

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	July 17, 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 ERB (Entrance Corridor Review Board) approval of a Certificate of Appropriateness for construction of an apartment building at 2005 Jefferson Park Avenue.</b>

**Background**

- On December 20, 2022, an application was submitted for an Entrance Corridor Certificate of Appropriateness [design review] for the development of Tax Parcels 17-104 (2005 JPA), 17-103 (104 Observatory Avenue), and 17-103.1 (2007 JPA); collectively referred to as *2005 Jefferson Park Avenue* (or *JPA*). [Note: 104 Observatory Avenue is not within the EC Overlay; however, as a component of the project, its development was included in the design review.]
- On February 14, 2023 and on March 14, 2023, the City's Entrance Corridor Review Board (ERB) approved a certificate of appropriateness (CoA) for construction of an apartment building at 2005 JPA. [Note: Due to a public notice error for the February 14, 2023 meeting, the matter was readvertised and reviewed on March 14, 2023.]
- Following the February 14, 2023 and on March 14, 2023 ERB meetings, staff received nine letters from seven parties appealing to Council the approval of the CoA. Three from property owners who reside near the development (116, 123, and 128 Observatory Avenue) and four from owners of rental properties located near the development (107, 111, and 113 Washington Avenue and 119 Observatory Avenue).
- On May 15, 2023 City Council reviewed the appeals [of the February and March ERB actions]. Following a presentation by staff and comments from two the appellants, Council took no formal action on the appeal; however, to eliminate concern that notice letters postmarked

March 1 for the March 14 ERB meeting did not comply with the fourteen (14) days required by City Code, Council instructed staff to readvertise the CoA request for review by the ERB.

Link to the May 15, 2023 City Council staff report. See agenda item 17.

[City Council Meeting Packet May 15 2023](#)

Link to the May 15, 2023 City Council meeting video. Discussion re: 2005 JPA begins at

02:20:30.) [City Council Meeting Video May 15 2023](#)

- On June 13, 2023, at the readvertised review (per City Council's May 15 instruction), the ERB approved the requested CoA for construction of an apartment building at 2005 JPA. [Note: The applicant's submittal and staff recommendations presented to the ERB on June 13, 2023—and to City Council on May 15, 2023 and July 17, 2023—are identical to the material presented to the ERB on February 14, 2023 and March 14, 2023.]
- Following ERB's action on June 13, 2023, staff received five letters from five parties appealing to Council the ERB's approval of the CoA. (Appeal letters are in Attachment 1.) Three from property owners who reside near the proposed development (116, 123 and 128 Observatory Avenue) and two from owners of rental properties near the proposed development (111 Washington Avenue and 119 Observatory Avenue). Similar to the May 15, 2023 review, staff has prepared a collective response to the appeal letters.
- State enabling legislation allows localities to regulate the design of development along arterial streets or highways [*entrance corridors*] that are significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures or districts, to ensure that such development is architecturally compatible with the historic landmarks, buildings, and structures to which these routes lead and a requirement that no building or structure may be erected, reconstructed, altered or restored unless approved by the local review board (or, on appeal, by the governing body) as being architecturally compatible with the other properties within the district. (Va. Code §15.2-2306). Per City Code §34-307(a)(5), the project at 2005 JPA is within the *Fontaine Avenue/Jefferson Park Avenue Entrance Corridor* and therefore, per §34-309, is subject to ERB design review.
- State law requires the City, by enacting the above, include within its ordinance the right to appeal the decision of the local review board. (Va. Code §15.2-2306) This is implemented in the City's zoning ordinance by §34-314: Following approval of an application by the ERB, any aggrieved person, may note an appeal of that decision to the city council.

- The order of presentation for Council's review of this appeal is: (1) City Preservation and Design Planner will present the staff report (ten minutes), (2) Appellants will make their presentation (ten minutes), and (3) ERB chair may offer comment (five minutes). Then Council may ask questions of both parties and make its decision. This is similar to process used by the ERB and BAR to review a project and CoA request, where staff introduces the project/request, the applicant then makes its presentation, followed by discussion and a decision.

### **Discussion**

CoA request for the development of 1.7 acres (three parcels, existing structures to be razed) to construct a multi-story, brick and stucco apartment building with a footprint of approximately 312-ft x 155-ft. The building will feature two, five-story wings separated by a courtyard and atop a two-story, brick foundation/podium, which provides a street level, primary entrance and encloses an internal parking garage accessed off Washington Avenue. (See the applicant's submittal in Attachment 7.)

