

CL22-494

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

LORNA MARTENS,
ANNE BENHAM,
MEGAN BUSCHI,
PAUL BUSCHI,
MARILYN POLING,
ANGELA ANDREWS,
JAMES H. WRIGHT,
NELSON BICKERS,
KENNETH HILL
WILLIAM E. SCHAAF
ELLEN CONTINI-MORAVA,
JACK MORAVA,
BONNIE REILLY,
and
KEVIN REILLY

Plaintiffs,

v.

CHARLOTTESVILLE CITY COUNCIL,

Serve: Lisa Robertson, Esq.

City Attorney
605 E. Main Street
Charlottesville, VA

And

CITY OF CHARLOTTESVILLE,

Serve: Lisa Robertson, Esq.

City Attorney
605 E. Main Street
Charlottesville, VA

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs, *pro se* and proceeding pursuant to Virginia Code § 8.01-184 (Power to issue declaratory judgments), et. seq., bring this action seeking a declaration that the approval of the Special Use Permit application for 2005 Jefferson Park Avenue/2007 Jefferson Park Avenue/104 Observatory Ave. (hereinafter also referred to as "the 2005 JPA development") by Charlottesville City Council on September 19, 2022 (see Appendix A), is void *ab initio* due to the failure to comply with the applicable statutory requirements for the approval of Special Use Permits.

10/19/22 @ 12:43p
FILED
(Date & Time)

City of Charlottesville
Circuit Court Clerk's Office
Liezelle A. Dugger, Clerk
By J. Williams
Deputy Clerk

Specifically, the City of Charlottesville (the "City") and City Council:

Failed to comply with [Virginia Code § 15.2-2283 \(Purpose of zoning ordinances\)](#): "Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, impounding structure failure, crime and other dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection,...; (vi) to protect against one or more of the following: ... obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers."

Failed to comply with the [Virginia Code requirement for Special Use Permits § 15.2-2286](#) (Permitted provisions in zoning ordinances; amendments), that "...Where provided by ordinance, the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that:.... (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification."

Failed to comply with the [City Code Standards for Special Use Permits](#) (Section 34-157, item 1), which specify that City Council must consider "(1) whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood", and (4) "whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general; and if so, whether there are any reasonable conditions of approval that would satisfactorily mitigate such impacts. Potential adverse impacts to be considered include, but are not necessarily limited to, the following:

- a. Traffic or parking congestion;
- b. Noise, lights, dust, odor, fumes, vibration, which adversely affect the natural environment;...
- j. Massing and scale of project"

THE PARTIES

1. Lorna Martens owns and resides in the two-story house at 128 Observatory Avenue, Charlottesville, VA. She is a faculty member at the University of Virginia whose department and office are located on Central Grounds and whose classes are scheduled on Central Grounds. She bought her house upon accepting her faculty position at the University of Virginia in 1988 in order to live on a quiet, safe street close to work. Her daughter grew up here. Currently disabled, Martens relies on her car to get to work and elsewhere. Since 1988 she has extensively improved and renovated her property, for example by adding a bathroom, gutting and remodeling the

kitchen, renovating another bathroom, installing A/C and a heat pump, contributing to the cost of building a sidewalk in front of her house, and protecting her large tulip poplar with lightning rods and cabling.

2. Anne Benham purchased her one-story house at 116 Observatory Ave, Charlottesville, VA, where she had previously been renting, in 1995. By the time the house came up for sale, she was working at Alderman Library, and glad to buy a home so close to her place of work. She also liked the relative quiet and privacy of living on a dead-end street.

3. Megan Buschi and Paul Buschi live at 126 Observatory Avenue, Charlottesville, VA. They have owned this property, a two-story house, for 15 years. Megan Buschi works for UVA and walks to work, and Paul Buschi works for Blue Wheel Bicycle, of which they are part owners, and rides his bicycle to work. They have two elementary age children who play in the yard and down the street. They were drawn to the area because of the great reputation of the City school district, recreation areas, and the fact that Observatory Avenue has a higher percentage of owner occupiers than any other street in the JPA neighborhood, many of whom have lived there for over 25 years. It has also been a lifetime goal to live and work in an area with multimodal access to bus systems and safe bike lanes.

