

Attachment 2

City staff response to the appeal of the ERB's February 14, 2023 and March 14, 2023 decisions approving a certificate of appropriateness for construction of a new apartment building at 2005 Jefferson Park Avenue.

(Throughout this Response, references to "Staff" represent the collective positions of the ERB, the City's Preservation and Design Planner, and the City Attorney's Office.)

EXECUTIVE SUMMARY OF STAFF'S RESPONSE

Eight appeal letters have been submitted representing six individual parties. Two are property owners who reside near the proposed development (116 and 128 Observatory Avenue) and four are owners of rental properties located near the proposed development (107, 111, and 123 Washington Avenue and 119 Observatory Avenue). All six parties filed appeals following the ERB's February 14, 2023 approval of the requested CoA. Two of the six filed appeals following the readvertised meeting on March 14, 2023. Following internal discussions, it was decided to respond to all eight letters collectively.

For the reasons stated below, Staff's position is that the concerns expressed by the Appellants do not provide a basis for City Council to deny—that is, to overturn the ERB's approval of--a Certificate of Appropriateness (CoA) for construction of a new apartment building at 2005 Jefferson Park Avenue. On February 14, 2023 and again on March 14, 2023, the ERB approved the CoA citing its application of the "standards set forth within the City's Entrance Corridor Design Guidelines" and a finding that the project is "consistent with the Guidelines and compatible with the goals of this Entrance Corridor[.]"

Council's Role on Appeal: Reference City Code §34-314. Council's role on appeal is to serve as the final decision-maker and to "review the application as if the application had come before it in the first instance." Additionally, Council "may consider any information or opinions relevant to the application which is the subject of such decision, including, but not limited to, those provided by the ERB [communicated here as the "Staff Response"]." Council should make a final decision on the application and not refer the matter back to the ERB.

Staff Response to Appellants' Contentions

In preparing the response to the eight letters submitted, staff organized the appellants' collective comments into 14 categories, in no particular order, see below. Those comments, as presented below, are paraphrased for clarity and brevity. Staff believes the response by categories fairly presents the germane points expressed by the appellants; however, Council should review each of eight letters.

1. Public Notice
2. Questions
3. General Concerns
4. Massing and Scale
5. Height

6. Design/Materials
7. Garage/Parking/Traffic
8. Enclosing/Screening [electrical/mechanical equipment]
9. Site Lighting
10. Landscaping
11. Trash/Recycling
12. Path between Observatory and Washington [at the rear of the property]
13. Construction activity
14. Affordable Housing

Item 1: Public Notice

Appellants: For the February 14, 2023 ERB meeting, a notice sign was not posted on-site ten (10) days ahead of the meeting.

Staff response: That is correct. Due to an oversight, staff erred by posting the sign eight (8) days prior to the meeting, not the required ten (10) days. When this was reported to staff on February 22 a decision was made to re-advertise the ERB review. For the March 14, 2023 meeting, on February 27, 2023, 15 days prior to the meeting, a notice sign was posted on the property, facing JPA. On March 1, 2023, 13 days prior to the meeting, two additional signs were posted at the property, one on the side facing Observatory Avenue and one on the side facing Washington Avenue.

Appellants: For the March 14, 2023 ERB meeting, notice letters were postmarked March 1, 2023. City Code mandates that notice be sent by first class mail and postmarked not less than fourteen days before the meeting.

Staff response: Notice letters were printed and provided for mailing on Monday, February 27, 2023. Letters were processed and placed in USPS box on March 1, 2023, see image below. When the matter was raised by an appellant, staff consulted with legal counsel [on March 23, 2023] and it was determined “there was sufficient notice based on the postmark date.” Had the mailing for the March 14, 2023 meeting not met the notice requirements, staff would have recommended the matter be readvertised and reviewed, again, by the ERB for a third consecutive month.



Item 2: Questions

Appellants: What are actual height and density?

Staff response: The maximum height of 75-feet was established by City Council's approval of the Special Use Permit. Density does not fall under ERB purview.

Item 3: General Concerns

Appellants: General concerns raised.

- Project will result in increased traffic congestion and noise and light pollution.
- Adding 390 people, service personnel, visitors and vehicles will result in noise, scooters, and human activity that will need to be managed.
- Owners and tenants of existing, adjacent rental units do not want congestion, lack of sunshine, traffic, noise, and light [from site lighting and vehicles].
- Project is sandwiched between established homeowners, investment properties and numerous student renters. The essence of this long-established neighborhood will be lost.

Staff response: These are understandable concerns ahead of a development project. However, the ERB does not have purview over traffic control, uses allowed by zoning, and/or policing of the City. The ERB reviewed the project on February 14, 2023 and on March 14, 2023. After applying the EC standards of review, the ERB approved the CoA on February 14, 2023 by a vote of 7-0 and again on March 14, 2023 by a vote of 5-0. For both dates, the same motion and conditions of approval were applied.

