

**Attachment 2**

**City staff response to the appeal of the ERB's June 13 2023  
decision 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**

Five letters appealing to City Council the June 13, 2023 ERB action were received within the deadline proscribed by City Code. Three from property owners who reside near the proposed development (116, 123, and 128 Observatory Avenue) and two from owners of rental properties located near the proposed development (111 Washington Avenue and 119 Observatory Avenue).

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 the requested Certificate of Appropriateness (CoA) for construction of a new apartment building at 2005 Jefferson Park Avenue. On June 13, 2023, the ERB approved the CoA with conditions. The approved motion for approval stated the review applied the “standards set forth within the City’s Entrance Corridor Design Guidelines” and the project was found to be “consistent with the Guidelines and compatible with the goals of this Entrance Corridor[.]”

**Note:** The applicant’s submittal and staff’s recommendations have not changed since initially presented to the ERB on February 14, 2023. The same drawings and the same staff report and recommendations were presented to the ERB on March 14, 2023 and again on June 13, 2023. On May 15, 2023, City Council reviewed appeals of the CoA approved in February and March, subsequently instructing staff to readvertise the ERB’s review the requested CoA, which was held on June 13, 2023, resulting in an approved CoA with conditions. The appeals presented to Council here (July 17, 2023) are only those received subsequent to and related to the ERB’s action on June 13, 2023.

**Staff Response to Appellants’ Contentions**

In preparing this response, staff organized the collective comments into 12 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, EC related issues expressed by the appellants; however, Council should read and review each of the five letters (Attachment 1).

1. Procedural objections
2. General Concerns
3. Massing and Scale
4. Height
5. Garage/Parking/Traffic
6. Enclosing/Screening [electrical/mechanical equipment]

7. Path between Observatory and Washington [at the rear of the property]
8. Landscaping
9. Construction activity
10. Trash/Recycling
11. Affordable Housing
12. Questions from Kenneth Hill

### **Item 1: Procedural objections**

Appellants: Notice for June 13, 2023 ERB meeting was not posted on the property per City Code.

Staff response: On May 30, 2023, 15 days prior to the June 13, 2023 ERB meeting, three (3) notice signs were posted by NDS staff. (See below.) City Code Sec 34-284(a) requires notice signs be posted at least ten days prior to the meeting. [Note: The ERB and BAR use the same public notice requirements stated in City Code Sec 34-284.]



108 Observatory Ave.



JPA median



100 Washington Ave.

Appellants: Notice for February 14, 2023 ERB meeting not posted on the property per City Code. (Ref. Letter #5.)

Staff response: Not relevant. Council is reviewing an appeal of the ERB's action on June 13, 2023.

Appellants: This is the first appeal of an Entrance Corridor CoA.

Staff response: Correct. To the best of staff's knowledge, the appeals of the ERB's February and March actions are the first appeal to Council of an ERB action.

Appellants: Appeal review process is flawed

- Not based on precedent, prejudicial to appellants.
- Presentation to Council should not be *managed by/prepared by/presented by* ERB staff, who cannot be impartial or serve as a neutral party.

Staff response: The process is not unprecedented. This review follows the same Council has used for BAR appeals (since at least 2008).

- Staff prepares a memo to Council summarizing the matter, including the appellant's written appeal and a staff response.
- At the Council meeting, staff makes a presentation, followed by the appellant's presentation, then comments from the BAR (typically from the chair).
- Council may then ask questions of both parties and make its decision.
- The staff memo and presentation typically recommend that Council uphold the BAR's decision. [Note: For some appeals, staff simply *referred to* the BAR's action.]

Re: 2005 JPA, on May 5, 2023, staff informed the appellants of the order and process for Council's May 15 review. (See e-mail below.) During the May 15, 2023 meeting, prior to hearing the ERB appeal for 2005 JPA, Council reviewed a BAR appeal for 104 Stadium Road. For both Council followed the same order and process. Prior to and during the May 15 Council review no appellant expressed concern for the process.

