

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	March 20, 2023
Action Required:	Motion to Approve a Certificate of Appropriateness, or Motion to Deny a Certificate of Appropriateness
Presenter:	Jeffrey Werner, Historic Preservation and Design Planner
Staff Contacts:	Jeffrey Werner, Historic Preservation and Design Planner
Title:	<b>Appeal of BAR (Board of Architectural Review) denial of Certificate of Appropriateness: First United Methodist Church solar panel project</b>

### Background

- On January 18, 2023, the City's Board of Architectural Review denied a certificate of appropriateness (CoA) for installation of rooftop photovoltaic/solar panels at 101 East Jefferson Street, pursuant to the details set forth within City application BAR 22-10-02. [See the Discussion below re: BAR's formal denial] [Note: Link to January 18, 2023 BAR action, staff report, submittal, and historical survey: [BAR meeting packet - 101 E Jefferson St - Jan 18 2023](#)]
- The owner of 101 East Jefferson Street on January 30, 2023, appealed the BAR's decision to City Council, pursuant to City Code §34-285(b) ("any aggrieved person may note an appeal of the BAR decision to the city council"). [Attachment 1.]
- State enabling legislation authorizes the City to establish historic districts within its zoning ordinance, and to designate specific buildings or structures within the zoning ordinance as having important historic, architectural, archaeological or cultural interest. Va. Code §15.2-2306(A)(1). Within the City's zoning ordinance, 101 East Jefferson Street is located within the North Downtown ADC District. City Code §34-272(2). (The structures at 101 East Jefferson Street are designated *contributing*, which identifies structures deemed to *contribute to* the character of an ADC District. City Code §34-277.)
- State law also authorizes the City to include within its ordinance a requirement that no building or structure, including signs, shall be erected, reconstructed, altered or restored within any such district unless approved by the review board or, on appeal, by the governing body of the locality as being architecturally compatible with the historic landmarks, buildings or structures therein. Va. Code §15.2-2306(A)(1). This is implemented in the City's zoning ordinance by City Code Chapter 34 – Zoning, Article II - Overlay Districts, Division 2 - Historical Preservation and Architectural Design Control Overlay Districts.

- State law also requires the City, by enacting the above, include within its ordinance the right of the owner of a historic landmark, building or structure to appeal to the circuit court for such locality from any final decision of the governing body. Va. Code §15.2-2306(A)(3). This is implemented in the City’s zoning ordinance by City Code §§ 34-285 and 34-286.
- **The City Council’s role in this appeal is to make the final decision of the governing body on the certificate of appropriateness (i.e., approval or denial).** According to City Code §34-286(b): “City Council shall consult with the BAR and consider the written appeal, the criteria [*standards for review*] set forth within section 34-276 or 34-278, as applicable, and any other information, factors, or opinions it deems relevant to the application.” Council should make a final decision on the application, and should not refer the matter back to the BAR.

[Staff note: Sec. 34-276, applicable here, proscribes the *standards for review of construction and alterations*. Sec. 34-278 proscribes the *standards for considering demolitions*.]

**Sample motion to approve: “Upon consideration of all of the information and factors referenced in City Code §34-276 and 34-286, I move to approve a certificate of appropriateness for Application No. BAR 22-10-02.”**

**Sample motion to deny: “Upon consideration of all of the information and factors referenced in City Code §34-276 and 34-286, I move to deny a certificate of appropriateness for Application No. BAR 21-10-02.”**

- If the owner of 101 East Jefferson Street is aggrieved by City Council’s final decision, the owner may appeal the decision to the Charlottesville Circuit Court. The City’s ordinance does not allow appeals to Circuit Court by anyone other than the landowner. City Code §34-286(c). [See below under *Alternatives*.]

The order of presentation for Council’s review of an appeal from a BAR decision is: (1) City Preservation and Design Planner presentation of the staff report (ten minutes), (2) Appellants’ presentation (ten minutes), and (3) BAR chair presentation (five minutes).