4. Marilyn Poling lives at 123 Observatory Avenue, Charlottesville, VA. She bought this one-story house in 1987, when it was affordable. It is on the city and university bus lines, and she was able to walk or take the bus to work when she worked day shift. Now that she is retired, she can walk to church and to local small businesses and a restaurant. The area is walkable, so she can easily walk for health/exercise. It is where she wants to “age in place.”

5. Angela Andrews owns and resides at 127 Observatory Avenue, Charlottesville, VA. She has lived in her two-story house there since 1989. The house dates back to the original Clarke estate. It has been a perfect residence for her. Her son was raised there, and before retirement, she could walk to work at the Virginia Transportation Research Council. There is a sense of community and there has been a long-standing *entente* with several neighbors, and also friendliness with a succession of UVA students and UVA personnel.

6. James H. Wright, President of the Jefferson Scholars Foundation, owns the one-story house at 119 Observatory Avenue, Charlottesville, VA. He bought it initially as an investment property with the expectation that it would be his retirement residence. The proposed development will significantly and negatively affect his decision.

7. Nelson Bickers owns the one-story house with a two-story addition at the rear at 114 Observatory Avenue, Charlottesville, VA, and it has been a part of his family for over 50 years. The house was built in 1927 and is one of the oldest in the neighborhood. After the family outgrew the house they decided to keep it as rental property. In 2004 the interior of the house was renovated and the addition was added to the back. The goal was to provide the renters, primarily students, with a top quality living experience at a reasonable price. This has been done by each bedroom having its own private bath and each unit having a washer and dryer with an abundance of parking. The property has been maintained to appear as just a private residence and hopefully not negatively impact the value of other property in the neighborhood.

8. Kenneth Hill is the owner of a two-story 8-bedroom duplex directly across from the 2005 development on 111 Washington Ave, Charlottesville, VA, which currently houses 9 UVA students. He lived in Charlottesville 2004-7 for his work but relocated to the DC area as a Foreign Service Officer with the U.S. Dept. of State. His property, a 1930 masonry home, was purchased in June 2021. As the property had a lot of deferred maintenance over the years, he invested heavily to upgrade it (new roof, gutters, flooring, appliances, masonry, electrical, plumbing, carpentry, etc). He makes frequent trips there to coordinate with contractors, work in the yard and exterior of the building. The 2005 JPA development would bring massive change to a tranquil neighborhood, tenants and his investment.

9. William E. and Rosemarie M. Schaaf own the two-story house at 113 Washington Ave, Charlottesville, VA, that he purchased for his son when he was attending school at UVA. He has kept the property as a good investment and has maintained the interior and exterior. This property will receive a significant negative impact from the 2005 JPA development as the exit ramp from the underground parking appears to align with his tenants' driveway. In his experience, each tenant on this street usually has a car, so parking and traffic has always been a concern in this area.

10. Ellen Contini-Morava and Jack Morava own and reside at 225 Montebello Circle, Charlottesville, VA. They purchased this property in 1988, both because it is within walking distance to U.Va, where Ellen served as a professor until she retired in 2019, and because the street is quiet, shady, and secluded despite being one block away from Jefferson Park Avenue. The house is a Sears-Roebuck prefabricated house dating to 1926, originally built by a UVa Engineering professor. It had been used as a rental property for several years and was in serious disrepair. Jack and Ellen repaired and restored it and raised their family there. They are concerned that the 2005 development will serve as a precedent for developers seeking to buy up owner-occupied homes and replace them with high-rises, which would negatively affect the JPA neighborhood as a whole.

11. Bonnie and Kevin Reilly have owned and resided at their home on 116 Oakhurst Circle in the JPANA neighborhood since 1983. The location was ideal as Bonnie worked as a registered nurse at the UVA Medical Center and was able to walk to work for over 20 years. They raised two sons who attended the Charlottesville public school system. The house was built in 1930 and is part of the Oakhurst-Gildersleeve Wood Neighborhood Historic District placed on the Virginia Landmark Registry in '08 and National Register for Historic Places in '09. It is a two story house containing a one bedroom rental apartment in the basement. Numerous renovation have been done over the years including kitchens (house and apartment), baths, windows and updating the heating system. As a residence fronting on the Oakhurst Circle Park, neighbors contribute yearly fees for the upkeep of the Park and the maintenance of the trees.

