
CITY OF COLUMBIA
DESIGN/DEVELOPMENT REVIEW COMMISSION AGENDA
February 7, 2020

**The Chair of the Design/Development Review Commission will conduct a
Special Called Meeting to be held at City Council Chambers,
1737 Main Street, 3rd Floor, on February 7, 2020 at 12:00pm.**

Paul Bouknight Robert Broom Harris Cohn Sanford Dinkins
Angi Fuller Wildt Ashley Johnson Michel Moore Tom Savory

The meeting is open to the public, but is not a public hearing. No other business will be discussed or acted on.

Please note that any inquiries regarding this item may ONLY be directed to staff,
reachable at 803-545-3222, in order to avoid ex parte communications with commission members.

*** Prior to entering the meeting please turn ALL electronic devices to a silent, vibrate or off position.***

I. CALL TO ORDER

II. EXECUTIVE SESSION

The receipt of legal advice where the legal advice relates to a pending, threatened,
or potential claim, pursuant to S.C. Code Section 30-4-70(a)(2).

--1600-1620 Gervais Street (TMS# 11401-09-01, 03, 05)

III. ITEMS FOR CONSIDERATION

1) Consideration of motion to rescind action taken at January 9, 2020, DDRC hearing
regarding 1600-1620 Gervais Street (TMS# 11401-09-01, 03, 05) Request for Certificate
of Design Approval for new construction. City Center Design/Development District

2) Consideration of motion to rescind action taken at January 9, 2020, DDRC hearing
regarding 1600-1620 Gervais Street (TMS# 11401-09-01, 03, 05) Request for Site Plan
Approval for new construction. City Center Design/Development District.

IV. ADJOURNMENT

February 7, 2020

VIA U.S. and Electronic Mail: amy.moore@columbiasc.gov

City of Columbia Design/Development Review Commission
Tom Savory (Chair), c/o Amy Moore (Secretary)
1136 Washington Street
Columbia, South Carolina 29217

RE: City of Columbia Design/Development Review Commission (“DDRC”) Decision
for 1600-1620 Gervais Street

Dear Chairman Savory and Members of the DDRC:

This firm represents Trinitas Development LLC (“Trinitas”). We are aware of the DDRC’s potential motion to rescind its votes at the DDRC’s hearing on January 9, 2020, to deny Trinitas’ requests for Certificate of Design Approval and Certificate of Site Plan Approval for proposed construction at 1600-1620 Gervais Street (the “Proposed Construction”). For the following reasons, Trinitas supports rescission of the DDRC’s prior decisions and believes a rehearing would be appropriate.

The stated basis of the DDRC’s denials were the Proposed Construction’s “mass and scale and use” which were determined to be “incompatible” with the adjacent historic districts.¹ Trinitas is informed and believes a rescission is appropriate based on a mistake of fact that affected the outcome of the DDRC’s decision on both denials, procedural deficiencies in the DDRC’s January 9, 2020, hearing and clerical mistakes in the DDRC’s written confirmations, and new evidence which Trinitas could not have reasonably presented at the hearing.

First, the DDRC accepted testimony concerning the use of the Proposed Construction and mistakenly made its decisions based on the anticipated use of the Proposed Construction as student housing. Certificates of Design Approval are governed by City Code Section 17-655(b) and are required to be issued “under the terms of the standards or design guidelines as adopted by city council.” *Id.* at 17-655(a)(1). Nothing in the City Code of Ordinances (Section 17-674(d)(2)) or City Center Guidelines permits the DDRC to consider the Proposed Construction’s “use” as incompatible with surrounding neighborhoods, and by stating that the planned use of the Proposed Construction was a basis for denying the requests, the DDRC made a mistake that affected the outcome..