## **Discussion**

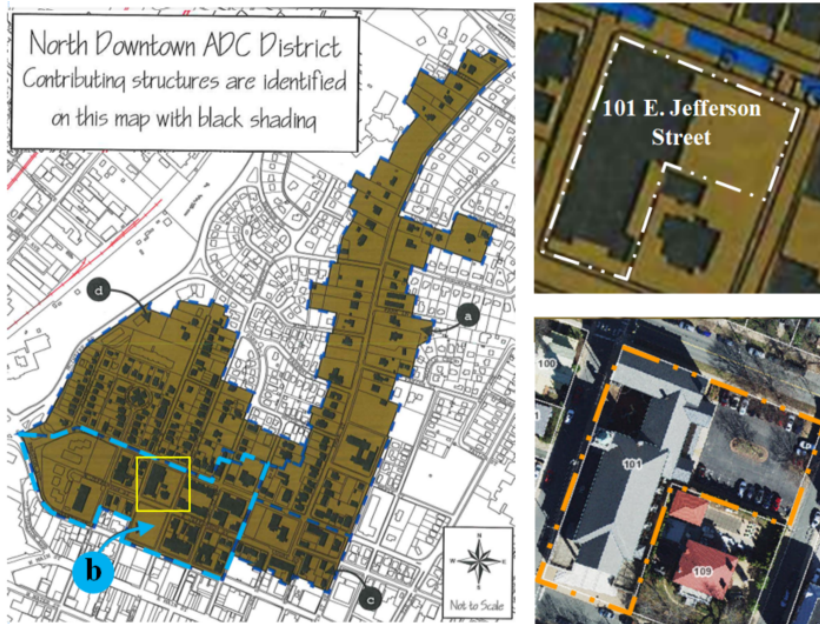
Constructed in 1923, First United Methodist Church is a Colonial Revival, brick church with a monumental portico on the south elevation featuring four Doric columns and a three-story brick tower with a wood-framed steeple on the east elevation. The parcel is within the North Downtown ADC District and the structures are designated as *contributing*.

From Chapter I of the ADC District Design Guidelines:

*North Downtown ADC District:* Adjacent to the Albemarle County Courthouse and laid out according to the 1762 town grid, this area served as the city’s first civic, religious, and commercial center. Thomas Jefferson, James Monroe and James Madison were frequent visitors to the Court Square area. Park Street residences built in the late eighteenth century for lawyers, judges and other professionals still retain their architectural integrity. Today, this district represents the socio-economic and architectural evolution of the original town.

*Subarea b. Jefferson Street/High Street West:* institutional, residential, large scale, open space, brick,

2 to 5 stories, limited setbacks, mix of styles, some classical styles.



In August 2022, the church inquired about installing solar panels and the BAR review process. (See Attachment 5.)

During the September 20, 2022 BAR meeting, staff informally introduced the request, with the BAR offering the following, which staff subsequently communicated to the church.

1. BAR questions for the applicant.
  - How will the panels be installed/mounted? (Brackets, hardware, etc.)
  - Where will wires/cables/conduit and equipment boxes be placed and how will they be screened, if necessary?
  - How high will the panels be above the slate?
  - How will the slate roof be protected during installation and subsequent maintenance of the solar panels? (Concern for condition of slate tiles with more-frequent activity.)
  - Photo-sim: panels on sanctuary are oriented NW.
2. BAR comments to the applicant.
  - Preference: install panels on rear addition; avoid panels on sanctuary.
  - Re: maximizing panel area, a frame over the parking area (east side) might be evaluated.

Meeting video (04:41:00): [BAR Meeting Video Sept 20 2022](#)

At the October 18, 2022 BAR meeting, a formal CoA request to install solar panels on the existing slate roof was presented (BAR #22-10-02). A motion to approve the CoA failed, 2-4. The applicant then requested, and the BAR accepted, a request for deferral.