**City Council's role in this appeal is to make the final decision on the certificate of appropriateness (i.e., approve or deny the CoA).**

Per City Code §34-314(c), reviewing the appeal of an ERB decision, Council shall review the application as if the application had come before it in the first instance. Any aggrieved person, shall be given an opportunity to be heard on the appeal. 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.

In evaluating this appeal—a request to deny a CoA for the proposed development at 2005 JPA-- Council should, as the ERB did on February 14, 2023, March 14, 2023, and June 13, 2023, apply the criteria for Entrance Corridor Design Guidelines (refer to the ERB staff reports) and standards for considering a CoA within City Code § 34-310 (below). To assist in that, Council should review the applicant's submittal and the recommendations in the February 14, 2023 ERB staff report, which includes links to the design guidelines. (See Attachments 3, 4, 5, and 6. These are also accessible at the following link, beginning at page 18 of the pdf: [PC-ERB Meeting - Feb 14 2023.](#))

From the City Code for Entrance Corridor Overlay Districts

### **Sec. 34-310. - Standards for considering certificates of appropriateness.**

1. The review board, the city council on review of an application, and the director in conducting an administrative review, shall consider the following features and factors in determining the appropriateness of proposed construction, reconstruction, alteration or restoration of buildings or structures pursuant to this article:
2. Overall architectural design, form, and style of the subject building or structure, including, but not limited to: the height, mass and scale;
3. Exterior architectural details and features of the subject building or structure;
4. Texture, materials and color of materials proposed for use on the subject building or structure;
5. Design and arrangement of buildings and structures on the subject site;
6. The extent to which the features and characteristics described within paragraphs (1)—(4), above, are architecturally compatible (or incompatible) with similar features and characteristics

of other buildings and structures having frontage on the same EC street(s) as the subject property.

7. Provisions of the Entrance Corridor Design Guidelines.

Summary of ERB Actions

**February 14, 2023.** The ERB reviewed a CoA request to construct a new apartment building at 2005 JPA. A motion to approve the CoA with conditions passed 7-0. (Motion by Commissioner Russell, seconded by Commissioner Mitchell.)

Link to February 14, 2023 meeting video. (Public comments begin at approximately 00:20:00. 2005 JPA discussion.) [Plan Comm meeting video Feb-14-2023](#)

**March 14, 2023.** Due to a public notice error for the February 14 meeting, this matter was readvertised and on March 14, 2023 reviewed by the ERB. A motion to approve the CoA with conditions passed 5-0. (Motion by Commissioner Stoltzenberg. Seconded by Commissioner Schwarz.)

Link to March 14, 2023 meeting video. (2005 JPA discussion begins at approximately 00:22:00.) [Plan Comm meeting video Mar-14-2023](#)

**June 13, 2023.** Per City Council's instruction of May 15, 2023, this matter was readvertised and on June 13, 2023 reviewed by the ERB. A motion to approve the CoA with conditions passed 7-0. (Motion by Mitchell. Seconded by Schwarz.)

Note: Mr. Mitchell moved to "approve this [CoA] based on the previous approvals and use the motion and recommendations, the staff recommendation, outlined on page 2 of the staff report." (Below.)

Having considered the standards set forth within the City's Entrance Corridor Design Guidelines, I move to find that the proposed design for 2005 Jefferson Park Avenue is consistent with the Guidelines and compatible with the goals of this Entrance Corridor, and that the ERB approves the Certificate of Appropriateness application as submitted, with the following conditions of approval:

- Glass will be clear, at the locations noted in the staff report.
- New railings, if required, will match the metal rail at the podium terrace [as presented in the submittal dated 12/20/2022].
- All exterior lighting and interior lighting visible from the garage will have lamping that is dimmable, has a Color Temperature not exceeding 3,000K, and has a Color Rendering Index 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.]
- Dumpsters and trash and/or recycling bins to be located within the garage and pulled to the curb only on collection days.
- 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.
- Stucco used on this site will be a durable synthetic material which is mechanically fastened over appropriate drainage mats with a code compliant water-resistant barrier.
- Bicycle runnels shall be provided as part of the multi-use path at the rear of the site.
- There will be no up-lighting of landscaping on the site.
- The number, size, type and character of all plantings (trees, shrubs etc.) and the biofilter shall be installed and maintained in substantial accordance with the drawings. [Reference sheets 44 through 48 of the submittal dated 12/20/2022.]
- Screening of vehicular lighting at the south wall of the parking garage, particularly at headlight level. [Re: glare and brightness visible outside the garage.]