At the request of the property owner, The City of Columbia rezoned the real property at issue on June 4, 2019 to make it part of the City Center Design Development District. That rezoning subjected the Proposed Construction to the scrutiny of the DDRC and required the

¹ The two DDRC motions reference incompatibility with adjacent historic “districts” even though the written confirmations reference only the “University Hill historic district.”

applications that the DDRC rejected on January 9, 2020. In the administration of Design Development area guidelines, the DDRC's consideration of the "[i]ssuance of a certificate of design approval shall be based upon the requirements set forth in design guidelines adopted by the city council." City Code, Section 17-655(b)(1). The City Center Guidelines, adopted by the Columbia City Council, expressly "do not address the regulation of uses within buildings."² "[U]se" is only referenced as a consideration for a Certificate of Design Approval if the "use[] . . . will have a negative impact on City Center's image,"³ for example "strip'-type development."⁴ The Proposed Construction is undisputedly not a "strip-type" development and the DDRC did not find the Proposed Construction's use (multi-family housing) would have a "negative impact on City Center's image." Instead, the DDRC concluded the Proposed Construction's "use" to be "incompatible" with the adjacent districts. Although the neighborhood association stated that its opposition to the Proposed Construction was based on "mass and design" of the Proposed Construction, the substance of the neighbors' opposition, described as "students," "student residences," and the "consequences" therefrom, focused entirely on *use* of the Proposed Construction and not the mass or design.⁵ Determination based on "use" is outside of the DDRC's discretion and authority.

There were also various mistakes of fact with respect to the DDRC's consideration and numerous witnesses' characterization of the Proposed Construction as "student housing." The Proposed Construction is a multi-family housing development, which is permitted to be constructed within the City Center Design District. References to the Proposed Construction as "student housing" constitutes a mutual mistake of fact as it misinterprets City Code Section 17-55 which defines "dormitory, public" and "dormitory, private" housing (which the Proposed Construction is undisputedly not) and "apartment" housing. Mischaracterizing the Proposed Construction as "student housing" unfairly and mistakenly suggests the Proposed Construction is a "dormitory," and may have improperly influenced the DDRC's decision.

As the DDRC is aware, Trinitas has worked closely with the city's planning department staff for more than a year and a half, making changes to the Proposed Construction, rezoning the property to become part of the City Center District, and obtaining zoning approval. Trinitas significantly modified its initial development plan of a 17 story building to accommodate the

² See City Center District Guidelines, available at www.columbiasc.net/depts/planning-preservation/docs/extprod002479.pdf at 5-2.

³ *Id.* at 2-5.

⁴ *Id.*

⁵ University Hill Neighbors Association President, Tom Gottshaw testified: "Trinitas deals in student residences. This is to be rented by the bed. 271 units of 540 beds to be rented by the beds to students. . . . What will four and five hundred students do on Thursday, Friday, and Saturday nights as they're moving to Five Points through our neighborhood late at night? We have 540 students going down late at night and coming back with the possibility of that." Another neighbor testified "540 students will need to go to class through the neighborhood. . . . [T]hursday, Friday, and Saturday evening parties in Five Points . . . [will involve] a significant proportion of the 540 residents" of the Proposed Construction. He speculatively referenced newspaper articles, generalizing regarding vandalism and other "altogether bad behavior, which he believed would result from the Proposed Construction in "the small hours of the morning as the students come back through the neighborhood."

concerns raised during the planning process with the city. With reasonable assurances from the planning department staff and believing its Proposed Construction met all Guidelines for the City Center District, Trinitas moved forward with its applications that the DDRC considered on January 9, 2020. The city's planning department staff recommended that Trinitas' Certificate for Design Approval be granted with some recommendations, none of which related to mass or scale (or use, which would be an inappropriate criteria for DDRC's consideration, as acknowledged at the hearing by the city's planning department staff). Trinitas' representative responded, stating it would be able to address all design recommendations of the city's planning department staff. Even these recommended changes should not serve as grounds to deny Trinitas' request Certificate for Design Approval. Pursuant to Section 17-655(f), "[a]ppropriate conditions may be attached to the certificate of design approval as the commission may find necessary or desirable to effect the purposes of this article, and the commission may modify or remove any such conditions."

In reviewing a request for Certificate of Site Approval, the DDRC is to consider "the exterior surface treatment, the arrangement and location of buildings and structures within the district involved, and other pertinent factors affecting the appearance and efficient functioning of the district." City Code Section 17-674(c). As indicated in comments made by the city's planning department staff to the members of the DDRC during the hearing, mass, scale, and usage of the Proposed Construction was not an appropriate consideration for a Certificate of Site Approval, just as use was not appropriate for the DDRC's consideration of Trinitas' proposed Certificate of Design Approval. Nevertheless, the DDRC's motion at the January 9, 2020, hearing remained the same: denial of the Certificate of Site Approval based on "proposed usage, mass, and scale" as considered with neighboring "historical districts." The DDRC's consideration of use, mass, and scale in denying Trinitas' petition for Certificate of Site Approval was therefore in error and based on a mistake of fact.

