

**Zoning Board of Appeals  
December 7, 2011 Regular Meeting**

**STAFF REPORT**

**Subject: ZBA11-020 - Administrative Appeal**

**Summary:** Tom and Sue Whitaker, Tom and Martha Luczak, 309 E. Jefferson LLC, and Limited Resources LLC, are requesting review of decisions related to the property at 415 and 425 S. Fifth Avenue. Review of the following actions is requested:

- A. City Council approval of Resolution R-11-445 (File No. 11-1336), City Place Landscape Modification Request, on October 17, 2011 and approval after reconsideration of said resolution on October 24, 2011.**
- B. City Council approval of Resolution R-11-449 (File No. 11-1345), City Place Revised Building Elevations Request, on October 17, 2011 and approval after reconsideration of said resolution on October 24, 2011.**
- C. The Planning and Development Services Manager's decision that proposed amendments to the City Place Site Plan are subject to review under Chapter 55, Section 5:122(5) Administrative Amendments to Approved Site Plans.**

**Description and Discussion:**

The original City Place site plan was approved on September 21, 2009. A proposed Administrative Amendment to the approved site plan was submitted to Planning and Development by the developer on September 9, 2011 requesting the following changes:

- Reconfigured internal floor plan including the optional loft levels for the 3rd floor apartments;
- Elimination of a redundant hydrant;
- Revisions to the parking lot landscaping and photometric plans;
- Addition of rear porches; and minor window placement and exterior material changes.
- Expansion of previously-approved window wells (this request was subsequently withdrawn by the developer)

The petitioners filed this administrative appeal November 1, 2011, challenging decisions of Council and staff related to the proposed Administrative Amendment. All work on the proposed Administrative Amendment stopped, as required by state law, upon receiving the appeal. This appeal applies only to issues related to the revised site plan submitted for the proposed Administrative Amendment and has no effect on the original site plan approved in 2009.

The powers of the ZBA to hear administrative appeals are contained in Chapter 55, Article IX, Section 5:98 Powers (1):

Administrative review: to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, or refusal made by the Building Official or any other administrative official in enforcing any provision of this Chapter. Appeals shall be filed within 60 days of the date of the decision in question.

Staff's opinion is that the petitioners' Claim A challenging Council's decision approving landscape modification under Chapter 62 Section 5:608 is incorrect and that Council properly approved the modification.

Staff's opinion is that Claim B, challenging Council's approval of the Revised Elevations under the development agreement, is not a matter of zoning under Chapter 55 and therefore is not appealable to the ZBA. However, even if Claim B were reviewable by the ZBA, Council's approval was correctly made in compliance with City code and/or the development agreement.

Staff's opinion is that Claim C, challenging "the Planning Manager's decision, as reflected in a memo to City Council" to review the proposed Administrative Amendment administratively is also not appealable because there has been no final order, requirement, permit, decision, or refusal regarding the proposed Administrative Amendment. In fact, the proposed changes the petitioners are challenging – expanded window wells – had already been removed from the proposed Administrative Amendment at the time the appeal was filed. Without a final decision, there is nothing for the ZBA to review. Because the petitioners filed their appeal prematurely and based on incorrect and incomplete information, Claim C is moot.

The petitioners have also included several claims regarding constitutional or federal statute violations. These claims do not relate to whether there was an error in enforcement of the zoning ordinance and therefore are not appropriate in an appeal to the ZBA under Chapter 55, Section 5:98.

Finally, after consulting with the City Attorney's Office, staff also believes that the

petitioners do not have standing to appeal any actions of the City pertaining to City Place. Standing requires the petitioners to show special damages related to the beneficial use and enjoyment of their own land that are not common to other similarly situated property owners. The petitioners application states simply that they live near the property and that the proposed Administrative Amendment would cause them injury due to increased density, traffic, light, noise, reduction of property values, adverse aesthetic impacts, and change in the character of the neighborhood. These claims of damage do not establish standing because they are merely hypothetical and, even if true, are not special or different from other similarly situated property owners. If speculative claims were enough to establish standing, then any neighbor could stop any nearby construction by filing an appeal, which automatically stops all work. While staff's opinion is that the petitioners do not have proper legal standing in order to bring this appeal to the ZBA, Staff has nevertheless responded to the issues identified in their application below.

Appeal Specifics:

Below are the three claims of appeal listed by the petitioners on their application, below each item is the staff response. The petitioners' headings are used and the numbers below directly correspond to petitioner's application. Please see Section 3 of the petitioners' application for the complete text of their claims.

**A. City Council's Resolution in File No. 11-1336 (enacted October 17, 2011, Enactment No. R-11-445) to Approve City Place Landscape Modification Request, 407 – 437 South Fifth Avenue and City Council's decision again approving the same resolution upon reconsideration on October 24, 2011.**

The petitioners claim that Council's approval of the developer's Landscape Modification Request was improper under Chapter 62 Section 5:608.

When the original site plan was approved, the plan met code because the only landscape requirements were for buffering of the parking lot. After the original site plan was approved, Chapter 62 was amended to create additional landscape buffer requirements between the proposed buildings and adjacent residential zoning. Chapter 62 requires application of current landscaping and screening requirements whenever a site plan is required, including when administrative amendments to a site plan are submitted. Therefore when the developers submitted their proposed Administrative Amendment, they also requested a modification of the current landscape buffer requirement so that the previously-approved landscape elements could remain as originally approved. No alteration to the existing landscape elements along the south property line was requested by the developer or approved by Council.

The proposed building is set back 21 feet from the southern property line, and an associated window well is located 16 feet from the property line. An existing driveway servicing the adjacent residential parcel to the south sits almost entirely on the City Place property, encroaching 10 feet onto the City Place property between the window well and the south property line. The southern parcel has an easement over the City Place property for the driveway. The location of this driveway restricts the installation of the required tree plantings in this area, therefore the developer requested a modification of the requirements to preserve the landscaping approved under the original site plan.

