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May 2, 2013

The Honorable Mayor and City Council
of the City of Ann Arbor
301 East Huron Street
Larcom City Hall, 1st Floor
Ann Arbor, MI 48104

Re: 413 E. Huron Street
The Zoning Ordinance requirements for Site Plan Approval

Dear Mayor Hieftje and Council Members:

For any site plan to be approved, it must comply with the specific requirements expressly set forth in law. The source of Ann Arbor's power to zone is the Zoning Enabling Act (the ZEA). The ZEA both sets forth and limits what a municipality has authority to do. Among the zoning powers authorized by the ZEA is a municipality's power to require site plan approval. The exercise of the statutory grant of site plan approval and the requirements a municipality must meet if it chooses to exercise that authority are expressly set forth in Section 501 of the ZEA.

125.3501 Submission and approval of site plan; procedures and requirements.

Sec. 501. (1) The local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.

(2) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance is agreed to by the landowner and the body or official that initially approved the site plan.



(3) The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments.

(4) A decision rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

(5) A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

Sub-sections (4) and (5) of the Act require the City to set forth in its zoning ordinance “*requirements and standards*” for approval of a site plan, and mandate that a site plan can *only* be approved if it contains the information required by the zoning ordinance and complies with “*the conditions imposed under the zoning ordinance*”, as well as complying with “*other statutorily imposed and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.*”

Pursuant to the statutory grant of authority, the City of Ann Arbor has provided for site plan approval in its zoning ordinance, and has followed the statutory rules by specifying the conditions a site plan must meet in order to be approved. Ordinance Section 5:122 (6) specifies the “Standards for site plan approval”:

(6) *Standards for site plan approval.* A site plan shall be approved by the appropriate body after it determines that:

(a) The contemplated development would comply with all applicable state, local and federal law, ordinances, standards and regulations; and



(b) The development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land, applying criteria for reviewing a natural features statement of impact set forth in this Chapter; and

(c) The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare.

Thus, under the Zoning Ordinance, Council may not approve the 413 site plan unless "it determines that ... the development would not have a detrimental effect on the public health, safety or welfare. Council also must "determine[] that [t]he development would not cause a public or private nuisance"

Additionally, The ZEA, further requires that the site plan "[complies] with other ... properly adopted local unit of government planning documents, [and] other applicable ordinances... .", and Zoning Ordinance Subsection 5:122 (6)(a) requires the site plan's compliance "with all applicable state [and] local ordinances, standards, and regulations". Among the applicable planning documents, ordinances, standards, and regulations which we submit the site plan does not comply with are the City's Master Plan, the Historic Ordinance, the Tree Ordinance, and the standards set forth in the Design Guidelines applicable to the zoning district. Additionally, the Michigan Department of Transportation has objected that development in accordance with the site plan will place an unacceptable traffic impact burden on already and projected future heavily traveled Huron Street.

The proposed site plan also fails to meet the standards of Subsection (6)(b) of the Zoning Ordinance. The site plan does not "limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land." On the contrary, the record shows that development in accordance with the site plan will result in a significant adverse impact on important trees on neighboring properties, as well as a substantial blockage of access of neighboring properties to light and air. This adverse impact on natural features could be alleviated by, for example, stepping down of stories and increasing setbacks. Such measures would still allow a reasonable use of the land.



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We submit that, on the record before you, you cannot make the findings expressly required by the Zoning Ordinance for site plan approval. Since the site plan before you does not comply with the conditions required for approval both by the Zoning Enabling Act and the Zoning Ordinance, you must deny approval.

Very Truly Yours,

STROBL & SHARP, P.C.

By:

Norman Hyman
Attorneys for Sloan Plaza

NH/kva

cc: Mayor and City Council Members (via e-mail)
Steven Postema, Esq. (via e-mail)
Kevin McDonald, Esq. (via e-mail)
Wendy Rampson, AICP (via e-mail)

P.S. We must point out what we submit is an erroneous and misleading statement the developer repeats. At the end of the 4/15 public hearing session on the proposed site plan, one of the developer's attorneys repeated, as he has stated at earlier Council meetings, that the proposed site plan is "by right". This attempt to argue that you must approve the proposed site plan because the site plan is one "by right" is based on a serious misunderstanding of the "by right" concept and its erroneous application to a site plan.

It is common for zoning ordinances to establish within a zoning district three separate categories of land uses. They are (1) uses permitted in a zoning district as a matter of right, i.e., without conditions—this category of uses is sometimes referred to as "by right" uses; (2) conditional uses, i.e., uses permitted if certain specified conditions are met; and (3) special or special exception uses, i.e. uses subject to special regulations if it is found that such a use is warranted on a specific parcel because of out of the ordinary circumstances. A use which falls within the first category of use has come to be called a "by right" use, or "use as a

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matter of right". The important point is that "by right" is a description of a *use*; "*by right*" *has nothing to do with site plans, as opposed to uses*. Sloan Plaza is not objecting to the multiple residential use of the 413 property; it is objecting to approval of the specific site plan before you. Moreover, as we pointed out above, even if the "by right" concept were mistakenly applied to a site plan, this site plan would not be entitled to approval "by right" since it doesn't fully comply with the "Standards for site plan approval" expressly set forth in Section 5:122(6) of the Zoning Ordinance.

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