**From:** Werner, Jeffrey B

**Sent:** Friday, May 5, 2023 12:40 PM

**To:** reppertfamily@gmail.com; jimmy.wright@jeffersonscholars.org; lm2e@virginia.edu; apbe4n@gmail.com; billschaafsr@gmail.com; micasabe@gmail.com

**Cc:** Freas, James <freasj@charlottesville.gov>

**Subject:** Appeal of CoA approval for 2005 JPA

In response to your letters (see the list below) submitted the Clerk of Council, your appeal of the Entrance Corridor Review Board's approval of a Certificate of Appropriateness for the proposed development at 2005 JPA is currently scheduled for review by City Council on May 15, 2023, during their regular meeting, which begins at 6:30 pm in Council Chambers at City Hall. I will notify you if anything

changes. (Refer to meeting link below. All of the information related to this matter should be posted by early next week. I'll let you know when it is.)

Council will evaluate your collective statements as a single appeal. The order of presentation will be: (1) City Preservation and Design Planner's presentation of the staff report (ten minutes), (2) Appellants' presentation (ten minutes), and (3) ERB chair's presentation (five minutes). You can attend in-person or participate via Zoom, but let me know so we can include you as a meeting *participant*. All eight of the appeal letters will be available to Council, so you are not required to speak, or make a presentation, or even to attend the meeting; however, please note that ten minutes is the cumulative time allocated for your comments collectively, not ten minutes for each of you. You will have to decide how to use that time, who speaks, in what order, what is presented, etc. If you have a presentation for Council—PowerPoint slides, etc.—please get those to me no later than the end of next week so we or self-serving.

Appellants: City Council must review the application as if it had come in the first instance. (Ref to City Code §34-314(c).) On May 15, 2023, Council focused on the notice letter, not substantive issues.

Staff response: For the May 15, 2023 review, staff's memo and presentation to Council cited City Code §34-314(c), which instructs Council to review an appeal "as if the [CoA request] had come before it in the first instance." Additionally, Council was provided links to the applicant's submittal and to the February 14, 2023 ERB staff report, which included staff's recommendations and a review that applied the pertinent EC design guidelines. (See Attachments 3, 4, and 5.)

Appellants: The June 13, 2023 ERB staff report overstates City Council's May 15 response: "Council determined the claims regarding the ERB's design review were without merit."

Staff response: The following is from the May 15, 2023 Council meeting video. Should Council feel their comments were misrepresented, staff apologizes and welcomes any correction or clarification.

Mr. Snook: [...] I don't really have a problem with most of the, really, any of the substantive stuff [...]

[...]

Mr. Werner: Can I ask you [...] this will likely be appealed again, are there any issues related to the ERB 's review that you feel should be addressed, and forgive me for interrupting, but I'm just trying to cover the bases.

Mayor Snook: I will tell you my basic feeling is that issues that are site plan issues, are not really appropriate for this, and most of the issues that I saw, maybe all of them, except perhaps the notice question, strike me as site plan issues. Or, the issues,

frankly, that these same appellants had the Circuit Court rule against them on last week.

Councilor Pinkston: Most of these issues seem like they were litigated and discussed when we actually did the SUP. I would have voted to uphold the Planning Commission, the ERB's decision, except for the issue that we're facing tonight, it sounds like on a technicality or a factual technicality, it's got to go back. Let's get it right.

Councilor Payne: I'll largely agree, I think the fact that this had to go back through the ERB process resulting in something [that] does look substantially better than the original proposal. I think we should just think about that with large buildings: Is there something that can make it just feel a little bit better? I think that was largely accomplished [here] from the building materials, colors, and I concur that some of the major issues [are] really about massing and scale, which I guess are parts the ERB could review, but it really feels more like the SUP was the relevant time when that decision got made. Hopefully that is somewhat clear.

Appellants: The May 15, 2023 staff memo to Council noted: "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 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[.]'" This is not the wording that the ERB actually voted, according to the video of the 2/14/2023 Planning Commission meeting.

Staff response: Not relevant. Refers to ERB actions on February 2023 and March 2023. Council is reviewing an appeal of the ERB's action on June 13, 2023.

## **Item 2: General Concerns**

Appellants: General concerns re: proposed building.