Appellants: Project does not fit with existing zoning; exceeds what would be allowed by-right in the rezoning proposed by the Future Land Use Map.

Staff response: The project, as presented on February 14 and March 14 (the submittal package was identical), is permitted under current zoning with the Special Use Permit approved by City Council on September 19, 2022, which allows the increase in building height from 45 feet to 75 feet, the reduction of the rear-yard setback from 75 feet to 36 feet, and reduces by 22% the amount of required on-site parking.

Item 4: Massing and Scale

Appellants:

- ERB interpreted massing and scale as a matter of appearance; did not address problems.
- The project's massing and scale is not compatible with existing [nearby] structures.
- Proposed building is extremely large; nothing like the surrounding residences; overwhelming and inappropriate; and will not enhance the City's character.
- Proposed building looks like a monolith; its footprint is enormous and does not maintain a human scale.
- Building depth [from JPA] exceeds buildings cited by applicant.
- Building wall occupies entire block [width] between Washington and Observatory.
- Depth (side) of the building is more than twice the width.
- Building does not have enough setback from side streets.
- Project was not reduced by the modifications approved by the ERB.

Staff response: The ERB reviewed the project and approved the CoA on February 14, 2023 by a vote of 7-0 and again on March 14, 2023 by a vote of 5-0. For both dates, the same motion and conditions of approval were applied. The motion for approval stated the ERB had “considered the standards set forth within the City’s Entrance Corridor Design Guidelines” and “found the project consistent with the Guidelines and compatible with the goals of this Entrance Corridor[.]”

Item 5: Height

Appellants:

- [Citing the applicant’s submittal.] “*Height is similar to nearby structures. 1725 JPA, 1815 JPA and 1800 JPA are five to nine stories tall.*” These do not define “human scale.” Two on same side of JPA [are under] 6 stories. Other side of JPA is zoned University High Density; 205 JPA zoned R-3. 1800 JPA is set back from the street. Referenced buildings are not on hills [like 2005 JPA].
- Five-plus stories out of character with neighborhood, impacting a unique variety in architectural styles of nearby homes.
- Building will dwarf any other building in sight of it on JPA; not harmonious with neighboring structures.
- Building is tall and gargantuan; does not fit within a Charlottesville residential neighborhood.
- EC Design Guidelines state: “Reduce height near lower density areas.” The proposed building will be five- to six-stories, where the abutting/adjacent houses are one- and two-story.
- Building will reduce morning sunlight on [neighboring] properties.
- Height will result in daytime shadows and loss of seasonal natural light; will impact trees, foliage, gardens and other environmental factors nearby.
- Building will be taller than other buildings on north side of JPA;

Staff response: (See Item 4 above.) The ERB reviewed the project and approved the CoA on February 14, 2023 by a vote of 7-0 and again on March 14, 2023 by a vote of 5-0.

Item 6: Design/Materials

Appellants:

- Design conflicts with the character of neighborhood.
- ERB was concerned with color and quality of the stucco. Those concerns were not addressed.

Staff response: (See Item 4 above.) The ERB reviewed the project and approved the CoA on February 14, 2023 by a vote of 7-0 and again on March 14, 2023 by a vote of 5-0. The CoA includes a condition of approval that requires the stucco “be a durable synthetic material which is mechanically fastened over appropriate drainage mats with a code compliant water-resistant barrier.”

Item 7: Garage/Parking/Traffic

Appellants:

- 122 parking slots [on-site] for 390 students and guests is inadequate. When spaces are not available, cars will likely clog side streets nearby.
- Sight line for traffic [on Washington Avenue] is restrictive [limited]; will be exacerbated by [increased traffic related to the new building].
- Increased traffic will create safety problems.
- Traffic at the garage entry and on the street will create traffic bottlenecks on Washington Avenue.
- Residents of 2005 JPA should not be allowed to park on side streets.
- The porches [on west elevation, Observatory Avenue] will encourage illegal parking by delivery vehicles and guests, blocking two-way traffic. Replace porches with balconies.
- Side streets are narrow. Concern Apprehensive about illegal parking impacting exit in emergency and access for emergency vehicles.

Staff response: These are understandable concerns ahead of a development project. However, the ERB does not have purview over traffic management, parking violations, emergency vehicle accessibility, and/or restricting parking on City streets. A condition of the Special Use Permit requires the owner Develop a Master Parking Plan.]

Appellants: Vehicles entering/exiting garage will be noisy, headlights will beam into properties.

Staff response: For vehicles exiting the site not a public street, the ERB cannot prevent or regulate headlight beams.

Appellants: Require two garage entries. Add alternative closer to/onto JPA.