1. The petitioners argue that the Landscape Modification Request did not meet the requirements of Chapter 62, Section 5:608 for a modification.

a. The petitioners claim the approved Landscape Modification request on the southern boundary is not consistent with the intent of the chapter as required by Section 5:608(2)(a).

Chapter 62, Section 5:600, sets out the intent of the chapter:

*Intent: This chapter is intended to:*

*(a) Improve the appearance of off-street vehicular use areas, property abutting public rights-of-way, private streets, and certain shared driveways within easements, thereby reducing conditions which lead to urban blight.*

*(b) Require buffering between conflicting land uses and conflicting zoning districts.*

*(c) Promote the public health, safety and general welfare by reducing noise and air pollution, light glare, soil erosion, and thermal heating of the environment.*

*(d) Reduce the negative impacts of stormwater runoff by reducing impervious surface area and retaining greater amounts of stormwater on site.*

*(e) Improve the quality and safety of pedestrian movement within paved areas and along public rights-of-way.*

*(f) Protect and preserve the appearance, character and value of the surrounding neighborhoods and parks.*

*(g) Promote preservation of existing significant vegetation, the use of non-invasive plant species and the selection of plant species based on site conditions including soil type, light exposure, presence of utilities, and salt tolerance.*

In referencing *Chapter 62, Section 5:600, Intent and application of chapter*, the intent of the chapter was met by granting the Landscape Modification Request for the southern

boundary. There is no conflicting land use or zoning since the parcels immediately adjacent to the south are zoned for the same uses and density, there is no vehicular use area on the City Place property whose appearance will be affected by retaining the previously approved landscaping, there is no increase in impervious surface, the appearance of the neighborhood will be preserved because the previously approved landscape elements are simply being continued.

b. The petitioners claim that the proposed Administrative Amendment shows alterations of the existing landscape elements contrary to Chapter 62, Section 5:608(2)(c)(vii), which requires that “[l]andscape elements which are a part of a previously approved site plan may be maintained and continued as nonconforming provided no alterations of the existing landscape elements are proposed.” The petitioners’ claim is incorrect, as the plan that was presented to City Council for the Landscape Modification Request did not propose any alterations to the existing landscape elements along the southern property line and Council did not approve any alterations. The developers did not request modification of the landscape buffer for the north, east, and west boundaries of the property, so they will be expected to comply with the requirements on those boundaries. After City Council approval, the developers submitted their proposed Administrative Amendment showing 7 additional trees along the southern boundary to respond to the request of an individual Council member; however these trees were not approved by Council as part of the Landscape Modification Approval and have not been approved by staff, as the proposed Administrative Amendment is still under review. Since no alterations have been approved, the petitioners’ claim is moot.

2. The Landscape Modification Request was granted consistent with the standards outlined in Chapter 62, Section 5:608. As discussed above, the petitioners’ claims regarding constitutional or federal statute violations do not relate to whether there was an error in enforcement of the zoning ordinance and therefore are not appropriate in an appeal to the ZBA.

3. The petitioners also claim that an “exemption from site plan requirements” was improperly granted because the Landscape Modification Request should have gone through the full site plan review process under Chapter 57, Section 5:122. There was no exemption from site plan requirements granted. Landscape modifications to approved site plans are permitted under Chapter 62, Section 5:608 and do not require full site plan review under Chapter 57. Although the petitioners are only challenging Council’s approval of the Landscape Modification Request, landscape modifications to a site plan would in any case be approvable as administrative amendments per Chapter 57, Section 5:122(5)(d). Administrative amendments do not require notice or public hearings.

4. The petitioners also claim that the Landscape Modification Request should have been a variance under Chapter 62, Section 5:609. However, as discussed above,

landscape modifications of the type approved here are expressly permitted to be approved by Council under Chapter 62, Section 5:608 without going through the procedures for a variance.

**B. City Council's Resolution in File No. 11-1345 (enacted October 17, 2011, Enactment No. R-11-449) to Approve City Place Revised Building Elevations (407 – 437 South Fifth Avenue) and City Council's decision again approving the same resolution upon reconsideration on October 24, 2011.**

The petitioners claim that City Council's approval of the Revised Elevations, reflecting the changes proposed under the Administrative Amendment, was improper. The Revised Elevations based on the proposed Administrative Amendment were approved by City Council under the contractual obligations of the development agreement, signed by the City and the developer, which require any proposed material changes to the elevations, setbacks, aesthetics, or materials be reviewed by City Council. This requirement is included in development agreements to ensure that the City is made aware when a developer changes the exterior appearance of a building. It is not part of the zoning ordinance or administrative amendment approval process, and it is not a review of whether the elevations meet the requirements of zoning. There are no specific standards of approval for elevations under the development agreement and, as such, this approval is simply informational for Council (if the proposed Administrative Amendment is denied, then the old elevations would remain in effect).

The detailed building elevations showing materials and aesthetics are only a requirement of the development agreement and are not part of the requirements for site plan approval. Chapter 57, Land Development Regulation 1:4(4) requires a site plan to include elevations showing only "a scaled massing elevation drawing showing the existing and proposed exterior dimensions."

Council's approval of the Revised Elevations grants no substantive rights to the developer to build the Revised Elevations. Only staff approval of the Administrative Amendment under Chapter 57, Section 5:122(5) can grant such rights by altering the site plan under the zoning ordinance. Since Council's approval was not based on any zoning standards, it is not appealable to the ZBA.

1. The petitioners' claim that the Revised Elevations show area wells, guardrails, and landscape modifications that are not permitted by ordinance and therefore the Revised Elevations should not have been approved. As discussed, Council's approval of the Revised Elevations was not based on an evaluation of zoning standards or any other requirement of City code. Council's approval was strictly based on the contractual

terms of the development agreement. The decision was not based on any standards in the zoning ordinance, therefore there is no zoning decision to review.