- Adding 390 people, service personnel, visitors and vehicles will result in noise, scooters, and human activity that will need to be managed.
- Of particular concern is the resulting traffic congestion, noise, and light pollution.

Staff response: The ERB does not have purview over traffic, parking, and pedestrian or tenant activities. Site 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 addresses exterior lighting and interior lighting visible from the garage.

Appellants: General concerns re: zoning.

- Building conflicts with existing zoning.
- Relies on a SUP allowing the proposed height.

Staff response: The project, as presented, is permitted under current zoning and the Special Use Permit approved by City Council on September 19, 2022, which allows the increase in maximum 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 3: Massing and Scale**

Appellants: General concerns re: massing and scale.

- ERB interpreted massing and scale as a matter of appearance; did not address problems.
- Proposed building is extremely large; nothing like the surrounding residences; overwhelming and inappropriate; and will not enhance the City's character.
- Building width (at JPA), depth (at side streets), setbacks and footprint not similar to other buildings on JPA.
- ERB did not follow Entrance Corridor Design Guidelines.

Staff response: The ERB reviewed the project and approved the requested CoA on June 13, 2023 (7-0). The adopted motion 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[.]"

Appellants: ERB did not discuss human scale; told b staff they must work within the box prescribed by the SUP.

Staff response: This is correct. The ERB's action cannot conflict with what is permitted by the current zoning and the SUP approved by City Council on September 19, 2022, which permits a maximum building height of 75 feet and a rear-yard setback of 36 feet.

### **Item 4: Height**

Appellants:

- EC Design Guidelines state: "Reduce height near lower density areas." The proposed building will be five- to six-stories. 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.

The ERB reviewed the project and approved the requested CoA on June 13, 2023 (7-0). The adopted motion 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[.]"

The maximum height of 75-feet was established by City Council's approval of the SUP on September 19, 2022. The ERB cannot require building modification that would conflict with what is permitted by the SUP.

**Item 5: Garage/Parking/Traffic****Appellants:**

- 122 parking slots [on-site] for 390 students and guests is inadequate.
- Pause the project until adequate on-site parking has been added.
- Sight lines for traffic on side streets are currently limited, will be exacerbated by increased traffic.
- Increased traffic will create safety problems; illegal parking impacting exit in emergency and access for emergency vehicles.
- Traffic at the garage entry and on the street will create traffic bottlenecks on Washington Avenue.
- The porches [on west elevation, Observatory Avenue] will encourage illegal parking by delivery vehicles and guests, blocking two-way traffic. Replace porches with balconies.

**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 SUP requires the owner Develop a Master Parking Plan.

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

**Staff response:** The ERB cannot regulate vehicles entering/exiting the garage.

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

**Staff response:** The EC Design Guidelines for Sites (Chapter III), 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 6: Enclosing/Screening [electrical/mechanical equipment]**

**Appellants:** Electrical/mechanical equipment and generator will be noisy. Odors from generator fuel. Enclose/screen mechanical equipment.

**Staff response:** In the adopted CoA, several conditions of approval address the screening of electrical and mechanical equipment. Council may amend or revise the conditions. Per the EC Design Guidelines for Sites (Chapter III), under Utilities, Communication Equipment & Service Areas: *Site noise-generating features away from neighboring properties especially residences, or use noise barriers or other means of reducing the impact.*

**Item 7: 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. Require ADA compliance.
- Bike runnels help bikes; but do not make path accessible for wheelchairs, carriages, strollers.

Staff response: The ERB required bike runnels as a condition of the CoA. Council may amend or revise the conditions. Accessibility will be reviewed during site plan review, including a review by the City's ADA coordinator, who will determine if the site is ADA compliant. As a result of that review, it is possible compliance can be achieved by pedestrian routes on the site other than this rear pathway.

### **Item 8: Landscaping**

#### Appellants:

- Existing mature tree canopy will be destroyed. New plantings will not provide equivalent carbon take-up or shade and cooling for decades.

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.

Tree coverage must meet the requirements of City Code and will be evaluated during the site plan review.

### **Item 9: Construction activity**

Appellants: Concern regarding construction-related activities: noise, traffic, and parking, cranes making streets impassable.

