

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

LORNA MARTENS, et al.,

Plaintiffs,

v.

Case No.: CL22-494

CHARLOTTESVILLE CITY COUNCIL and
THE CITY OF CHARLOTTESVILLE,

Defendants.

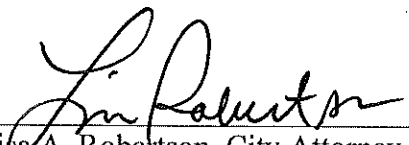
DEFENDANTS' MOTION CRAVING OYER

COME NOW the City of Charlottesville and the Charlottesville City Council (together, "City" or "Defendants"), by counsel, and submit their motion *craving oyer* for the entire legislative record for the Special Use Permit application that is at issue in these proceedings (including public hearing speakers, public hearing attendees, meeting minutes, video, and complete record of each of the meetings referenced within the Complaint).

Respectfully Submitted,

CITY OF CHARLOTTESVILLE and
CHARLOTTESVILLE CITY COUNCIL,

By Counsel:



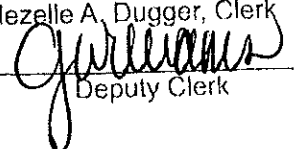
Lisa A. Robertson, City Attorney (VSB # 32496)
Charlottesville City Attorney's Office
Counsel for Defendants City of Charlottesville and Charlottesville City Council
P.O. Box 911, 605 East Main St., 2nd Floor
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robertsonl@charlottesville.gov

FILED.

11/14/22 e 9:12 AM
(Date & Time)

City of Charlottesville
Circuit Court Clerk's Office
Liezelle A. Dugger, Clerk

By

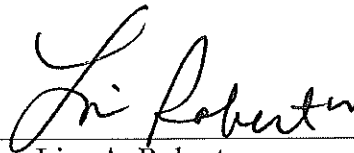


Deputy Clerk

CERTIFICATE OF SERVICE

I hereby certify that, on Nov. 14, 2022, a paper copy of the foregoing document was mailed by U.S. mail, first-class, postage pre-paid, to each of the Plaintiffs at their address given within the Complaint:

1. Lorna Martens, 128 Observatory Avenue, Charlottesville, Virginia, 22903.
2. Angela Andrews, 127 Observatory Avenue, Charlottesville, Virginia, 22903
3. Meghan Tillet Buschi and Paul Buschi, 126 Observatory Avenue, Charlottesville, Virginia, 22903
4. Marilyn Poling, 123 Observatory Avenue, Charlottesville, Virginia, 22903
5. James H. Wright, 119 Observatory Avenue, Charlottesville, Virginia, 22903
6. Anne Benham, 116 Observatory Avenue, Charlottesville, Virginia, 22903
7. Ellen Contini-Morava and Jack Morava, 225 Montebello Circle, Charlottesville, Virginia, 22903
8. Bonnie and Kevin Reilly, 116 Oakhurst Circle, Charlottesville, Virginia, 22903
9. Nelson Bickers, 3582 Richmond Road, Keswick, Virginia, 22947
10. Kenneth Hill, 3532 Barkley Drive, Fairfax, Virginia, 22031
11. William Schaaf and Rosemarie Schaaf, 5017 Westbury Farms Drive, Erie, Pennsylvania, 16506.



Lisa A. Robertson

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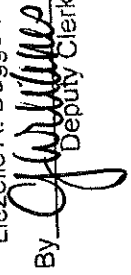
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City of Charlottesville
Circuit Court Clerk's Office
Liezelle A. Dugger, Clerk
By  Deputy Clerk

DEMURRER

COME NOW Defendants City of Charlottesville and the Charlottesville City Council (together, hereinafter "City") and pursuant to Virginia Code Section 8.01-273 and Rule 3:8 of the Rules of the Supreme Court of Virginia and submit their Demurrer to Plaintiffs' Complaint for Declaratory Judgment ("Complaint"). The City submits that the Complaint is not sufficient in law and ought not to be prosecuted, on the following grounds:

A. Background

On September 19, 2022 the Charlottesville City Council approved a special use permit for a multifamily development referred to as the "2005 JPA Development". The Plaintiffs' Complaint requests this Court to declare the City Council's September 19, 2022 decision to be *void ab initio*.

B. Each Plaintiff Lacks Standing to Bring this Action

In order for the Plaintiffs to have standing to challenge the City's decision, each 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 County Board of Supervisors*, 286 Va. 38, 48, 49 (2013) (citing *Virginia Marine Res. Comm'n v.*

Clark, 281 Va. 679, 687 (2011)). The Complaint fails to allege facts demonstrating particularized harm resulting from the City's zoning decision to any of the Plaintiffs.

C. Failure to Sign Pleadings

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

D. The allegations within Counts 1 through 11 fail to present probative evidence that the City's zoning decision was unreasonable; therefore, this action may not proceed against the City Defendants.

Approval of a special exception is a legislative act. *Newberry Station Homeowners Ass'n v. Bd. of Supervisors*, 285 Va. 604, 620-21, 740 S.E.2d 548, 557 (2013). This legislative action is entitled to a presumption of validity, which is a presumption of reasonableness. *Town of Leesburg v. Giordano*, 280 Va. 597, 606, 701 S.E.2d 783, 787 (2010). "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).

It is the burden of the Plaintiffs to allege facts which, if true, would be probative evidence that the City's approval of this Special Use Permit was unreasonable. *Helmick v. Town of Warrenton*, 254 Va. 225, 230, 492 S.E.2d 113, 115 (1997). If their Complaint does not contain such allegations, then it is proper for the Court to sustain a demurrer. The allegations in Counts 1 through 11, taken as true, do not support claims that the City's approval of the Special Use Permit was arbitrary, capricious, or unwarranted; therefore, the Complaint is insufficient, as a matter of law.

E. The allegations in Counts 1 through 11 fail to establish that City Council failed to follow mandatory requirements of state law, or the City's zoning ordinance; rather, each of the statutory and ordinance provisions cited in those counts merely articulate standards by which City Council's decision is to be guided.

Courts apply the presumption of validity referenced in Section D, preceding above, when reviewing whether the local governing body adequately considered the standards set forth in the zoning ordinance when it approved or denied a special exception application. *Newberry Station Homeowners Ass'n v. Bd. of Supervisors*, 285 Va. 604, 623, 740 S.E.2d 548, 558 (2013). None of the allegations within Counts 1-11 constitutes probative evidence of unreasonableness.

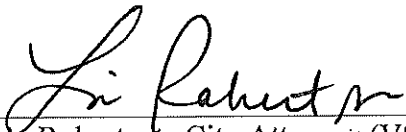
CONCLUSION

Wherefore, the City Defendants, by counsel, pray that, for the reasons cited herein, the Court will sustain their Demurrer and dismiss the Complaint against them.

Respectfully Submitted,

CITY OF CHARLOTTESVILLE and
CHARLOTTESVILLE CITY COUNCIL,

By Counsel:

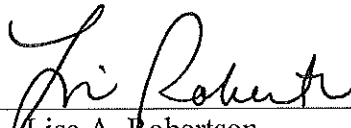


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