2. a. The petitioners also claim the Revised Elevations should not have been approved by City Council because the proposed Administrative Amendment is still under review by City staff and the County Water Resources Commissioner, so it is not yet known whether the site plan would “comply with all applicable state, local and federal law” under Chapter 57, Section 5:122(6). However, Section 5:122(6) applies only to site plan approval. Here, Council was approving elevations under the development agreement, and not approving the site plan itself. The original site plan was already approved on September 21, 2009. Whether City staff or the County had reviewed the proposed Administrative Amendments to the site plan is unrelated to Council’s approval of the Revised Elevations under the development agreement..

b. The petitioners claim that the proposed Administrative Amendment will require building height to be recalculated because of expanded area wells. Again, Council was not approving building height or any other aspect of zoning when it approved the Revised Elevations. Regardless, the window wells of the proposed Administrative Amendment are now the same as the original approved site plan. The petitioners presumably relied upon the original draft of the proposed Administrative Amendment submitted by the developer, which showed proposed expanded window wells, which were subsequently withdrawn. Because the petitioners have filed this appeal prematurely, before a decision was taken by staff, they erroneously presumed the original draft would be approved. Building height under the proposed Administrative Amendment also remains the same as in the original approved site plan.

3. The petitioners claim that approval of the Revised Elevations should have gone through the full site plan review process under Chapter 57, § 5:122. As discussed, approval of the Revised Elevations was a contractual requirement of the development agreement, not a site plan requirement.

4. The petitioners submitted a supplement to their appeal, adding a fourth claim that the Revised Elevations did not reflect the proposed Administrative Amendments with regard to the orientation of porches and stoops on the buildings. Again, Council approval of the Revised Elevations is a development agreement issue that is not appealable to the ZBA. However, the decision of Council was correct in any case. The Revised Elevations contained the correct drawings, however the labeling of two of the drawings as “East Elevation Both Buildings” and “West Elevation Both Buildings,” respectively, is somewhat misleading. The buildings are the same, but are oriented oppositely so that each building is a mirror image of the other. The label on these two elevation drawings should more clearly indicate this. The label will be clarified on any final site plan set.

The petitioners also claim that “to the extent the [Revised Elevations] intended to show covered porches without columns facing both the south and north side lot lines, such changes would either interfere with the required landscape buffer... and/or violate setback/open space requirements, and also would be a change that cannot be approved administratively under City Code Chap. 57, Sec. 5:1:22(5).” The Revised Elevations show stoops facing south and north, and not porches. Stoops are permitted in the open space under Chapter 55, § 5:54(2)(a). The stoops do not project into the required setback, nor do they interfere with any landscape buffer.

**C. The Planning and Development Services Manager’s decision, as reflected in a memo to City Council date October 13, 2011, that certain proposed amendments of the City Place site plan, including expanded “area wells” with guardrails are subject to being reviewed administratively as “minor changes” under the City Code.**

Finally, the petitioners challenge “the Planning and Development Services Manager’s decision, as reflected in a memo to City Council dated October 13, 2011, that “certain proposed amendments of the City Place site plan... are subject to being reviewed administratively” under Chapter 57, Section 5:122(5) Administrative Amendments to Approved Site Plans, rather than by City Council.

As discussed above, the memo in question does not reflect any decision, but merely informs Council that the proposed Administrative Amendment was being reviewed by staff. As no decision has been made, there is nothing to appeal and no decision for the ZBA to review.

1. The petitioners claim that the addition of expanded “area wells” and their guardrails are not “minor changes” reviewable administratively under Chapter 57, Section 5:122(5). This is moot, since, as discussed above, the proposed alterations to the window wells were withdrawn by the developers. The window well dimensions in the current proposed Administrative Amendment match the window wells on the original approved site plan. The Petitioners have not challenged any of the other changes, and all other changes on the plan are permitted under Chapter 57, Section 5:122(5). Further, since window wells and guardrails are not mentioned or regulated in either Chapter 55 or Chapter 57, they are considered to be such a minor element of construction that the code does not apply.

2. The petitioners claim that because the Landscape Modification Request was improperly granted, City staff cannot administratively consider any site plan elements that would conflict with the required landscape buffer. As discussed above in response to the petitioners’ claim A, the Landscape Modification Request was properly granted



Zoning Board of Appeals  
Administrative Review  
December 7, 2011 - Page 9

consistent with the standards outlined in Chapter 62, Section 5:608. In any case, no changes are being proposed that would conflict with the currently required landscape buffer, so the claim is moot.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matt Kowalski', written in a cursive style.

**Matt Kowalski, AICP**  
**City Planner**

ATTORNEYS AND COUNSELORS AT L A W  
**RENTROP & MORRISON, P. C.**

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SUSAN E. MORRISON

E-mail: [smorrison@rentropmorrison.com](mailto:smorrison@rentropmorrison.com)

TELEPHONE (248) 644-6970

FACSIMILE (248) 644-7141

November 1, 2011

City of Ann Arbor Zoning Board of Appeals  
c/o Planning and Development Services Unit  
City of Ann Arbor  
100 N. 5<sup>th</sup> Avenue  
P.O. Box 8647  
Ann Arbor, MI 48107

**Subject: Appeal / Notice of Appeal to Zoning Board of Appeals / City Place  
(407 – 437 S. Fifth Avenue)  
Our File Number 1096.001**

Dear Sir or Madam:

Enclosed please find two copies of an appeal to the City of Ann Arbor Zoning Board of Appeals and a CD of the referenced exhibits with regard to the above matter.

Very truly yours,  
RENTROP & MORRISON, P.C.