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

### **Item 10: Trash/Recycling**

#### Appellants:

- Dumpsters are loud when lifted/dropped, will disturb nearby tenants.
- Concern for debris and odors.
- Trash pickup will impact traffic.

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 11: Affordable Housing**



Appellants:

- Project will not provide affordable housing. These will be luxury units with higher rents than nearby housing.

Staff response: Not relevant. The BAR has no purview over the use of a site or building, only whether a proposed design is appropriate per the review criteria.

**Item 11: Questions from Kenneth Hill**

Staff comment: Staff received Mr. Hill's questions on June 26, 2023. Of these, only two—re: building height\* and site lighting\*\*—relate to design elements within ERB purview. The remaining questions relate to construction activity, which is not part of the design review. Out of courtesy to Mr. Hill, this list was forwarded the list to the applicant, allowing them an opportunity to respond, if they wished. Their comments are included below.

Question \*: What will be the total height of the building from the street on Observatory, Washington and JPA avenues at each corner of the building?

Applicant response:

- At the upper corner on Observatory, at the nearest corner of the structure, the building height is approximately 35'-4" +/- above the street. At locations further removed, the tallest parapet is approximately 60' +/- above the street.
- At the JPA and Observatory corner, at the nearest corner of the structure, the building height is approximately 19'-0" +/- above the street to the roof terrace at the 3<sup>rd</sup> level.
- At the JPA and Washington corner, at the nearest corner of the structure, the building height is approximately 72'-4" +/- above the street.
- At the upper corner on Washington, at the nearest corner of the structure, the building height is approximately 62' +/- above the street.

Question \*\*: Once the project is complete, explain the type of lights, locations and wattages on the building facade that will be facing down to the street? What distance from the parking garage and building will they illuminate out/downward?"

Applicant response: Refer to the preliminary Site Photometrics plan, and associated cut sheets that are part of the site plan submission for types, locations, and wattages. Note the design is still in progress. Proposed exterior light fixtures include bollards, step lights, wall mounted fixtures, and down lights in exterior soffits. As part of the site plan approval process, this is reviewed for compliance with the city's ordinance, found here: [Municode excerpt City Outdoor Lighting site plan](#) and must also meet ERB's conditions for the Certificate of Appropriateness. The distance out / downward is variable depending on the fixture and its mounting height, but this is calculated at grade on the photometric plan.

Question: When is the project expected to break ground?

Applicant response: Summer 2024 +/-

Question: How long will construction last from start to finish?

Applicant response: 18 – 24 months +/-

Question: If the contractor takes longer than allowed in the contract, what are the financial or other penalties for not staying on schedule? Please explain the details.

Applicant response: This will be negotiated with the GC during the selection process and is between the GC and the Owner.

Question: From the date construction starts, at what time in the morning will these activities and associated noise start? What will be the schedule on Saturdays or holidays, if any?

Applicant response: The general contractor has not been selected. These aspects of the project have not yet been determined. Unlikely there will be work on public holidays. The contractor must abide by the city noise ordinance, found here: [Municepe City Noise Ordinance](#), which stipulates “No person shall permit, operate or cause any source of sound to create a sound level in a residential zone or within any residential building during the hours between 10:00 p.m. and 6:00 a.m. in excess of fifty-five (55) dB(A) when measured at or outside the property boundary.” A typical construction workday is 7am to 4pm +/-.

Question: When construction starts, will trucks and equipment be parked on Observatory or Washington avenues overnight? And, on weekends? Or, only during work hours? If so, at what location(s)?

Applicant response: This will be worked out in advance with the City once a general contractor is selected.

Question: What decibel level of noise from generators, trucks and construction equipment will nearby residents experience? What steps and mechanisms will be taken to keep neighbors apprised on a regular basis?

Applicant response: TBD. During the daytime hours of 6am to 10pm, construction noise is exempt from the noise ordinance.

Question: When underground pipes (for sewer, water, and gas) are installed, what street or sidewalk locations will be dug up - starting when and for how long?