Staff response: (See Item 4 above.) The ERB reviewed the project and approved the CoA on February 14, 2023 by a vote of 7-0 and again on March 14, 2023 by a vote of 5-0. The EC Design Guidelines for Sites--under Parking--recommend reducing the visibility of garages by not allowing them to become a primary feature, when viewed from the street, and locating them behind the building setback, preferably facing the side or rear. Therefore, moving the garage entrance to the primary façade facing JPA would conflict with the Design Guidelines.

Item 8: Enclosing/Screening [electrical/mechanical equipment]

Appellants: Electrical/mechanical equipment near garage. Noise. Generator on site: Noise, fuel storage, smell. Enclose/screen mechanical equipment from sight and for security/safety reasons. Recommend underground electrical cabling.

Staff response: In the adopted CoA, several conditions of approval address the screening of electrical and mechanical equipment.

- If used for mechanical units, utility/service boxes, storage, trash containers, the Mech Equip area noted on sheet 44, at the west elevation, will be appropriately screened. That screening will be subject to approval by design staff and must be memorialized as an amendment to the site plan.

- Any ground-level mechanical equipment and/or utility boxes will be appropriately screened. That screening will be subject to approval by design staff and must be memorialized as an amendment to the site plan.
- Meters and panel boxes for utility, communications, and cable connections will be located preferably within the garage; if not, then in non-prominent locations on the side elevations only and appropriately screened. That screening will be subject to approval by design staff and must be memorialized as an amendment to the site plan.

Item 9: Site Lighting

Appellants:

- Properly situated [lighting] will help, an inconvenience to others as well.
- Recommend low-strength outdoor lighting
- Exterior lighting needs to be more specific. Excessive lighting is detrimental to sleep.

Staff response: Specific lighting is evaluated during the site plan review and, as necessary, following submittal for a building permit. The CoA includes a condition of approval that all exterior lighting and interior lighting visible from the garage will have lamping that is dimmable, has a Color Temperature [CCT] not exceeding 3,000K, and has a Color Rendering Index [CRI] not less than 80, preferably not less than 90. Additionally, the owner will address any reasonable public complaints about light glare by either dimming the lamp or replacing the lamps/fixtures. Note: This condition addresses two light sources: exterior lighting refers to all site and exterior lighting fixtures; interior lighting visible from the garage refers to all lighting fixtures within (inside) the garage.

Item 10: Landscaping

Appellants:

- Existing mature tree canopy will be destroyed. New plantings will not provide equivalent carbon take-up or shade and cooling for decades.
- Trees will take 20 years to reach proportions illustrated.

Staff response: The CoA includes a condition of approval that the number, size, type and character of all plantings (trees, shrubs etc.) shall be installed and maintained in substantial accordance with the drawings. Note: Approximately 25 existing trees will be removed during construction: 18 have diameters between 4" and 15"; seven have diameters between 20" and 40", which is considered mature. Approximately 70 new trees will be planted: 17 large canopy trees; 10 medium canopy trees; 25 small flowering trees; 18 evergreen trees.

Item 11: Trash/Recycling

Appellants:

- Dumpsters are loud when lifted/dropped, will disturb nearby tenants.

- Concern for debris and odors.
- Trash pickup will impact traffic.
- Require trash pick-up be inside the garage or establish alternate other than Washington Ave.
- Require trash pick-up be no sooner than 7:00 AM.
- Observatory Avenue is a very narrow street. The trash truck must back up the street from JPA.

Staff response: The timing and means of trash pick-up are not under ERB purview. The CoA includes a condition of approval that dumpsters and trash and/or recycling bins be located within the garage and pulled to the curb only on collection days.

Item 12: Path between Observatory and Washington [at the rear of the property]

Appellants:

- Must be sufficient width to allow for pedestrians, bikes and baby carriages, etc.
- Eliminate the stairs/steps. ADA compliance. Walkway must meet everyone's needs.
- Steps on the proposed path would make this path inaccessible for pedestrians in wheelchairs or with baby carriages or strollers.
- Bike runnels help bikes; but do not make path accessible for wheelchairs, carriages, strollers.
- Space creates the potential for crowd gathering and nefarious activities.
- Consider lighting triggered by motion.

Staff response: Accessibility will be reviewed during site plan review. Pathway is not visible from the EC; therefore, it is not formally within the ERB's purview.]

Item 13: Construction activity

Appellants:

- Noise, traffic, parking will destroy peaceful quality of life.
- Construction crane(s) will make streets impassable.
- Construction employees should not be allowed to

Staff response: Construction activity is not within the ERB's purview

Item 14: Affordable Housing

Appellants:

- Project will not provide affordable housing.
- Project will have luxury units that cater to the wealthy; rents will be much higher than a comparable sized unit in nearby housing.

Staff response: The use of a site or building is not within the ERB's purview. Additionally, at no point during the ERB's design review was there any discussion or presentation regarding potential tenants or rental rates.