Susan E. Morrison

# APPLICATION FOR ADMINISTRATIVE APPEAL

(And Notice of Appeal pursuant to MCL 125.3604(2))

## Section 1: Applicant Information

Name of Applicant: Tom and Susan Whitaker  
Address of Applicant: 444 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-29-428-005  
Daytime Phone: 734-994-4025  
Email: [tgwhitaker@gmail.com](mailto:tgwhitaker@gmail.com)  
Applicant's Relationship to property: Own and reside in a home directly across  
the street from the City Place property.\*

[Section 1 continued on attached page]

## Section 2: Property Information

Address of Property: \_\_\_\_\_ 407 - 437 S. Fifth Ave., Ann Arbor, MI 48104  
Zoning Classification: \_\_\_\_\_ Zoned R4C  
Tax ID# (if known): \_\_\_\_\_ 09-09-29-427-025  
\*Name of Property Owner: \_\_\_\_\_ City Place Ann Arbor, LLC

\*If different than applicant, a letter of authorization from the property owner must be provided.

N/A

## Section 3: Request Information

- Code or Ordinance and Specific Language you are appealing:

Give a detailed description as to what decision you would like to appeal

See attached Section 3.

## Section 4: Supporting Documentation Materials

The following materials are **suggested** for all Administrative Appeals. Failure to provide these materials may result in an incomplete appeal and may delay staff review and Zoning Board of Appeals consideration of the appeal. ALL materials should accompany the application must be provided on **8 ½" by 11" sheets or a CD ROM (Adobe PDF Preferred)**.

- Survey of the property including all existing and proposed structures, dimensions of property, and area of property.
- Building floor plans showing interior rooms, including dimensions.
- Photographs of the property, neighborhood and any existing buildings involved in the request.
- Any other graphic or written materials that support the appeal.

## APPLICATION FOR ADMINISTRATIVE APPEAL

### **Section 1: Co-Applicant Information (continued)**

**Name of Applicant:** 309 E. Jefferson, LLC by Neal Snook, Member  
Owner of: 309 E. Jefferson  
Ann Arbor, MI 48104  
Parcel ID: 09-29-427-001  
Address of Applicant: 5184 Village Road  
Saline, MI 48176  
Daytime Phone: 734-944-2405  
Email: [nsnook1012@aol.com](mailto:nsnook1012@aol.com)  
Applicant's Relationship to property: Owns a house which abuts part of the south boundary of the City Place property.\*

**Name of Applicant:** Tom and Martha Luczak  
Address of Applicant: 438 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-29-428-006  
Daytime Phone: 734-747-6781  
Email: [toml@cmplaw.com](mailto:toml@cmplaw.com)  
Applicant's Relationship to property: Own and reside in a home directly across the street from the City Place Property.\*

**Name of Applicant:** Limited Resources, LLC by Tom Whitaker, Member  
Owner of: 450 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-09-29-428-004)  
Address of Applicant: 444 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-29-428-004  
Daytime Phone: 734-994-4025  
Email: [tgwhitaker@gmail.com](mailto:tgwhitaker@gmail.com)  
Applicant's Relationship to property: Own house directly across the street from the City Place property.\*

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\* Because of the close proximity of the applicants' properties which are either along the south boundary of the proposed City Place project (407 – 437 South Fifth Avenue) or across Fifth Avenue from the southwest corner of the City Place property, all of the applicants are and will be specially harmed by the decisions being appealed herein and the future construction of the City Place project, which harm includes, but is not limited to, adverse impacts on applicants' use and enjoyment of their properties and on their property values due to the proposed construction of a project with buildings greatly out of scale to the surrounding homes, and the resulting increased density, noise, traffic, pollution, light glare, and adverse visual and aesthetic impacts, including adverse impacts on the appearance, character and value of the neighborhood.

**Section 5: Acknowledgement**

**SIGNATURES MUST BE SIGNED IN PRESENCE OF NOTARY PUBLIC**

I, the applicant, request an Administrative Appeal from the above named Chapter(s) and Section(s) of the Ann Arbor City Code for the stated reasons, in accordance with the materials attached hereto.

734-994-4025  
Phone Number  
SUSWhitaker@gmail.com  
Email Address

Susan Whitaker  
Signature  
Susan Whitaker  
Print Name

I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.

Susan Whitaker  
Signature

Further, I hereby give City of Ann Arbor Planning & Development Services unit staff and members of the Zoning Board of Appeals permission to access ~~the subject~~ <sup>my</sup> property for the purpose of reviewing my Administrative Appeal. By signing this form, I state that I am aware of all meeting dates, times and locations, and will not receive additional notice regarding that from the Planning and Development Services Division.

Susan Whitaker  
Signature

On this 31<sup>st</sup> day of October, 2011, before me personally appeared the above named applicant and made oath that he/she has read the foregoing application by him/her subscribed and knows the contents thereof, and that the same is true as to his/her own knowledge except as to those matters therein stated to be upon his information and belief as to those matters, he/she believes them to be true.

Thomas D. Luczak  
Notary Public Signature

May 18, 2015  
Notary Commission Expiration Date

Thomas D. Luczak  
Notary Public, Washtenaw County, MI  
Acting in Washtenaw County, MI

**Staff Use Only**

Date Submitted: \_\_\_\_\_ Fee Paid: \_\_\_\_\_  
File No.: \_\_\_\_\_  
Pre-Filing Review Person & Date: \_\_\_\_\_  
Secondary Staff Review Person & Date: \_\_\_\_\_  
Date of Public Hearing: \_\_\_\_\_  
ZBA Action: \_\_\_\_\_

**Section 5: Acknowledgement**

**SIGNATURES MUST BE SIGNED IN PRESENCE OF NOTARY PUBLIC**

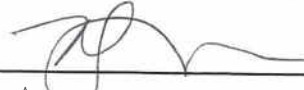
I, the applicant, request an Administrative Appeal from the above named Chapter(s) and Section(s) of the Ann Arbor City Code for the stated reasons, in accordance with the materials attached hereto.

734.747-6781

Phone Number

LUCZAKfamily@comcast.net

Email Address

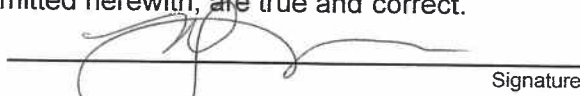


Signature

Martha Portz Luczak

Print Name

I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.