12. The City is a municipal corporation and political subdivision of the Commonwealth of Virginia.

13. City Council is the governing body of the City. Its powers are conferred by the General Assembly of Virginia.

Background:

14. "The Property Located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue" (see Appendix A, Resolution # R-22-117) consists of 1.711 acres. Until 1995, 2005 JPA was the site of a mansion dating to 1900 on the top of a hill, surrounded by an extensive lawn with many trees. Then three 3-story rental units (the Observatory Apartments and the Washington Condominiums) were built on the edges of the lawn fronting on Observatory Avenue and Washington Avenue respectively. The current owner, Gradient, bought the 2005 JPA property in 2005. He also bought the property at 104 Observatory Avenue (a one-story single-family house) in 1995. He then bought the property at 2007 JPA (a two-story apartment building) in 2022.

Currently, "The Property Located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue" contains several discrete rental units, all of which are within the limits of current by-right R-3 zoning (max. height 45 feet, max. density 21 DUA):

- 1) "Graduate Housing", consisting of (source <http://www.gradhousing.com/>):
 - a. The Mansion at 2005 JPA (a 1900 mansion offering 6 bedrooms and one parking space per bedroom)
 - b. The Observatory Apartments at 106 and 108 Observatory Avenue, consisting of 5 units (11 bedrooms total) with one covered parking space per unit, plus an additional parking space per bedroom
 - c. The Washington Condominiums at 110 Washington Avenue, consisting of 5 apartments (18 bedrooms total), with a parking space for each bedroom
 - d. The Bungalow at 104 Observatory Avenue, consisting of 4 bedrooms, with (as visible from the street) parking spaces for two vehicles.
- 2) 2007 JPA, a building with four apartments (<https://clustrmaps.com/a/29dcdk/>) and a parking lot.

15. Aspen Topco II LLC Acquisitions, a contract purchaser, requested (see [City Council Agenda packet](#) for September 19, 2022, p. 104) and City Council has granted, the following Special Use Permits for "the properties located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue". The Resolution dated September 19, 2022 grants the SUP to Norman Lamson, as Trustee for the Gradient JPA Land Trust, the current owner (see Resolution, Appendix A):

Density of 70 DUA (R-3 zoning permits up to 21 DUA by-right);
Height of 75' from average grade plane (R-3 zoning permits 45' max);
Reduced rear yard setback to 36' (R-3 zoning requires 75');
Parking reduction to 125 spaces (R-3 zoning requires 200 spaces).

16. The SUPs granted by City Council amount to close to double the by-right height and more than three times the by-right density for this location (see Footprint, Appendix B). Furthermore, although this property is currently zoned R-3, the rest of Observatory and Washington Avenues are zoned R-2U.

17. Contract buyer Aspen Heights intends to build a 119-unit, 390 bedroom, 5-7 story high-rise on the property, which will be designed for rental to university students at market rates. The architects Mitchell-Matthews' plan includes an underground parking lot issuing onto Washington Avenue, a swimming pool, and a pet area ([NDS Agenda packet](#) for the May 10, 2022 joint meeting of the Planning Commission and City Council). No affordable housing is envisaged. Instead, the contract buyer intends to contribute \$1,053,080 to the City's affordable housing fund. At the September 19, 2022 City Council meeting, Mayor Snook stated that it costs about \$200,000 for a nonprofit to build one affordable unit. The developer's representative said it would cost a private developer about \$350,000 per unit. The developer's contribution would therefore correspond to the cost of building at most 5.27 affordable units, if someone actually built them. Currently, however, the contract buyer has not yet purchased the property; Gradient is still the owner on record.

18. Observatory Avenue is a 1-block long dead end on a steep upgrade from Jefferson Park Avenue that narrows halfway up. There is no turnaround. There is at most one sidewalk, and for stretches no sidewalk at all. City records show that in 1924 H. Gary Clarke acquired a tract of land whose description corresponds to the location of present-day Observatory Avenue and Washington Avenue (DB 46, pg 29). According to 1925 land records for Charlottesville's "District #1," lot sales on Observatory Avenue took place in that year, and the first houses were built. The "new street" Observatory Avenue, built by H.G. Clarke, is shown together with its numbered lots on a plat of September 1928 (DB 62, pg 362). Please refer to the photo of this plat (Appendix C). The size of the road shown on the plat of 1928 has not changed. Observatory Avenue narrows upwards of the large parking lot behind 108 Observatory. Observatory Avenue is 27" wide at the level of 108 Observatory, but only 21.5" wide at the telephone pole in front of 113 Observatory. The [NDS Staff Report](#) of April 27, 2022 (Appendix D), written for the May 10, 2022 Planning Commission Public Hearing, calls Observatory Avenue a "sub-standard roadway" that "would have difficulty accommodating additional traffic while still maintaining the on-street parking that is currently present" (p. 12). Currently, if cars park on both sides of the street on the narrow stretch and stay on the asphalt, i.e., do not drive up onto somebody's grass, large vehicles like garbage trucks, fire trucks, and snow plows cannot squeeze through between two cars parked on opposite sides of the street. This has been an ongoing problem for decades and already constitutes a hazard. Mail vehicles, delivery and other trucks, etc. routinely use the 108 Observatory parking lot (a parking lot that the proposed project plans to get rid of) to turn around so as to descend back onto JPA.

