



Fox Rothschild LLP
ATTORNEYS AT LAW

434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
Tel 919.755.8700 Fax 919.755.8800
www.foxrothschild.com

HAYES FINLEY
Direct No: 919.755.8837
Email: HFinley@Foxrothschild.com

August 13, 2021

VIA EMAIL

Honorable Esther Manheimer
esthermanheimer@avlcouncil.com

City Council Members
AshevilleNCCouncil@ashevillenc.gov

City of Asheville
70 Court Plaza
P.O. Box 7148
Asheville, NC 28802

Dear Mayor Manheimer and City Council:

Fox Rothschild LLP represents the Preservation Society of Asheville and Buncombe County (PSABC). I am writing today to request the public hearing for the 101 Charlotte Street conditional rezoning, currently scheduled to be heard on August 24, 2021, be continued until a public hearing can be held in person.

We were notified on August 5, 2021 that the August 24, 2021 City Council meeting would be held virtually. As you may be aware, PSABC experienced significant difficulties with submitting comments and being heard at the public hearing before the Planning Commission on 101 Charlotte Street conditional rezoning, due to the virtual format. As indicated in our letter dated May 12, 2021, comments that were submitted to the portal were lost and were not included in the public folder and presumably were not reviewed by Planning Commission before making their recommendation. In addition, the phone line was cut off multiple time requiring callers to call back in and get back in a queue, some members of the public were unable to get back in the queue at all. Also, during the three minutes of PSABC's comments, the video feed cut out and members of the general public, including the media, were not able to hear the entirety of PSABC's comments. (For a full list of other issues experienced, see the letter dated May 12, 2021).

A Pennsylvania Limited Liability Partnership

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101 Charlotte Street is a conditional rezoning requiring a legislative hearing. Legislative decisions are “those that ***affect the entire community*** because they set general policies that are applicable throughout the zoning ordinance.” David W. Owens, *Legislative Zoning Decisions, Legal Aspects* 10 (2d ed.1999) (emphasis added). Under the Asheville UDO, actions taken to approve a conditional zoning district must be “reasonable and ***in the public interest.***” UDO 7-7-8(c)(7) (emphasis added). Because they affect the entire community, not just the applicant, a legislative hearing for a legislative decision is required with a fair opportunity to hear from both sides, equally.

The manifest intention of the General Assembly was that a public hearing be conducted at which those who opposed and those who favored adoption of the ordinance would have a fair opportunity to present their respective views.

Freeland v. Orange Cty., 273 N.C. 452, 456, 160 S.E.2d 282, 286 (1968).

The 101 Charlotte Street project has generated significant public interest. The public wants to fully participate in the hearing and provide comment for your consideration. Given the technical difficulties experienced at Planning Commission, the significant public interest in this particular project, PSABC requests that the City Council postpone the legislative hearing on 101 Charlotte Street until one can be done safely in person, allowing members of the general public an opportunity to provide meaningful comment and a fair opportunity to present their views.

Sincerely,

A handwritten signature in black ink that reads "Hayes Jernigan Finley".

Hayes Jernigan Finley

cc: Jessie Landl, Chair, Preservation Society of Asheville and Buncombe County
Brad Branham, Esq., City Attorney
Shannon Tuch, Principal Planner, City of Asheville
Debra Campbell, City Manager, dcampbell@ashevillenc.gov
Todd Okolichany, Planning Director, tokolichany@ashevillenc.gov