Second, the DDRC's hearing and subsequent decisions contained procedural deficiencies which should be cured after the DDRC rescinds its decision. During the January 9, 2020, hearing, the DDRC members in attendance moved to deny Trinitas' Certificate of Design Approval based on "mass, scale, and use" of the Proposed Construction in relation to neighboring historical "districts," but the written confirmation references such considerations in relation specifically to the "adjacent University Hill historical district." Similarly, the DDRC's motion to deny Trinitas' Certificate of Site Approval was based on "usage, mass, and scale" in relation to neighboring historical "districts," but the DDRC's January 14, 2020, written confirmation only stated that the bases for denial were "mass and scale of the parking."

The DDRC also failed to consider that the Proposed Construction would "enhanc[e] the long-term development" of Gervais, a specific factor the DDRC is required to consider with respect to proposed new construction in the City Center District.⁶ This procedural deficiency is an additional reason the DDRC should decide to rescind its decisions.

⁶ *Id.*

Furthermore, it is unclear to Trinitas what the DDRC means by its denial on the basis of “mass and scale and use” of the Proposed Construction. In failing to clearly articulate the basis for its denial, or reference any City Center Guidelines that were not satisfied, the DDRC failed to “implement[] and administer[]” City Council’s Guidelines for the City Center District in a “fair and consistent manner, causing “an extraordinary burden on property owners and developers,”⁷ including Trinitas. At the January 9, 2020, hearing, the DDRC did not provide any specific criticisms or suggested changes which might bring the Proposed Construction in line with City Guidelines. Based on this procedural deficiency and clerical error, a rescission is appropriate.

Finally, several new issues, which were not previously raised by the city’s planning department staff to Trinitas, were discussed at the January 9, 2020, hearing. Trinitas could not have reasonably anticipated these issues and was not prepared to present evidence at the January 9, 2020 hearing. These items of discussion include: (1) information concerning the height of the adjacent structures, (2) demographic information concerning the adjacent neighborhood, and (3) economics of fewer floors of underground parking to reduce the height of the Proposed Construction. The DDRC asked for specific elevations of the University of South Carolina School of Law, the Hilton Garden Inn, the McMaster College, and the adjacent First Church of Christian Science. The neighborhood association President who testified at the January 9, 2020, hearing suggested *his* “estimate” concerning the number of residential structures and non-student residents living in the adjacent neighborhood and testified as to estimates of the number of “contributing structures” and “noncontributing structures” as to the historical designation of the area. Trinitas did not have information to answer the DDRC’s questions or challenge the neighbors’ assertions and would respectfully request the DDRC consider rescission so that Trinitas may appropriately gather information and present evidence as necessary to inform the DDRC’s consideration of the Proposed Construction.

Trinitas is informed and believes the Proposed Construction falls squarely within City Council’s “series of principles to support the vision for City Center and guide actions related to the challenges and strategies,” including:

- “[p]romot[ing] residential development and a pedestrian-friendly environment,”
- “[p]romot[ing] City Center as belonging to everyone,”
- “[c]reat[ing] a critical mass of activities, opportunities, and resources,”
- “[r]ecogniz[ing] City Center as an economic resource,”
- “[e]stablishing linkages to surrounding districts and employment centers,”
- “[a]cknowledg[ing] housing as a priority and an essential ingredient for success,”
- “[s]upport[ing] neighborhood re-investment and vitality,” among others.⁸

The Proposed Construction is “compatible with its function and with its surroundings (context),” as is required by City Center Guideline section 5.2.⁹ The Proposed Construction is

⁷ See City Center District Guidelines, available at www.columbiasc.net/depts/planning-preservation/docs/extprod002479.pdf at p. 3-1; see also *id.* at 3-5 (“[T]he process of reviewing projects for compliance with the provisions of the *Guidelines* must be well-defined and fair.”).