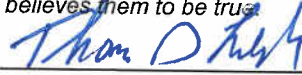
Signature

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Signature

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Notary Public Signature

May 18, 2015

Notary Commission Expiration Date

Thomas D. Luczak  
Notary Public, Washtenaw County, MI  
Acting in Washtenaw County, MI

**Staff Use Only**

Date Submitted: \_\_\_\_\_ Fee Paid: \_\_\_\_\_

File No.: \_\_\_\_\_

Pre-Filing Review Person & Date: \_\_\_\_\_

Secondary Staff Review Person & Date: \_\_\_\_\_

Date of Public Hearing: \_\_\_\_\_

ZBA Action: \_\_\_\_\_






**Section 5: Acknowledgement**

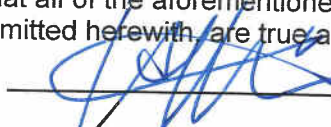
**SIGNATURES MUST BE SIGNED IN PRESENCE OF NOTARY PUBLIC**

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734-649-9596  
Phone Number  
TGW@ATTNED.COM  
Email Address

  
\_\_\_\_\_  
Signature  
TOM WHITAKER  
\_\_\_\_\_  
Print Name

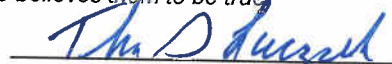
I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.

  
\_\_\_\_\_  
Signature

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\_\_\_\_\_  
Signature

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\_\_\_\_\_  
Notary Public Signature

May 18, 2015  
\_\_\_\_\_  
Notary Commission Expiration Date

Thomas D. Luczak  
Notary Public, Washtenaw County, MI  
Acting in Washtenaw County, MI

**Staff Use Only**

Date Submitted: \_\_\_\_\_ Fee Paid: \_\_\_\_\_  
File No.: \_\_\_\_\_  
Pre-Filing Review Person & Date: \_\_\_\_\_  
Secondary Staff Review Person & Date: \_\_\_\_\_  
Date of Public Hearing: \_\_\_\_\_  
ZBA Action: \_\_\_\_\_




**Section 5: Acknowledgement**

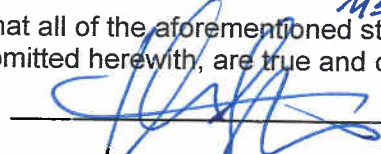
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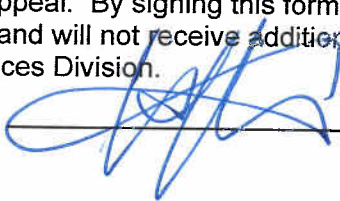
734-649-9596  
Phone Number  
TGWHTAKSR@GMAIL.COM  
Email Address

  
Signature  
LIMITED RESOURCES, LLC, TOM WHITAKER,  
Print Name  
MEMBER


I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.

  
Signature

Further, I hereby give City of Ann Arbor Planning & Development Services unit staff and members of the Zoning Board of Appeals permission to access the subject property for the purpose of reviewing my Administrative Appeal. By signing this form, I state that I am aware of all meeting dates, times and locations, and will not receive additional notice regarding that from the Planning and Development Services Division.

  
Signature

On this 31<sup>st</sup> day of October, 2011, before me personally appeared the above named applicant and made oath that he/she has read the foregoing application by him/her subscribed and knows the contents thereof, and that the same is true as to his/her own knowledge except as to those matters therein stated to be upon his information and belief as to those matters, he/she believes them to be true.

  
Notary Public Signature

May 18, 2015  
Notary Commission Expiration Date

Thomas D. Luczak  
Notary Public, Washtenaw County, MI  
Acting in Washtenaw County, MI

Staff Use Only

Date Submitted: \_\_\_\_\_ Fee Paid: \_\_\_\_\_

File No.: \_\_\_\_\_

Pre-Filing Review Person & Date: \_\_\_\_\_

Secondary Staff Review Person & Date: \_\_\_\_\_

Date of Public Hearing: \_\_\_\_\_

ZBA Action: \_\_\_\_\_

**Section 5: Acknowledgement**

**SIGNATURES MUST BE SIGNED IN PRESENCE OF NOTARY PUBLIC**

I, the applicant, request an Administrative Appeal from the above named Chapter(s) and Section(s) of the Ann Arbor City Code for the stated reasons, in accordance with the materials attached hereto.

734 944-2407  
Phone Number  
NSNOOK1012@AOL.com  
Email Address

[Signature]  
Signature  
NEIL SNOOK, MEMBER  
Print Name  
309 E. JEFFERSON, LLC

I, the applicant, hereby depose and say that all of the aforementioned statements, and the statements contained in the materials submitted herewith, are true and correct.

[Signature]  
Signature

Further, I hereby give City of Ann Arbor Planning & Development Services unit staff and members of the Zoning Board of Appeals permission to access the subject property for the purpose of reviewing my Administrative Appeal. By signing this form, I state that I am aware of all meeting dates, times and locations, and will not receive additional notice regarding that from the Planning and Development Services Division.

[Signature]  
Signature

On this 1<sup>st</sup> day of November, 2011, before me personally appeared the above named applicant and made oath that he/she has read the foregoing application by him/her subscribed and knows the contents thereof, and that the same is true as to his/her own knowledge except as to those matters therein stated to be upon his information and belief as to those matters, he/she believes them to be true.

[Signature]  
Notary Public Signature

May 18, 2015  
Notary Commission Expiration Date

Thomas D. Luczak  
Notary Public, Washtenaw County, MI  
Acting in Washtenaw County, MI

**Staff Use Only**

Date Submitted: \_\_\_\_\_ Fee Paid: \_\_\_\_\_  
File No.: \_\_\_\_\_  
Pre-Filing Review Person & Date: \_\_\_\_\_  
Secondary Staff Review Person & Date: \_\_\_\_\_  
Date of Public Hearing: \_\_\_\_\_  
ZBA Action: \_\_\_\_\_

**Letter of Authorization to submit Application for Appeal - Zoning Board of Appeals  
and/or appear before Board**

By signing below I/We, as owners of the property(ies) referenced below our signatures, do hereby allow Susan E. Morrison of Rentrop & Morrison, P.C. to submit an application for an Appeal and other documents to the Zoning Board of Appeals and/or appear before the Board on our behalf.