19. Washington Avenue, built in the 1930s, runs between JPA and Stadium Road. It is also a narrow road, though somewhat wider than Observatory Avenue. On Washington Avenue, too, there is at most one sidewalk. Washington Avenue is downhill from 2005 JPA. The plaintiffs' properties are 10-15" below it.

Time Line:

20. The developer held the community meeting required by City Code Sec. 34-41(c)2 on December 7, 2021 and presented the plans for the 2005 JPA development to residents of the area.

21. Beginning in January 2022, residents of the nearby neighborhood wrote numerous letters to city officials and organized site visits with members of the Planning Commission and City Council, in which they expressed many concerns about the 2005 JPA development, including the following:

- the increased density would add many cars of both renters and their guests to a neighborhood already choked with traffic. The reduced parking requested in the SUP would be inadequate for the 2005 JPA development and externalize parking onto the side streets, negatively affecting the surrounding neighborhood, causing hazardous conditions for access by rescue vehicles, and also impede access for trash pickup and service vehicles;
- the increased density of 390 student renters would add lights and noise, negatively affecting nearby residents;
- the development would remove 27 trees, thus reducing the urban forest and contributing to heat island effects in a neighborhood that is already one of the hottest in the city (see article in [Charlottesville Tomorrow](#) 8/30/21);
- the proposed massing and scale is grossly out of proportion to existing structures in the surrounding neighborhood;
- the proposed building (5-7 stories in height) would tower over adjacent one-and two-story houses;
- the proposed building would be on the crest of a hill, adding to the negative effects of its height on neighboring one- and two-story homes: shadow blocking the light for residents of Observatory and Washington, as well as blocking afternoon light for those on Harmon St. and Shamrock Rd. to the east and morning light for residences to the west. Residents requested a shadow study;
- the replacement of the six existing buildings with one large U-shaped building would create an increase of impervious surfaces, reducing ground water absorption;
- danger that demolition and construction vibrations would damage the century-old terra cotta sewage lines running along Observatory Ave.;
- the proposed garbage collection site on Washington Ave. would create odor and litter that would negatively affect residents of that street;
- authorization of these SUPs short circuits the rezoning process. It undermines the ongoing deliberative, community-collaborative rezoning process to which the City is committed. This SUP application presupposes that this district will be rezoned Higher Intensity Residential (as proposed by the Future Land Use Map that is part of the [City's Comprehensive Plan](#)). The applicant justifies their request for increased height and density with reference to the FLUM, as though the FLUM were already accomplished fact. But the FLUM is not yet accomplished fact, as underscored by Judge Worrell's ruling in Doe et al. v. Charlottesville on August 26, 2022 that the Comprehensive Plan is advisory in nature and therefore the plaintiffs could not claim to be harmed by it because

no rezoning had yet occurred (Sean Tubbs, *Charlottesville Community Engagement*, August 26).

- the proposed building is inconsistent with the City's [Entrance Corridor Design Guidelines](#) I.C: "New building design should be compatible (in massing, scale, materials, colors) with those structures that contribute to the overall character and quality of the corridor"; IV.C "4. When making transitions to lower density areas, modulate the mass of the building to relate to smaller buildings. Heights can be greater if the mass is modulated and other scale techniques are adopted. Reduce height near lower density uses."; V.F (Corridor 5): "Design new apartment buildings to break up their large scale and use traditional materials";
- residents requested a new traffic study that would take into account the traffic increase due to City Council's authorization of new developments at 240 Stribling Ave. and the promised conversion of UVa's Piedmont Faculty Housing to affordable housing units, which were not considered in the developer's traffic study.