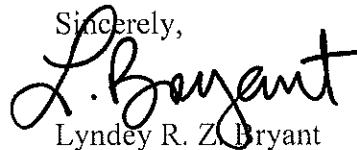
⁸ www.columbiasc.net/depts/planning-preservation/docs/extprod002479.pdf at p. 1-1 – 1-2.

⁹ *Id.* at 5-1.

similar in mass, scale, and design to the hotel directly across Gervais Street and smaller in mass, scale, and design than the University of South Carolina School of Law to the west on Gervais Street. Thus, the Proposed Construction is “sympathetic and compatible with surrounding buildings in terms of mass, scale, height, façade rhythm, placement of doors and windows, color, and use of materials[.]”¹⁰ In making its determination, the DDRC cannot compare the Proposed Construction solely to single or two-story residential buildings in the surrounding area, as the neighbors’ suggested, but must also consider the commercial and educational structures that are adjacent to the property and within the area of the Proposed Construction.

For the above-stated reasons, among others which may be presented, Trinitas respectfully supports the DDRC’s anticipated motion to rescind its decisions at the January 9, 2020, hearing regarding the Proposed Construction and requests a rehearing based on the existence of a mistake of fact that affected the outcome of the DDRC’s decision on both denials, procedural deficiencies in the DDRC’s January 9, 2020, hearing and subsequent decisions, and new evidence which Trinitas could not have reasonably presented on January 9, 2020.

Thank you in advance for your consideration of this request.

Sincerely,

Lyndey R. Z. Bryant

LRZB/WCMIII/jas

cc: Lucinda Statler (via electronic mail only - lucinda.statler@columbiasc.gov)
Peter M. Balthzor, Esquire (via electronic mail only - peteb@rplfirm.com)
Damian VanMatre (via electronic mail only)
Linda Irving (via electronic mail only)

¹⁰ *Id.*

Submission to the DDRC Opposing Special Meeting Regarding "Motion to Rescind" Trinitas Student Housing Application

Representatives from the University Hill Neighborhood Association, the Historic Columbia Foundation and the University of South Carolina all opposed the Trinitas student apartment complex application and gave testimony why design of the 540 rent-by-the-bed, eight-story monolith should not be approved at the DDRC's January 9, 2020 hearing. Speaking in opposition to the Trinitas proposal were:

- Thomas R. Gottshall, President of University Hill Neighborhood Association
- Robin Waites, Executive Director of Historic Columbia Foundation
- Derek Gruner, University of South Carolina architect
- John Magill, University Hill Neighborhood Association Treasurer
- Kathryn Fenner, University Hill Neighborhood Association Vice President
- Beth Richardson, resident Gibbes Court, University Hill neighborhood
- April Lucas, resident Laurens Street, University Hill neighborhood
- John Stucker, resident Laurens Street, University Hill neighborhood
- Bobby Lyles, resident Senate Street, University Hill neighborhood
- Douglas Carlisle, resident Gregg Street, University Hill resident

Standing to register opposition to the Trinitas application, in addition to the above were:

- Travis Weatherford, University Hill Neighborhood Assn secretary
- Steven Francis, resident Laurens Street, University Hill neighborhood
- Karen Belser, resident Laurens Street, University Hill neighborhood
- Howard Duvall, resident Senate Street, University Hill neighborhood
- Susan Gottshall, resident Senate Street, University Hill neighborhood
- Polly Morrison, resident Pendleton Street, University Hill neighborhood
- And others

The public input provided by those listed above and the DDRC's questions to the representatives of the student housing developer, Trinitas, revealed that the proposed project violated Center City Design/Development Guideline 5.3 and University Architectural District Design Guideline Section VI.B.1 in that the mass and size of the proposed project was not visually compatible with the surrounding buildings, and the height of the project is out of proportion to adjacent development. The DDRC's conclusion was unanimous in this regard and cannot be disturbed on appeal unless Trinitas shows that the DDRC abused its lawful discretion. With regard to design approval, the DDRC's decision to deny the Trinitas student housing application is well-supported by the evidence and well-within its lawful discretion. On appeal too, the factual findings of the DDRC are conclusive and may not be disturbed for any reason.