Tom Whitaker  
444 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-29-428-005

10/31/11


Date



Susan Whitaker  
444 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-29-428-005

10-31-11

Date



Limited Resources, LLC by Tom Whitaker, Member  
450 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-09-29-428-004)

10/31/11

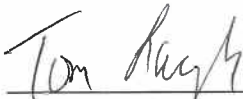
Date



309 E. Jefferson, LLC by Neal Snook, Member  
309 E. Jefferson  
Ann Arbor, MI 48104  
Parcel ID: 09-29-427-001

11/1/11

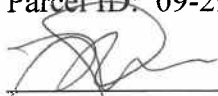
Date



Tom Luczak  
438 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-29-428-006

10/31/11

Date



Martha Luczak  
438 S. Fifth Ave.  
Ann Arbor, MI 48104  
Parcel ID: 09-29-428-006

10-31-11

Date

### **Section 3 of Application for Administrative Appeal**

#### **Description of Decisions Being Appealed:**

**A. City Council's Resolution in File No. 11-1336 (enacted October 17, 2011) Enactment No. R-11-445) to Approve City Place Landscape Modification Request, 407-437 South Fifth Avenue and City Council's decision again approving the same resolution upon reconsideration on October 24, 2011.**

A copy of the above-referenced Resolution is attached as **Exhibit A**. Applicants submit that the "modification" granted by City Council to the City Place developer of requiring no landscape buffer on the south boundary of the City Place property (hereafter "exemption") was erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion for reasons which include, but are not limited to, the following:

1. The City Place project does not meet the requisite ordinance conditions necessary to allow an exemption from Code Chap. 62, Sec. 5:603 under either Chap. 62, Sec. 5:608(2)(a) or under Chap. 62, Sec. 5:608(2)(c)(vii), both of which must be met to qualify for a "modification" of the buffer requirement.

a. The exemption from the buffer requirement on the southern boundary is not consistent with any of the statements of intent in Sec. 5:600(1) and therefore does not meet the condition set forth in Chapter 2, Sec. 5:608(2)(a);

b. The City Place amended site plan shows alterations of the existing landscape elements and therefore cannot meet the condition in 5:608(2)(c)(vii). (A copy of the City Place original and proposed amended site plans provided by the Planning Department is attached to this Application).

2. The exemption was also arbitrary and capricious, an abuse of discretion, and a violation of substantive due process and equal protection rights of the Applicants under Art. I, Sec. 2 and 17 of the Michigan Constitution and the 14<sup>th</sup> Amendment to the U.S. Constitution and under 42 U.S.C. § 1983 in that the City did not exempt the City Place project from complying with the landscape buffer requirements for the protection of residential properties on the eastern boundary of City Place, but is requiring no landscape buffer at all along the southern boundary of City Place to the detriment of the Applicants.

3. The exemption from site plan requirements was erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion because the decision was made without full compliance with the site plan review procedures required under the City Code (see Code Chap. 57, Sec. 5:122, including Sec. 5:122(2) and (3) and Sec. 5:135(4)) and under state law, including but not

limited to notice and public hearing requirements, to the detriment of the Applicants, and also constitutes a violation of substantive and procedural due process rights of the Applicants under Art. I, Sec. 17 of the Michigan Constitution and the 14<sup>th</sup> Amendment to the U.S. Constitution, and under 42 U.S.C. § 1983.

4. The exemption was erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion because the decision was, in effect, the grant of a variance from ordinance requirements without compliance with the variance procedures required under City ordinances (see Code Chap. 55, Sec. 5:97 through 5:109) and under state law, including but not limited to notice and public hearing requirements, to the detriment of the Applicants, and also constitutes a violation of substantive and procedural due process rights of the Applicants under Art. I, Sec. 17 of the Michigan Constitution and the 14<sup>th</sup> Amendment to the U.S. Constitution, and under 42 U.S.C. § 1983.

Accordingly, Applicants respectfully request that the Zoning Board of Appeals (“ZBA”) grant the following relief: (i) reverse the exemption from landscape buffer requirements along the south boundary of the City Place property granted to the City Place developer; (ii) determine that the City Place project is required to comply with the terms of Chapter 62; (iii) declare that the amended site plan should be subject to the full site plan review procedure required under Chapter 57, Sec. 5:122, including Sec. 5:122(2) and (3) and Sec. 5:135(4)) with regard to the landscape plan, and any elements of the site plan that interfere with the ability to comply with the required landscape buffer, and other non-minor changes; and (iv) grant such other and further relief to Applicants as the ZBA deems warranted.

**B. City Council’s Resolution in File No. 11-1345 (enacted October 17, 2011, Enactment No. R-11-449) to Approve City Place Revised Building Elevations (407 – 437 South Fifth Avenue) and City Council’s decision again approving the same resolution upon reconsideration on October 24, 2011.**

A copy of the above-referenced Resolution is attached as **Exhibit B**. Applicants submit that the City Council’s approval of amended elevation drawings for City Place (hereafter “approval”) was erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion, for reasons which include, but are not limited to, the following:

1. As described in Section A above, an exemption from the landscape buffer requirement on the southern boundary was wrongfully granted for the City Place project. Applicants incorporate by reference herein Section A in its entirety. The elevation drawings recently approved show details that are inconsistent with the City Place project being able to comply with the landscape buffer requirement on the southern boundary under Code Chap. 62, Sec. 5:603. For example, the elevation drawings show guardrails around proposed expanded area wells, including area wells along the southern boundary



which would conflict with the required landscape buffer. Because the City Place project should have been required to comply with the landscape buffer requirements under Chapter 62 along the southern boundary, and because the elevation drawings show details that conflict with and would violate those buffer requirements, consequently, approval of the amended elevation drawings should also have been denied.