22. The SUP application was due to be on the Planning Commission agenda for the Public Hearing of April 12, 2022. The city staff report of March 30, 2022 (Entrance Corridor review, written by Jeff Werner, AICP) found that "whether applying the E[entrance] C[orridor] guidelines (60-feet) or the Comprehensive Plan (five stories) a height of 75-feet exceeds the recommendation for this location and therefore results in an adverse impact." The report also stated that "the unbroken east and west elevations exceed what is typical within this corridor; in fact, exceed what is typical in Charlottesville." The NDS staff report, written by Matt Alfele AICP (See Appendix E), stated that "the scale and density of the development is not harmonious with the existing patterns within the neighborhood" (p. 6), thus failing to conform with Standard 1 of the City's [Zoning Ordinance](#) with respect to Special Use Permits ("whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood").

23. The developer requested a one-month time extension, but made no changes to the application. Instead the ERB review changed. The revised report of April 27, 2022 stated: "*No adverse impact on E[entrance]C[orridor]; The impacts of increased height can be adequately mitigated by application of the design guidelines and addressed during the required ERB design review.*" (See Appendix F, Comparison of City Staff Reports of March 30, 2022 and April 27, 2022). No explanation was given for the change.

24. On May 10, 2022, the Planning Commission voted 4-3 to approve the Special Use Permit application.

25. On September 19, 2022, City Council approved 4-0 the Special Use Permit application.

COUNTS

Count 1

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it compromises the health, safety, and general welfare of the residents of nearby properties.

26. Plaintiffs incorporate the preceding allegations.

27. [VA Code 15.2-2283](#) provides that zoning ordinances "shall be for the general purpose of promoting the health, safety or general welfare of the public." The Supreme Court of Virginia has explained in [Board of Supervisors v. Southland Corporation](#) that the purpose of requiring a special exception is "to insure compliance with standards designed to protect neighboring properties and the public." City Council's authorization of the SUPs permits the construction of a building that will diminish the quality of life of all the Observatory Avenue and Washington Avenue plaintiffs in ways not shared by the general public and compromises their health, safety, and general welfare in a variety of ways that will be outlined in more detail in subsequent counts. Four of the plaintiffs on Observatory Avenue are over the age of 65 and are concerned that sudden health problems will require ambulance transport to the hospital. Both the bustle of construction and increased traffic when the construction is finished will compromise ambulance access. Additionally two of the plaintiffs on Observatory Avenue suffer from asthma and would be harmed by the dust and fumes of demolition and construction which are projected to take 18-24 months, as stated by the architect at the December 7, 2021 community meeting. Two other plaintiffs on Observatory Avenue have elementary age children and are concerned about the dangers of increased traffic on the road.

Count 2

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it fails to protect against obstruction of light to adjacent properties.

28. Plaintiffs incorporate the preceding allegations.

29. [VA Code 15.2-2283](#) (i) provides that zoning ordinances "shall be designed to give reasonable consideration to each of the following purposes, where applicable: (i) to provide for adequate light...; (vi) to protect against...obstruction of light". This high-rise will necessarily obstruct sunlight and cast a shadow. All of the plaintiffs on Observatory and Washington Avenues will to a greater or lesser extent suffer loss of light. This is not true of the general public. The loss of sunlight and the degree to which plaintiffs will be in the shadow of the high rise will depend on their location relative to the high-rise as well as on the time of day and the season. Those closest to the building will be most severely affected by loss of light and by shadow. Observatory Avenue plaintiffs are to the northwest and will lose morning sunlight. They all value that sunlight. The Observatory Avenue plaintiffs all maintain gardens with flowers and shrubs that would be negatively affected by the loss of sunlight. Those on Observatory Avenue close to the high-rise will be in its shadow in the morning. Washington Avenue plaintiffs are to the southwest and will lose afternoon sunlight. Washington Avenue plaintiffs will suffer most from the shadow of the building, since they are 10-15 feet downhill from the high-rise and the planned 7-story tower is on the Washington Avenue side of the complex. At the spring equinox, the plaintiffs' houses on Washington Avenue are currently in the shadow of the existing 3-story buildings opposite them by 3pm.

Count 3

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it fails to provide convenience of access or to reduce or prevent congestion in the public streets.

