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February 27, 2023

Mr. James Freas

Director of Neighborhood Development Services

City of Charlottesville

605 E Main Street

Charlottesville VA

by email to Ms Carrie Rainey <raineyc@charlottesville.gov>

Re: Preliminary site plan for 0 East High Street

Dear Mr. Freas:

Please accept these comments on the access provisions of the second revision of the preliminary site development plan for 0 E High Street, submitted on February 17, 2023. and make them part of the official record of your review. I request that copies of this submission be provided to the applicant, to all city departments involved in reviewing subject preliminary site plan, to the members of the Charlottesville City Council, and to all members of the Charlottesville Planning Commission.

I present these comments on behalf of: Rebecca Jones Reilly, 528 Caroline Avenue, Charlottesville, VA 22902.

The February 17 revision to the preliminary site plan proposes that access to the development be provided by two new public streets. This comment explains why the City of Charlottesville may not accept the proposed public streets.

Charlottesville Code § 28-32 authorizes the city council to accept public streets proposed by a developer's site plan. Such approval is discretionary and may occur only after the department of neighborhood development services and the department of public works determine that the proposed street complies "with all applicable statutes, regulations, ordinances, guidelines, design and construction standards."

In *Milford v. Walnut Hill Farm Group, LLC*, 282 Va. 98, 712 S.E.2d 468 (2011), the Virginia Supreme Court found two necessary elements for the establishment of a public road: (1) an offer by the landowner, and (2) acceptance by a public authority. 282 Va. at 106, 712 S.E.2d at 473.

The dispute involved plaintiff claims to access over the property of the defendant on what the plaintiff argued was a public road, that the roadway was an easement by estoppel, and that he enjoyed a prescriptive easement to the roadway. The circuit court determined that the roadway was not a public road. The Supreme Court, deciding the question de novo, affirmed the decision of the circuit court that acceptance by the public had not been established by long use. No one argued that any public authority affirmatively and explicitly had accepted the roadway as public.

There was a typical controversy, involving a claim that a property owner has impliedly dedicated land for a public road by allowing the public to use it, or that the public authority has accepted a public road by permitting or facilitating public use. Neither situation is at issue here. Seven Development proposes explicitly and affirmatively to grant part of its R-1 and CC zoned land for a public use.

The question here is whether the City of Charlottesville may accept these proposed public roads. The city may not, for two reasons. First, acceptance of the proposed public roads would be inconsistent with the R-1S and CC zoning through which these “roads” would pass; public road dedication is merely an end run around Charlottesville Code § 34-420 and the *Capelle v. Orange County*, 269 Va. 60, 607 S.E.2d 103 (2005) case. Second, to accept the proposed public roads would be inconsistent with the public interest, because they would dump unacceptable levels of traffic onto barely improved Caroline Avenue and already-congested East High Street.

The proposed public streets violate the zoning ordinance because they would cause traffic from higher density zoned parcels to traverse R-1S and CC zoned property. Use of a public street does not explicitly violate section 34-420 of the zoning code, because it does not involve private uses. Accepting a proposed public street over R-1S or CC zoned property, however, results in the same conflict with the zoning law, in that it burdens R-1S and CC zoned property with traffic from higher density parcels. This implicit conflict with the zoning laws must be taken into account in the city’s discretionary determination whether to approve the proposed public streets.

Charlottesville Code § 34-896 imposes requirements for access. It requires that access be designed to “reduce or prevent congestion in the public streets; minimize conflict and

friction with vehicular traffic on the public street, and on-site; minimize conflict with all of the various modes of traffic” and authorizes the city engineer to “specify the number, type, and location of access points to a public street, together with such measures as may be deemed appropriate to insure adequate functioning of such access points, and may require related facilities to be provided and constructed, such as travel lanes or driveways to serve adjoining properties” It also requires that entrances take into account design specifications of the city’s Standards and Design Manual and other mandatory safety and engineering requirements.

Section 34-896(f)(3) requires “access to a street which meets minimum engineering and safety criteria for two-way vehicular travel with sidewalks.”

The proposed public streets do not meet these requirements and should not be accepted. East High Street, where one of the proposed public roads connects, cannot accommodate the increased traffic. Caroline Avenue, where the other proposed public road connects, has no sidewalks and cannot accommodate two-way vehicular travel.

Section 3.4 of the city’s Standards and Design Manual provides that “The location, spacing, and design of intersections, driveways, alleys, and median openings should be designed in a manner that both provides vehicular access to adjacent properties and limits conflicts between other users to provide safe travel along streets.”

Transition or turn lanes, as required by section 3.4.2, cannot be provided within the existing geometry of East High Street and of Caroline Avenue.

The proposed public streets could not meet the city's design standards without adding travel lanes to East High St. and travel lanes and sidewalks to Caroline Avenue, improvements that would necessitate the widening of both streets and likely the exercise of eminent domain over properties bordering the streets. Such action would involve the expenditure of significant public funds and require the approval by the city council.

Under section 3.7, a traffic analysis is required, using actual data for Caroline Avenue and East High Street, because the proposed development will generate more than 50 trips at peak traffic hours. In particular, the traffic analysis must show the “the ability of the existing roadway system to accommodate future traffic (with site development),” pursuant to section 3.7.1.6.

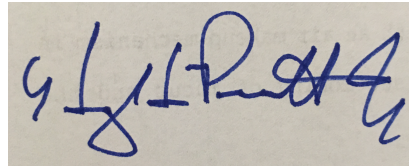
It is unlikely that the required traffic analysis will show that the existing roadway system is able to accommodate traffic generated by the development or that proposed access to the development will “reduce or prevent congestion in the public streets; minimize conflict and friction with vehicular traffic on the public street, and on-site; minimize conflict with all of the various modes of traffic,” as required by section 34-896.

New public streets, if approved, must be accepted by City Council for maintenance.

Brennan Duncan said, in paragraph 82 of the city's October 26, 2022 comments on the first preliminary site plan, "I don't believe the city would want to take ownership of a 150' "stub road" off of Caroline Avenue." This is the correct position, and applies logically to the now-proposed stub road off of East High Street, as well.

The City of Charlottesville should continue to reject this preliminary site plan.

Very truly yours

A handwritten signature in blue ink, appearing to read "H. H. Perritt, Jr.", on a light-colored rectangular background.

Henry H. Perritt, Jr.
Attorney at Law