Meeting video (02:06:00): [BAR Meeting Video Oct 18 2022](#)

Meeting packet: [101 East Jefferson Street - BAR Submittal Oct 2022](#)

At the January 18, 2023 BAR meeting, a formal CoA request to remove portions of the slate roof,

install asphalt shingles, and install solar panels was presented (BAR #22-10-02). A motion to deny the CoA passed 4-3. (Motion to deny CoA by Lewis. Second by Schwarz. Vote 4-3, motion passed. Yes: Schwarz, Zehmer, Lewis, Bailey. No: Birle, Gastinger, Timmerman.)

Having considered the standards set forth within the City Code, including the ADC District Design Guidelines, I move to find that the proposed slate roof replacement and roof-top solar panels at 101 East Jefferson Street do not satisfy the BAR's criteria and are not compatible with this property and the other properties in the North Downtown ADC District for the following reasons:

- the removal of the slate and obscuring and damaging the slate does not meet our guidelines;
- this proposed system of rooftop installation does not comply with the Secretary of Interior standards;

and the BAR denies the application as submitted.

Meeting video (01:06:00): [BAR meeting video - January 18 2023](#)

Meeting packet: [BAR meeting packet - 101 E Jefferson St - Jan 18 2023.](#)

During the BAR's discussions—informal and formal—three primary questions were weighed:

1. How much damage will be done to the slate during installation and subsequent maintenance of the solar panels, and how will that be mitigated?
2. Per the proscribed standards for review, is the installation of solar panels appropriate at the proposed location?
3. Per the proscribed standards for review, is removal of the slate [entirely or partially] and replacement with asphalt shingles appropriate?

For the final submittal (reviewed January 18, 2023), the applicant addressed the first question by proposing removal of the slate and the installation of asphalt shingles at areas where the solar panels will be installed.

For the second question, the ADC District Design Guidelines (Chapter IV – Rehabilitation. G. Roof) recommend solar collectors be installed on *non-character defining roofs or roofs of non-historic adjacent buildings*. Additionally, *The Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards)* offer ten criteria for evaluating rooftop solar panels. When applied to this request, the germane criteria did not support approval. (See pages 5 – 8 of the January 18, 2023 BAR staff report.)

For the third question--and to the BAR, the most important question--the ADC District Design Guidelines (Chapter IV – *Rehabilitation*. G. Roof) recommend that *when replacing a roof, match original materials as closely as possible and to retain elements that contribute to the style and character of the building*. In brief, to preserve the historic, character-defining slate roof.

Additionally, slate is a long-life, durable product. Properly maintained, a Buckingham slate roof can exceed 150 years. (The roof is Buckingham slate, believed to be original to the 1923 construction.) Absent the installation of solar panels, there is no demonstrated need to remove and replace the slate.

Regarding the apparent conflict of the BAR's standards of review and the City's broader policy goals and initiatives, this is acknowledged in the January 18, 2023, staff report, with staff offering the BAR the following recommendation:

*To be clear, a strict application of the design guidelines and of the Secretary's Standards would recommend denial of this request. With that, the options available to the BAR are: a) approve the CoA by, as instructed by the design guidelines, working with the applicant to devise a creative solution that meets that applicant's goal for sustainability; or, b) deny the CoA, acknowledging the matter can be appealed to City Council who may consider additional information, factors or opinions deem[ed] relevant to the [appeal]. (That is, Council may consider factors the BAR cannot.)*

(For a more detailed summary, see Attachment 2: Staff response to appeal.)

**Attachments:** [Note: link to the January 18, 2023 BAR staff report and applicant submittal: [BAR meeting packet - 101 E Jefferson St - Jan 18 2023.](#)]

1. January 30, 2023, First United Methodist Church letter appealing BAR's January 18, 2023 action re: BAR 22-10-03.
2. Staff response to appeal.
3. BAR meeting draft minutes, October 18, 2022. Excerpts re: FUMC, including action taken.
4. BAR meeting draft minutes, January 18, 2023. Excerpts re: FUMC, including action taken.
5. Misc. email correspondence with applicant August 31 to December 14, 2022.