30. Plaintiffs incorporate the preceding allegations.

31. [VA Code 15.2-2283](#) (i) states that zoning ordinances "shall be designed to give reasonable consideration to... provide for convenience of access...; (ii) to reduce or prevent congestion in the public streets" and "danger and congestion in travel and transportation". In authorizing the SUPs for increased density and reduced parking, City Council creates an adverse impact relative to traffic and parking congestion, because *de facto* a building of that density will create traffic and parking congestion, which given the narrowness of the streets and the intensified coming and going of vehicles for deliveries, services, repairs, and visitors (for example) cannot be adequately mitigated even if street parking is restricted. This is true on both Observatory and Washington Avenues, as acknowledged by Mayor Snock at the September 19 City Council meeting, stating (4:50:05 of the recording of that meeting) that the narrowness of both side streets "is a significant problem unique to those streets". This constitutes an adverse impact to residents that is not shared by the general public. In the case of Observatory Avenue, traffic and parking congestion will result in particularly hazardous conditions because the street is a dead end with only one egress. Emergency vehicles such as fire trucks and ambulances can easily be blocked from entering and ascending the street—a danger that affects all Observatory Avenue plaintiffs that is not shared by the general public.

Count 4

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it fails to facilitate the provision of adequate police and fire protection.

32. Plaintiffs incorporate the preceding allegations.

33. [VA Code 15.2-2283](#) (i) states that zoning ordinances shall be designed "to provide for... safety from fire...; (iv) to facilitate the provision of adequate police and fire protection... (vi) to protect against...loss of life, health or property from fire." Observatory Avenue is frequently impassable by large vehicles such as fire trucks now, due to legally parked cars. This is especially true under snowy conditions. Increased traffic resulting from increased density will exacerbate the problem. This danger is specific to plaintiffs on Observatory Avenue and is not shared by the general public.

Count 5

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it fails to facilitate the creation of a convenient, attractive, and harmonious community.

34. Plaintiffs incorporate the preceding allegations.

35. [VA Code 15.2-2283](#) (iii) states that zoning ordinances shall be designed "to facilitate the creation of a convenient, attractive, and harmonious community". By authorizing a high-rise in the immediate vicinity of one- and two-story buildings, and moreover one located on the crest of a hill (a local high point), City Council undermines what has been until now a convenient, attractive, and harmonious community. In addition to the height, the building material the architect has proposed (fiber cement panels) contrasts starkly and unattractively with the wood, brick, and stucco construction of the surrounding houses, all of which were built in the 1920s and 1930s. The building will be an eyesore in its context. City Council did not consider aesthetics (attractiveness) at all. A hodgepodge of sizes and styles is generally not considered consistent with attractiveness and harmoniousness. This unreasonable, ill-considered authorization, which failed to take the size and styles of houses on the side streets into consideration, constitutes an adverse impact for the plaintiffs on Observatory and Washington Avenues specifically that is not shared by the general public.

Count 6

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because the approved modifications will be of substantial detriment to adjacent property and will change the character of the zoning district.

36. Plaintiffs incorporate the preceding allegations.

37. [VA Code 15.2-2286](#) provides that "the zoning administrator may be authorized to grant a modification from any provision contained in the zoning ordinance with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the administrator finds in writing that... (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification." The modifications granted by City Council will be of substantial detriment to adjacent property and will also change the character of the zoning district.

While the City Council action harms the Observatory Avenue and Washington Avenue plaintiffs in ways that do not affect the general public (see Counts 1, 2, 3, 4, 5, 7, 8, 9, 10, 11), it cannot therefore be argued that City Council sacrificed these plaintiffs' wellbeing and quality of life in order to promote the good of the public generally. They compromised the good of the neighborhood as well, which negatively affects other residents of the Jefferson Park Avenue neighborhood. City Council's shortsighted sacrifice of the homeowners on Observatory Avenue so as to build student housing is a piece of poor urban planning that will introduce a trend that cannot be good for any neighborhood: a neighborhood of 100% transient student renters. Approval of this development will encourage developers to buy up the remaining owner-occupied homes in the entire JPA neighborhood, which is proximate to U.Va., demolish them, and replace them with apartment buildings aimed at renters. Homeowners will be driven out. The 2005 JPA development approval sets a precedent for more high-rises in the neighborhood, so that plaintiffs on Montebello Circle, which is closer to the university than Observatory and Washington Avenues and thus an even more coveted space for student accommodations, also stand to be affected by it. Finally, City Council also compromised the good of the general public. Their failure to consider the increased traffic flow on JPA that this

building will create, in addition to the increased traffic flow from the recently authorized 240 Stribling development and the conversion of UVA Piedmont Faculty Housing into affordable housing, ignores the greater public good: a great many people will be tied up in the resulting traffic on JPA.