2. The approval of the elevation drawing portion of the amended site plan was premature and erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion, for reasons which include, but are not limited to, the following:

a. The proposed site plan amendments are still under review by the City and by the County Water Resources Commissioner so it is not yet known whether the development would “comply with all applicable state, local and federal law, ordinances, standards and regulations,” a determination required by Chap. 57, Sec. 5:122(6)(a), or whether any further modifications will be required which affect the elevation drawings.

b. The building height allowed will need to be recalculated after the City Place developer provides the information regarding wall dimensions and construction required in Section 1.4(7) of the City’s Land Development Regulations in connection with its site plan amendment. The amended plan, among other things, proposes expanded area wells with retaining walls (for use by the basement level living spaces), but fails to provide the information required in Section 1.4(7) (and did not previously provide any such information in its original site plan submission). Pursuant to Code Chap. 57, Sec. 5:131 a site plan shall not be considered to have been filed with the City until all required materials are submitted. The starting point for measuring building height pursuant to Code Chap.55, Sec. 5:1(9) is from the “average elevation of the finished grade within 20 feet of the building.” The allowed height will need to be recalculated due to the expanded area wells which will affect the average finished grade elevation within the 20-foot area. It is believed that the height of the buildings shown on the amended elevation drawing will be found to exceed the maximum height allowed after the developer provides the required information.

3. The approval was erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion because it was done without compliance with the full site plan review procedures required under City ordinances (see Code Chap. 57, Sec. 5:122, including Sec. 5:122(2) and (3) and Sec. 5:135(4)) and under state law, including but not limited to notice and public hearing requirements, to the detriment of the Applicants, and also constitutes a violation of substantive and procedural due process rights of the Applicants under Art. I, Sec. 17 of the Michigan Constitution and the 14<sup>th</sup> Amendment to the U.S. Constitution, and under 42 U.S.C. § 1983.

Accordingly, Applicants respectfully request that the Zoning Board of Appeals (“ZBA”) grant the following relief: (i) reverse the City’s approval of the revised elevation drawings submitted for the City Place project; (ii) determine that the information regarding wall construction under Section 1.4(7) of the Land Development Regulations is required for a site plan submission for the City Place project and that the average elevation of the finished grade within 20 feet of the buildings should be re-calculated once that information is submitted; (iii) declare that the amended site plan should be subject to the full site plan review procedure required under Chapter 57, Sec. 5:122, including Sec. 5:122(2) and (3) and Sec. 5:135(4)) with regard to non-minor changes, height, the landscape plan, and any elements that interfere with the ability to comply with the required landscape buffer; and (iv) grant such other and further relief to Applicants as the ZBA deems warranted.

**C. The Planning Manager’s decision, as reflected in a memo to City Council dated October 13, 2011, that certain proposed amendments of the City Place site plan, including expanded “area wells” with guardrails, are subject to being reviewed administratively as “minor changes” under the City Code.**

Attached as **Exhibit C** is a memo dated October 13, 2011 from a Planning Staff member and the Planning Manager to City Council that indicates that an Administrative Amendment to the City Place site plan is currently being reviewed. Part of what is included in the “administrative review” are expanded “area wells” and their guardrails. Applicants submit that this decision to allow the proposed amendments to be reviewed administratively is erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion, for reasons which include, but are not limited to, the following:

1. The addition of expanded “area wells” and their guardrails are not within the defined term “minor change” under Code Chap. 57, Sec. 5:122(5). Accordingly, the review being done “administratively” for non-minor changes should instead be subject to the full site plan review procedures required under City ordinances (see Chapter 57, Sec. 5:122, including Sec. 5:122(2) and (3) and Sec. 5:135(4)) and by state law, including but not limited to notice and public hearing requirements. The decision to proceed with this administrative review also constitutes a violation of substantive and procedural due process rights of the Applicants under Art. I, Sec. 17 of the Michigan Constitution and the 14<sup>th</sup> Amendment to the U.S. Constitution, and under 42 U.S.C. § 1983.

2. As described in Section A above, an exemption from the landscape buffer requirement on the southern boundary was wrongfully granted for the City Place project. Applicants incorporate by reference herein Sections A and B in their entirety. Because the City Place project should have been required to comply with the landscape buffer requirements along the south boundary under Chapter 62, any action by the Planning Manager or designee to consider or approve administratively any site plan elements that conflict with the ability to install a landscape buffer as required by ordinance along the south boundary would similarly be erroneous, contrary to the City Code and other

applicable law, improper and wrongful, a violation of the Michigan and U.S. Constitutions, not supported by competent, material and substantial evidence, and/or arbitrary, capricious and an abuse of discretion, as described in Section A.

Accordingly, Applicants respectfully request that the Zoning Board of Appeals (“ZBA”) grant the following relief: (i) reverse the Planning Manager’s decision that review of “area wells” and their guardrails are within the defined term “minor change” under Code Chap. 57, Sec. 5:122(5); (ii) declare that the amended site plan should be subject to the full site plan review procedure required under Chapter 57, Sec. 5:122, including Sec. 5:122(2) and (3) and Sec. 5:135(4)) with regard to non-minor changes, height, the landscape plan, and any elements that interfere with the ability to comply with the required landscape buffer; and (iii) grant such other and further relief to Applicants as the ZBA deems warranted.



ATTORNEYS AND COUNSELORS AT L A W  
**RENTROP & MORRISON, P. C.**

40950 WOODWARD AVENUE, SUITE 300

BLOOMFIELD HILLS, MICHIGAN 48304

SUSAN E. MORRISON  
E-mail: smorrison@rentropmorrison.com

TELEPHONE (248) 644-6970  
FACSIMILE (248) 644-7141

November 9, 2011

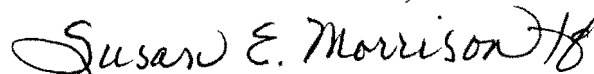
City of Ann Arbor Zoning Board of Appeals  
c/o Planning and Development Services Unit  
City of Ann Arbor  
100 N. 5<sup>th</sup> Avenue  
P.O. Box 8647  
Ann Arbor, MI 48107

Subject: **ZBA File No.: 11-020 Regarding City Place – 407 – 437 S. Fifth Ave.  
Supplement to Section 3 of Application for Administrative Appeal  
Our File Number 1096.001**

Dear Sir or Madam:

Enclosed please find two copies of a Supplement to Section 3 of Application for Administrative Appeal to the City of Ann Arbor Zoning Board of Appeals with regard to the above matter.