Applicant response: Portions of Washington, Observatory, and Jefferson Park will be dug up in trenches for new utility connections and city required utility abandonments at the service mains. Trenching activities are short term durations typically less than one week and are often complete within days. Contractors don't like to work in roadways any longer than absolutely necessary as it is expensive work for them to manage so they are always self-motivated to expedite the necessary work. Certain work may be performed as

night work for connections such as water mains to minimize disruptions when making connections. Start date is TBD by the contractor (yet to be selected), but would be expected to be several months after the start of construction for these activities to take place.

Question: What size pipes will be installed? Will they connect to the existing city infrastructure? If so, at what interchange(s)? Please be as specific as possible?

Applicant response: Pipe sizes vary, however all currently proposed within the roadways are six inches and less for water and sanitary sewer connections. Yes, water and sewer will connect to city infrastructure as necessary/required for service. Water connections are expected in three locations; in front of 113 and 111, and 101 Washington Ave. The sewer connection along Jefferson Park will be made at an existing manhole located within the existing parking lane along the site's frontage.

Question: As electrical wiring and cabling (signal, etc.) are planned overhead (vice underground) will new poles be installed, or will existing ones be used? If new locations are planned, where will they exactly be?

Applicant Response: Electrical wiring/cabling is not yet fully designed. Dominion Energy is responsible for the design and determination for overhead or underground lines. At this time, the site plan anticipates underground lines fed from an existing pole in the project's vicinity, however this is subject to change. Exact locations are TBD at this time.

Question: As construction equipment is put on the work site or streets adjacent to the project, will parking be restricted? If so, in what locations and for what duration?

Applicant response: Yes, no parking is expected to occur along the length of the property's street frontages. The duration is potentially for the extents of the construction timeline, TBD. This is part of the site plan approval process and will be worked out in advance with City staff.

Question: What are the dimensions of the trash dumpsters that will be pushed to Washington Avenue for pick-up each week? How will this be done? And how long will they remain out on the street?

Applicant response: TBD. This depends to some degree on the trash servicer selected. Management will be required to comply with the city ordinance regarding trash collection, including removal of emptied receptacles from the street / sidewalk within 12 hours after collection. Trash is permitted to be placed at the street at 6pm on the day prior to collection. Refer to [Municode City Trash Ordinance](#)

Question: What steps will management take to keep trash or debris from refuse containers (e.g. that comes out during pick-up or movement) won't spread to adjoining properties by wind or otherwise? Please explain.

Applicant response: This property will be professionally managed including trash handling, clean up, building maintenance and site maintenance.

Question: What type of motorized/electrical equipment will be located in the parking entryway on Washington or Observatory are planned? How many decibels of noise will this equipment make when it is running? What steps in construction will be taken for noise mitigation for this equipment? Please explain. Will said equipment be behind a wall or a fence (to prevent shock or tampering, etc)?

Applicant response: No motorized equipment is currently planned at the parking entryway.

Question: When existing buildings, trees and foliage are removed and the area is excavated, will the removal occur via Observatory or Washington Avenue(s) or both? Please explain what the plan is and an estimate of when it will occur?

Applicant response: The construction entrance will be worked out with City staff via the site plan approval process. The project is currently showing phased entrances, both onto Washington Avenue. The duration and timing will be determined by a General contractor, which has not yet been selected.

Question: If parking will be restricted on Observatory or Washington Avenue(s) during construction, where will that likely be and for what duration? Will it be during working hours or at night? How far in advance will affected neighbors receive such notification?

Applicant response: This will be worked out in advance with City staff once a General contractor is selected.

Question: What steps are being taken to ensure traffic bottlenecks are minimized during daylight hours during construction?

Applicant response: This will be worked out in advance with City staff once a General contractor is selected.

Question: Given the dearth of parking available in the immediate area, where will construction workers and others with business at the site park? Please provide specifics about this overflow.

Applicant response: This will be worked out in advance with City staff once a General contractor is selected.

Question: During construction what kind of illumination will there be at night? Explain the types of security lighting, wattage(s) and estimated locations?

Applicant response: TBD. Note that construction lighting is exempt from the zoning ordinance. [Municode excerpt City Outdoor Lighting exempt](#)

