averment(s)

Count III(C) contains a contradictory averment that is fatal to the Plaintiffs' case. It states that 750 Hinton is "larger than any R1/R1S lot in the North Belmont neighborhood." Charlottesville City Code Section 34-350 states that the R1(S) zoning district should consist of low-density residential areas characterized by small-lot development.

As the Plaintiffs' note, the City rezoned 750 Hinton from R1(S) to Neighborhood Commercial Corridor (NCC). In effect, the City rezoned a lot, which the Plaintiffs' state is larger than any other lot in a zoning district designed for small-lot development to the NCC

zoning district. Charlottesville City Code Section 34-541 states the following about the NCC's intent, "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 Plaintiffs' allegations of the City's rezoning of a parcel that is "larger than" any lot in a zoning district designed for small residential lots to a zoning district for small town center type commercial areas designed for development is the definition of reasonableness. The Plaintiffs do not allege sufficient facts to overcome the presumption of reasonableness applied to the City's rezoning of 750 Hinton. Therefore, the Plaintiffs' Count III should be dismissed for failing to allege sufficient facts to establish a claim for which this Court may grant relief.

**(7) Count IV fails because City Councilors' comments are insufficient to overcome the presumption of reasonableness of the City Council's legislative decision.**

Count IV fails to allege a specific cause of action recognizable pursuant to Virginia law. It reiterates Count III's allegation that the 750 Hinton rezoning is arbitrary and capricious while listing three alleged quotes from City officials. Virginia does not recognize a cause of action for the comments of individual Councilors or government officials. Therefore, the Plaintiffs' Count IV should be dismissed for failing to allege sufficient facts to establish a cognizable claim pursuant to Virginia law.

**(8) Count V fails because the allegations therein stated fail to state grounds that overcome the presumption of reasonableness of City Council's legislative decision.**

(a) Count V provides a history of proffers in the Hinton Avenue area and the Plaintiffs' allegations that proffers related to properties other than 750 Hinton Avenue have not been enforced. Count V then questions the financing of the 750 Hinton Avenue rezoning including a

discussion of federal programs such as the Low Income Housing Tax Credit program. However, Count V fails to allege sufficient facts upon which relief may be granted.

(b) The factors which may be considered in a rezoning are found in Virginia Code Sections 15.2-2283 and 15.2-2284. Both statutes apply factors related to the use of the land in question. However, neither statute mentions the potential financing of a project or the enforcement of proffers on properties located near a proposed rezoning.

(c) The Plaintiffs' Count V asserts that the proposed financing of the 750 Hinton Avenue rezoning as well as the City's alleged failure to enforce proffers on nearby properties constitute factors in which "a rezoning to NCC appears even more capricious and arbitrary." Neither of these factors may be considered by the Court to determine whether the City's rezoning of 750 Hinton is arbitrary or capricious. The allegations in Count V do not provide sufficient factual background to establish a cognizable claim recognized by Virginia law.

**(9) Count VI fails because the absence of one commissioner does not render the commission's action invalid.**

(a) In Count VI(A), the Plaintiffs assert that Planning Commissioner Lisa Green's absence "meant there was a lack of leadership to ask important questions and a failure to get answers." However, this assertion fails to allege sufficient facts upon which relief may be granted. Virginia does not recognize a cognizable legal claim based upon the absence of an individual member of a board or commission. In fact, Virginia Code Section 15.2-2215 specifically states, "A majority of the members shall constitute a quorum and no action of the local planning commission shall be valid unless authorized by a majority vote of those present and voting." So long as a quorum is present, the Planning Commission's vote to recommend the 750 Hinton rezoning is valid. The Plaintiffs have not alleged the absence of a quorum when the

Planning Commission voted, therefore they have failed to allege sufficient facts upon which relief may be granted.

(b) In Count VI(B), the Plaintiffs allege the Planning Commissioners Heaton and Stolzenberg had “considerable personal bias” and should have been removed from the Commission’s vote on the 750 Hinton rezoning. However, the Plaintiffs fail to allege that Commissioners Heaton and Stolzenberg violated the Virginia Conflict of Interests Act (Virginia Code Section 2.2-3100, et seq.). The Virginia Conflict of Interests Act was enacted, “for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests.” The Virginia Conflict of Interests Act determines if a Planning Commissioner is required to recuse themselves from a vote.

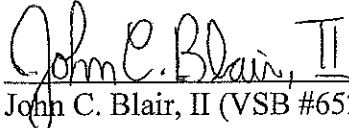
The Plaintiffs failure to allege a violation of the Virginia Conflict of Interests Act is a failure to allege sufficient facts to establish a claim upon which relief may be granted.

### **CONCLUSION**

Wherefore, for the reasons set forth within this Demurrer, the Defendants, by counsel, pray the Court to dismiss the Complaint with prejudice and award Defendants their costs expended in this action.

Respectfully Submitted,  
CHARLOTTESVILLE CITY COUNCIL,  
NIKUYAH WALKER, WES BELLAMY, HEATHER  
HILL, MIKE SIGNER, AND KATHLEEN GALVIN,

By Counsel:  
Charlottesville City Attorney's Office

Handwritten signature of John C. Blair, II in cursive script, positioned above a horizontal line.

John C. Blair, II (VSB #65274)

[blairjc@charlottesville.org](mailto:blairjc@charlottesville.org)

Lisa A. Robertson (VSB #32486)

[robertsonl@charlottesville.org](mailto:robertsonl@charlottesville.org)

P.O. Box 911, 605 East Main Street

Charlottesville, VA 22902

Tel. (434) 970-3131

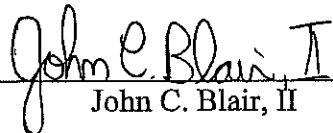
FAX (434) 970-3022



### CERTIFICATE OF SERVICE

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