Link to June 13, 2023 meeting video. (Public comments are offered at approximately 00:58:00 and the ERB's discussion begins at approximately 02:36:00.) [Plan Comm meeting video June 13 2023](#)

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

Upholding the ERB's decision contributes to Goal 3 - A Beautiful and Sustainable Natural and Built Environment, specifically objective 3.1: *Engage in robust and context sensitive urban planning and implementation.*

### **Community Engagement**

City Code §34-313 requires public notice prior to ERB review of a CoA request. For the February 14, 2023, March 14, 2023, and June 13, 2023 ERB meetings, the abutting landowners were notified by letter and notice posted on-site. [Note: §34-313 - *ERB review process* refers to the public notice provisions under §34-284. The ERB and BAR follow the same public notice requirements, which are within the ordinance division for the City's ADC Design Control Districts. After it was realized the on-site notice for the February 14 meeting was posted late, the matter was readvertised for March 14. Following Council's May 15, 2023 review of the appeal of the approved CoA, to eliminate a potential challenge that notice letters postmarked March 1 for the March 14 ERB meeting did not comply with the fourteen (14) days required by City Code, Council instructed staff to readvertise the CoA request for review by the ERB.]

During the February 14, 2023 PC/ERB meeting, five individuals offered comments: Kenneth Hill, owner of 111 Washington Avenue (**00:19:18**); William Schaaf, owner of 113 Washington Avenue (**00:22:59**); Lorna Martens, who owns/resides at 128 Observatory Avenue (**00:25:49**); Bonnie Williams, JPA neighborhood resident (**29:03**); and Anne Benham, who owns/resides at 116 Observatory Avenue (**33:03**). All expressed concerns about and opposition to the project.

[Plan Comm meeting video Feb-14-2023](#)

During the March 14, 2023 PC/ERB meeting, there were no comments from the public. [Plan Comm meeting video Mar-14-2023](#)

During the June 13, 2023 PC/ERB meeting, two individuals expressed spoke: Ellen Contini-Mora, who read a statement on behalf of Lorna Martens, who owns/resides at 128 Observatory Avenue **(00:59:25)**; and Kenneth Hill, owner of 111 Washington Avenue, **(01:16:10)**. Both expressed concerns about and opposition to the project, which are reflected in their current appeal letters. [Plan Comm meeting video June 13 2023](#)

Meeting minutes for the February 14, 2023, March 14, 2023, and June 13, 2023 PC/ERB meetings are not available. Council can review the public comments and the ERB's discussions via the meeting video links noted in the *Discission*.

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

Upholding the ERB's decision contributes to Goal 3 - A Beautiful and Sustainable Natural and Built Environment, specifically objective 3.1: *Engage in robust and context sensitive urban planning and implementation*.

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### **Budgetary Impact**

None.

### **Recommendation**

Based on the application materials, the information and standards set forth within City Code §34-310 [standards for considering a CoA] and for the reasons set forth within this memo, the staff response to the appeal (Attachment 2), and the February 14, 2023, ERB staff report (Attachment 3), staff's recommendation is that City Council approve the requested CoA--upholding the ERB's action--and not refer the matter back to the ERB.

Should Council approve this CoA, staff recommends the resolution include the ERB's conditions of approval; however, Council may amend or revise those conditions. (See Resolution 1 in Attachment 8.)

Should Council determine to deny this CoA, staff recommends the resolution include the reasons for denial. (See Resolution 2 in Attachment 9.)

### **Alternatives**

- *Approval of the CoA.* City Council can approve the requested CoA, including the conditions approved by the ERB. (See Resolution 1 in Attachment 8.)
- *Approval of the CoA with amended conditions.* City Council can approve the requested CoA, but amend or revise the conditions approved by the ERB. (See Resolution 1 in Attachment 8.)
- *Denial of the CoA.* City Council can deny the requested CoA. That motion should state the reasons for the denial. (See Resolution 2 in Attachment 9.)

### **Attachments**

1. Attachment 1 – 2005 JPA Appeal Letters June 2023 (For CC July 17 2023)
2. Attachment 2- 2005 JPA appeal - staff response for CC July 17 2023 - 710)
3. Attachment 3 2005 JPA - ERB staff report Feb 14 2023 (final 2-3)
4. Attachment 4 - 2005 JPA Review of EC guidelines (Attach 2 from Feb 14 2023 ERB staff report)
5. Attachment 5 - 2005 JPA applicant submittal (ERB Application)(PDF)
6. Attachment 6 - 2005 JPA - ERB staff report March 14 2023
7. Attachment 7 - 2005 JPA - ERB staff report June 13 2023)

8. Attachment 8 – 2005 JPA Appeal – Draft Resolution 1 (For CC July 17 2023)
9. Attachment 9 – 2005 JPA Appeal – Draft Resolution 2 - Denial (For CC July 17 2023)
10. Attachment 10 - City Code \_EC Overlay Districts