Count 7

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because the proposed development will not be harmonious with existing patterns of use and development within the neighborhood.

38. Plaintiffs incorporate the preceding allegations.

39. The [City Code Standards for Special Use Permits](#) (Section 34-157 item (a).1) state that "the city council shall consider... "whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood".The city staff report of March 30, 2022 (Appendix E) stated that "the scale and density of the development is not harmonious with the existing patterns within the neighborhood". City staff concluded: "The application does not meet standard one (1)" (p. 20). Standard 1 refers to p. 6 of the City's [Zoning Ordinance](#) with respect to Special Use Permits ("whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood"). The staff report of April 27, 2022 (Appendix D), reiterates that "staff believes the scale and density of the development is not harmonious with the existing patterns within the neighborhood" (p. 6) and that "the application does not meet standard one (1)" (p. 21). (See also Count 11 below.)

Count 8

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it will increase parking and congestion.

40. Plaintiffs incorporate the preceding allegations.

41. The [City Code Standards for Special Use Permits](#) Section 34-157, item (a) state that "the city council shall consider... (4) Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general... Potential adverse impacts include... a. traffic or parking congestion". The adverse impact would be the same as that cited for Count # 3 on traffic and parking above.

Count 9

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it will produce noise, dust, fumes, and vibration that will adversely affect residents of adjacent properties.

42. Plaintiffs incorporate the preceding allegations.

43. The [City Code Standards for Special Use Permits](#) Section 34-157, item (a) state that "the city council shall consider... (4) Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general... Potential adverse impacts include...b. Noise, lights, dust, odor, fumes, vibration, and other factors which adversely affect the natural environment". At the December 7, 2021 community meeting the architect estimated that it will take 18-24 months to complete the 2005 JPA development. This is a significant amount of time for a person who is over 65, such as four of the homeowners on Observatory Avenue. Two years of incessant noise, dust, and movement of construction vehicles--assuming the project does not take even longer, given that construction delays are common--will make life intolerable for residents of all ages, but will be especially harmful to the health and wellbeing of older residents who are retired and therefore spend more time at home than those who attend school or go to work.

Count 10

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because it will create an adverse impact due to odor of trash.

44. Plaintiffs incorporate the preceding allegations.

45. The [City Code Standards for Special Use Permits](#) Section 34-157, item (a) state that "the city council shall consider... (4) Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general... Potential adverse impacts include...b.... odor." For trash pickup by the city, the dumpsters would have to be set out on the road somewhere, because the "arrangement of the buildings" authorized by City Council does not leave any room for setting out dumpsters except on the public roads. There is no spot for this that is not within smelling distance of adjacent residents and consequently constitutes an adverse impact on them that is not shared by the general public. Since the entrance to underground parking is envisaged for Washington Avenue, the dumpsters presumably would be set out on Washington, very close to the properties of the Washington Avenue plaintiffs, and will constitute an adverse impact for them.

Count 11

Declaration that the approval of the Special Use Permits for the property located at 2005/2007 Jefferson Park Avenue and 104 Observatory Avenue is *void ab initio* because the massing and scale will have an adverse impact on residents of adjacent properties.

46. Plaintiffs incorporate the preceding allegations.

47. City Code [Standards for Special Use Permits](#) Section 34-157, item (a) state that "the city council shall consider... (4) Whether the proposed use or development will have any potentially adverse impacts on the surrounding neighborhood, or the community in general... Potential adverse impacts include... j. massing and scale of project". The massing and scale of the project will obstruct light and cast shadows that will harm all plaintiffs on Observatory and Washington Avenues in ways not shared by the general public. The city staff report of March 30, 2022 (Appendix E) found that "whether applying the E[ntrance] C[orridor] guidelines (60-feet) or the

Comprehensive Plan (five stories) a height of 75-feet exceeds the recommendation for this location and therefore results in an adverse impact." The report also stated that "the unbroken east and west elevations exceed what is typical within this corridor; in fact, exceed what is typical in Charlottesville." Furthermore, the report stated that "the scale and density of the development is not harmonious with the existing patterns within the neighborhood", and City staff concluded that "the application does not meet standard one (1)" [of the City's Zoning Ordinance with respect to Special Use Permits ("whether the proposed use or development will be harmonious with existing patterns of use and development within the neighborhood")]. The city staff report of April 27, 2022 (Appendix D) reiterates this statement on p. 6, affirming that the requested SUP fails.