## **Appendix**

Links to the City of Charlottesville's ADC District Design Guidelines

- [Chapter 1 Introduction \(Part 1\)](#)
- [Chapter 1 Introduction \(Part 2\)](#)
- [Chapter 2 Site Design and Elements](#)
- [Chapter 3 New Construction and Additions](#)
- [Chapter 4 Rehabilitation](#)
- [Chapter 5 Signs, Awnings, Vending, and Cafes](#)
- [VII: Public Improvements](#)
- [Chapter 7 Moving and Demolition](#)
- [Index](#)

## **Alignment with City Council's Vision and Strategic Plan**

Upholding the BAR's decision aligns with Council's vision for Charlottesville Arts and Culture: Charlottesville cherishes and builds programming around the evolving research and interpretation of our historic heritage and resources; and for A Green City: Charlottesville citizens live in a community with a vibrant urban forest, tree-lined streets, and lush green neighborhoods. It contributes to Goal 2 of the Strategic Plan, to be a safe, equitable, thriving and beautiful community, and objective 2.5, to provide natural and historic resources stewardship.

## **Community Engagement**

City Code Sec. 34-284 requires public notice prior to the BAR's formal review of a CoA request. For the BAR meetings on October 18, 2022, and January 18, 2023, the abutting landowners were notified by letter and the meeting was publicly posted.

Except for the applicant and individuals with the project team, there were no public comments offered during the October 18, 2022 and January 18, 2023 meetings. [See minutes in Attachments 3 and 4.]

Note: Minutes for October 18, 2022 and January 18, 2023 meetings have not been approved by the BAR. The draft minutes reflect only the BAR's discussion and comments prior to action taken.

## **Budgetary Impact**

None

## **Recommendation**

Based on the application materials, the information and standards set forth within City Code §34-276 and §34-286, and for the reasons set forth within this memo, the applicant's appeal, the staff response to that appeal (Attachment 2 of this memo), and the January 18, 2023, BAR staff report (link above), staff's recommendation is that City Council render a final decision regarding this CoA, and not refer the matter back to the BAR.

## **Alternatives**

1. If City Council agrees with the appellant, then Council should vote to overturn the BAR decision, approving the CoA allowing replacement of the slate with asphalt shingles and installation of the rooftop solar panels, as proposed under BAR #22-102.
2. If City Council agrees with the BAR decision to deny the CoA, then Council should vote to uphold the decision. The applicant would then have the option, per Sec. 34-286(c), to make further appeal to the Circuit Court.

## **Sec. 34-286. - City council appeals.**

1. An applicant shall set forth, in writing, the grounds for an appeal, including the procedure(s) or standard(s) alleged to have been violated or misapplied by the BAR, and/or any additional information, factors or opinions he or she deems relevant to the application. The applicant, or his agent, and any aggrieved person, shall be given an opportunity to be heard on the appeal.
2. In any appeal the city council shall consult with the BAR and consider the written appeal, the criteria set forth within section 34-276 or 34-278, as applicable, and any other information, factors, or opinions it deems relevant to the application.
3. A final decision of the city council may be appealed by the owner of the subject property to the Circuit Court for the City of Charlottesville, by filing with the court a petition at law, setting forth the alleged illegality of the action taken. such petition must be filed with the circuit court within thirty (30) days after council's final decision. The filing of the petition shall stay the council's decision pending the outcome of the appeal; except that the filing of the petition shall not stay a decision of city council denying permission to demolish a building or structure. Any appeal which may be taken to the circuit court from a decision of the city council to deny a permit for

the demolition of a building or structure shall not affect the right of the property owner to make the bona fide offer to sell referred to in subparagraphs (d) and (e), below.

**Attachments**

1. Attachment 1 - FUMC appeal of BAR denial - Rooftop Solar Panels January 30 2023-
2. Attachment 2 - FUMC appeal - BAR staff response
3. Attachment 3 -FUMC -BAR meeting minutes October 18 2022
4. Attachment 4 -FUMC - BAR meeting minutes January 18 2023
5. Attachment 5 -FUMC -Misc email FUMC solar panels Aug 31 - Dec 14 2022