See for example a case involving a similar deliberative body, the Board of Zoning Appeals, where similar matters are discussed: The "reviewing court shall determine only whether the decision of the Board of Zoning Appeals is correct as a matter of law...it will refrain from substituting its judgment for that of the board, even if it disagrees with the decision." *Austin v. Board of Zoning Appeals*, 362 S.C. 29, 606 S.E.2d 209, (Ct. App. 2004)(quoting *Restaurant Row Assocs. v. Horry*

County, 335 S.C. 209, 216, 516 S.E. 2d 442, 446 (1999). The test is whether the decision is "arbitrary, capricious, has no reasonable relation to a lawful purpose, or if the board has abused its discretion." Restaurant Row, 335 S. C. at 216, 516 S.E.2d at 446. The present decision of the DDRC is amply supported by testimony and discretion.

As discussed at the hearing, the monolith Trinitas' student housing project narrowly skirted within the limits of the City's zoning requirements related to set-backs, size and massing, parking, and so forth. However, our City's zoning ordinances only define the base-line requirements that govern land use throughout the entire City of Columbia. An overlay district ordinance (and its corresponding guidelines), such as the Center City Design Guidelines, define additional requirements over and above the zoning requirements that govern land use within the specified district, and in some cases in adjacent areas. Both sets of requirements are contained in the COC Code of Ordinances and therefore have full legal force and effect.

Center City Design Guidelines 5.3.1 specifically says, "It is, however, critical that in applying these Guidelines – as well as other development regulations – the City be consistent in considering the height of proposed structures as they relate to adjacent development. Building height should be considered on a case-by-case basis" This point is made in the Building Heights drawing in Section 5.3.1 showing a comparison where a building is out of context/scale to its neighbor. Further, Center City Design/Development Guidelines 5.2 (Architectural Style or Theme) provide:

the design of a building should be compatible with its function and with its surroundings (context). New buildings should be compatible with existing more traditional buildings....These projects should be sympathetic and compatible with surrounding buildings in terms of mass, scale, height, façade rhythm....

The public input at the hearing presented ample evidence showing that the mass and size of the proposed Trinitas student housing project is grossly disproportionate to adjacent development and neighborhoods. The proposed Trinitas' student apartment complex would sit as a seventy-five foot, eight-story building on the south side of Gervais Street and corner of Pickens Street. This student housing monolith would immediately abut and tower over the most historic and stately area of the University of South Carolina community as well as the University Hill Neighborhood, which predominantly house traditional two-story, late-nineteenth and early twentieth century homes and structures. More particularly, the proposed monolith student housing project immediately looms over in size and mass the Christian Science church, a historic, two-story, white-columned, 1920s church at 1114 Pickens St., and also the McMaster College of the University of South Carolina, a three-story, brick and cast stone school built in 1911, at 1106 Pickens Street on the corner of Senate Street, and designed by noted Columbia architect William Augustus Edwards of the firm of Edwards and Walter. To give further context, at 426,000 sq ft this project is more than 100 times the size of a 4000 sq ft residence, but with infinitely more capacity for student density.

At the hearing, moreover, it was duly noted that the developer's architectural renderings drew to scale the height and proportion of the massive Trinitas student housing development vis-a-vis its representation of the height and proportion of a larger several storied building, the Hilton Garden

Inn, across Gervais Street and outside the City Center district. To this end, Trinitas tried to argue that the massive student housing development was not out of line with adjacent neighborhoods. It was noted by one opponent to the Trinitas' application that the Hilton Garden Inn, on the north side of the four-lane Gervais Street artery, is actually not in an adjacent neighborhood. Rather, in the adjacent neighborhood wherein the Christian Science church and McMaster College sit, the Trinitas' architectural renderings misrepresented the scale of the proposed student housing development's mass and size vis-a-vis the two-story Christian Science church and McMaster College. Both Robin Waites of Historic Columbia noted and the DDRC's questions of the representatives of Trinitas revealed that Trinitas made no effort to depict this relationship to scale and indeed the comparative elevations advanced by Trinitas were not at all in scale, showing the two-story Christian Science church as meeting the massive student housing development around its fifth story.

Adjacent development also very much relates to the University Hill Neighborhood. The University Hill Neighborhood is a community of mainly two- or three-story, late 19th and 20th century homes protected by the City's University Architectural Guidelines, many of which are on the national historic register. The University Architectural Conservation District Design Guidelines of the City of Columbia, for example, permit new development of no more than two stories. See Section VI, B. 1, stating: "The size and scale of a new building *shall* be visually *compatible* with surrounding buildings."