WHEREFORE Plaintiffs respectfully request that this Court enter an Order finding that the approval of these Special Use Permits by City Council is void *ab initio* due to the failure to abide by statutory requirements and is otherwise invalid and for such further relief as this Court deems appropriate.

Respectfully submitted,

Lorna Martens

Lorna Martens

Anne Benham

Anne Benham

Megan Buschi

Megan Buschi

Paul Buschi

Paul Buschi

Marilyn Poling

Marilyn Poling

Angela Andrews

Angela Andrews

James H. Wright

James H. Wright

Nelson Bickers

Nelson Bickers

Kenneth Hill

Kenneth Hill

William E. Schaaf

William E. Schaaf

Ellen Contini-Morava

Ellen Contini-Morava

Jack Morava

Jack Morava

Bonnie Reilly

Bonnie Reilly

Kevin Reilly

Kevin Reilly

October 18, 2022

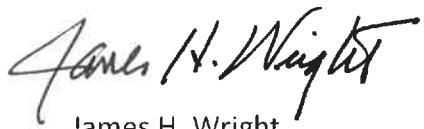
Ms. Llezelle Dugger
Clerk of Court
Charlottesville Circuit Court
315 E. High St.
Charlottesville, VA 22902

Re: Plaintiff signature for complaint

Dear Ms. Dugger,

I am James H. Wright, owner of the property at 119 Observatory Avenue, Charlottesville VA 22903, and I am a signatory on the complaint against the September 19 City Council decision to approve the Special Use Permit application for 2005/2007 Jefferson Park Avenue/104 Observatory Avenue. I am not present to sign the complaint itself, but please include my signature on this letter showing that I agree to be a plaintiff on this complaint.

Sincerely,



James H. Wright

October 18, 2022

Ms. Liezelle Dugger
Clerk of Court
Charlottesville Circuit Court
315 E. High St.
Charlottesville, VA 22902

Re: Plaintiff signature for complaint

Dear Ms. Dugger,

I am Nelson Bickers, owner of the property at 114 Observatory Avenue, Charlottesville VA 22903, and I am a signatory on the complaint against the September 19 City Council decision to approve the Special Use Permit application for 2005/2007 Jefferson Park Avenue/104 Observatory Avenue. I am not present to sign the complaint itself, but please include my signature on this letter showing that I agree to be a plaintiff on this complaint.

Sincerely,



Nelson Bickers

October 18, 2022

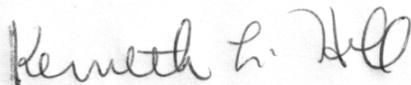
Ms. Llezelle Dugger
Clerk of Court
Charlottesville Circuit Court
315 E. High St.
Charlottesville, VA 22902

Re: Plaintiff signature for complaint

Dear Ms. Dugger,

I am Kenneth Hill, owner of the property at 111 Washington Avenue, Charlottesville VA 22903, and I am a signatory on the complaint against the September 19 City Council decision to approve the Special Use Permit application for 2005/2007 Jefferson Park Avenue/104 Observatory Avenue. I am not present to sign the complaint itself, but please include my signature on this letter showing that I agree to be a plaintiff on this complaint.

Sincerely,



Kenneth Hill

October 18, 2022

Ms. Llezelle Dugger
Clerk of Court
Charlottesville Circuit Court
315 E. High St.
Charlottesville, VA 22902

Re: Plaintiff signature for complaint

Dear Ms. Dugger,

I am William E. Schaaf, owner of the property at 113 Washington Avenue, Charlottesville VA 22903, and I am a signatory on the complaint against the September 19 City Council decision to approve the Special Use Permit application for 2005/2007 Jefferson Park Avenue/104 Observatory Avenue. I am not present to sign the complaint itself, but please include my signature on this letter showing that I agree to be a plaintiff on this complaint.

Sincerely,

A handwritten signature in blue ink, appearing to read "William E. Schaaf".

William E. Schaaf

Appendix:

- A. Resolution adopted by City Council (Resolution # R-22-117)
- B. Footprint of 2005/2007 JPA/104 Observatory Ave.
- C. Plat of 1928
- D. NDS Staff report of April 27, 2022
- E. NDS Staff report of March 30, 2022
- F. Comparison of City staff reports of March 30, 2022 and April 27, 2022