It is important to note, that while some of the overlay district requirements address the proposed structure itself, they predominately speak to the intended use of the proposed structure and the impact that that use will have in the overlay district and adjacent areas. A 7-8 structure at 1600 and 1616 Gervais Street built to house a server farm for Amazon might be aesthetically less pleasing than the 2-story switching station operated by ATT at the corner of Senate and Henderson street. But its impact on the surrounding streets and properties would hardly differ from that of the ATT building. The same cannot be said of a student housing complex with 540 residents. Traffic and pedestrian density (day and night), movement through the University Hill Neighborhood, the impact on property values in the adjacent University Architectural Conservation District, all of these factors will be significantly detrimental under the City Center Overlay District guidelines which encompass impacts on adjacent areas, such as the University Architectural Conservation District.

What is at stake here - and must be emphasized - is illustrated by the "Staff Comments" section of the *DDRC Site/Subdivision Plan, Case Summary, 100 and 1616 Gervais Street, Trinitas*. Essentially all these comments relate to the physical aspects of the proposed structure and its surround. In other words, they are basically dealing with zoning issues. There is nothing in this assessment that speaks directly to the various impact issues which speakers raised at the January 9 DDRC meeting. Indeed, it was the members of the DDRC who that evening focused on these impact issues when they rendered their judgement. Eight stories high and truly massive, the Trinitas project is out of scale with these neighbors and the mass puts real burdens on the neighborhood, as earlier advanced, including traffic, parking and late-night student reveling.

The DDRC has the discretion to interpret all the regulations discussed above, and in so doing is charged with protecting Columbia regarding development, especially in the Center City. To this

end, it is worth noting that the DDRC is the guardian of our City. The Center City Design/Development Guidelines, para. 2.5.1 label Gervais Street as a Gateway/Corridor Street and as part of "the city's formal 'front door'...[where an image of] "the highest quality" should be projected. In 1984, a proposed addition to the National Gallery in London was criticized as being a "monstrous carbuncle on a much beloved face." This project is that kind of a building on the face of Columbia, near much more dignified buildings such as the new USC School of Law, the historic "Horseshoe," and the State House itself. A 540 rent-by-the-bed, eight-story monolith student housing complex is inappropriate for the site and the DDRC was within its bounds of informed discretion to deny the Trinitas application.

Representatives from the University Hill Neighborhood Association also note that they have due process concerns about this Special Meeting. The Design/Development Review Commission, having given notice of that meeting, heard from Trinitas witnesses and then the opposition witnesses in a full and open hearing. Presently, there is pending a notice of a Special Called meeting of the DDRC for Friday, February 7, the notice being issued on January 27, 2020, only 11 full days in advance of the meeting. The notice provides, "The meeting is open to the public, but is not a public hearing. No other business will be discussed or acted on." This violates due process.

The Special Called Meeting notice provides only for two motions to rescind, one regarding Design Approval and the other for Site Plan Approval. Both January 9 decisions of the DDRC were unanimously (all six commissioners present) adopted by motion and second, turning down the proposals, following the evidentiary hearing.

Despite a FOIA request, transmitted January 28 (See file), in order to learn of any submissions/communications by Trinitas to the DDRC or staff (or vice versa), the opponents have no understanding of the basis for the motion, except that it was proposed by the Chairman.

We raise our objection to the Specially Called Meeting on procedural and due process grounds, as there is inadequate notice of who has originated the motion, seconded it, and the issue for discussion as well as the opportunity to hear any debate or debate. If a proponent of the motion was not present on January 9, that person would not have heard the extensive evidence which was presented, and it would be unfair now to re-examine the decision at DDRC level.

For these reasons, and for others advanced at the January 9 hearing, these Motions to Rescind are out of order/unfair or, in the alternative, should be denied.

Thomas R. Gottshall, University Hill Neighborhood Assn President and for the Assn
Robin Waites, Executive Director of Historic Columbia Foundation
John Magill, University Hill Neighborhood Assn Treasurer
Kathryn Fenner, University Hill Neighborhood Assn Vice President
April Lucas, University Hill Resident Assn Executive Council Member
Beth Richardson, University Hill neighbor