Very truly yours,  
RENTROP & MORRISON, P.C.

  
Susan E. Morrison

Enclosure  
cc: Kevin McDonald

**ZBA FILE NO: 11-020**

**ADMINISTRATIVE APPEAL REGARDING CITY PLACE: 407 – 437 S. FIFTH AVE.**

**SUPPLEMENT TO SECTION 3 OF APPLICATION FOR ADMINISTRATIVE APPEAL**

In addition to the arguments regarding City Council's Resolution in File No. 11-1345 (enactment No. R-11-449) set forth in Section B of Section 3 of the Application for Administrative Appeal, the following paragraph 4 to Section B is hereby added:

4. Applicants incorporate by reference herein all other provisions of Section 3 of Application for Administrative Appeal in ZBA File No. 11-020. The approval by Council in Resolution No. R-11-449 was also erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion because the approved amended elevation drawings (shown in Exhibit B) contain errors in depicting buildings ("west elevation both buildings" and "east elevation both buildings") which show a porch with columns on the south side of the south building which is inconsistent with other portions of the site plan; and to the extent the drawings intended to show covered porches without columns facing both the south and north side lot lines, such changes would either interfere with the required landscape buffer as described in Section A and/or violate setback/open space requirements, and also would be a change that cannot be approved administratively under City Code Chap.57, Sec. 5:122(5).

**ZBA FILE NO: 11-020**

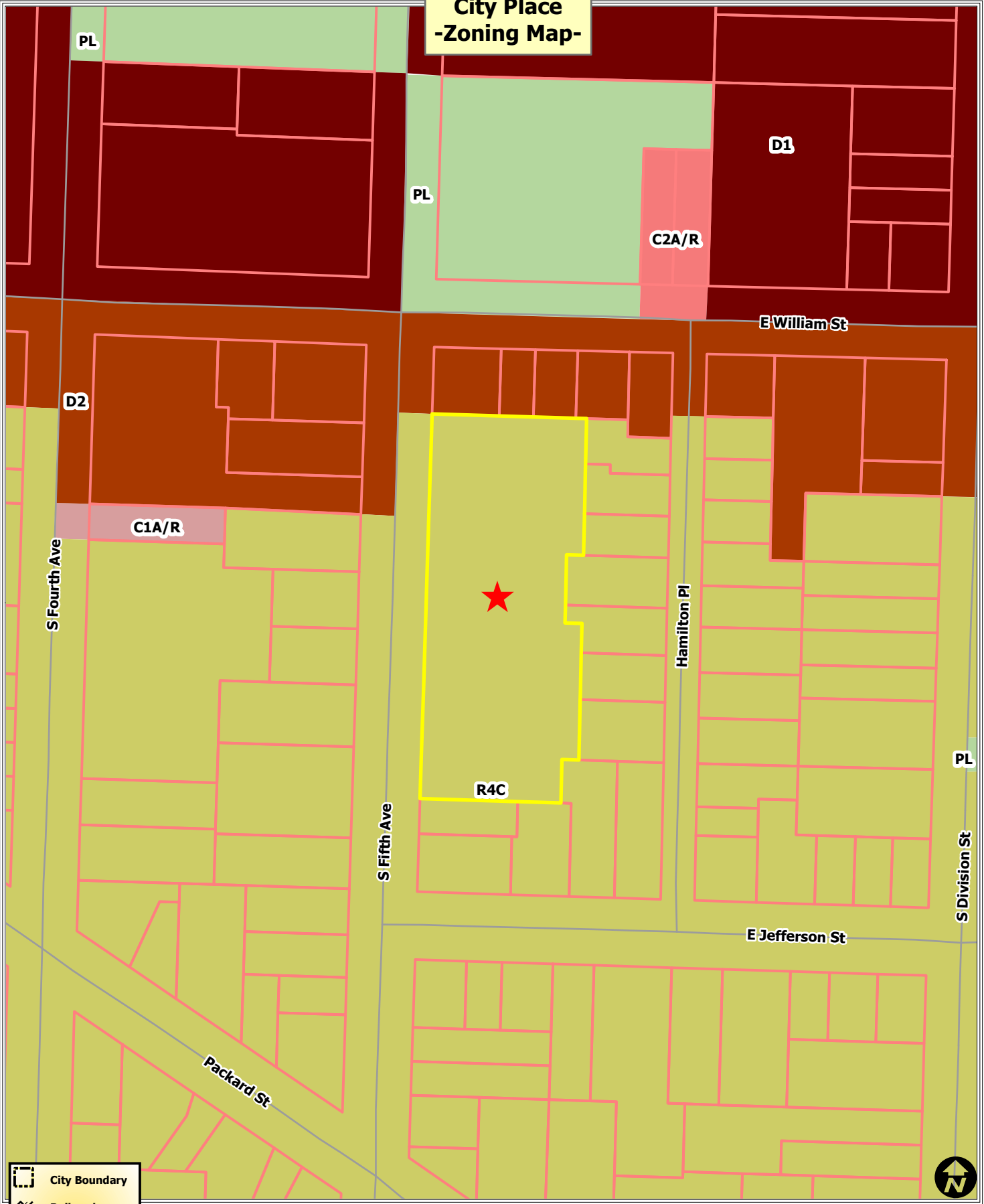
**ADMINISTRATIVE APPEAL REGARDING CITY PLACE: 407 – 437 S. FIFTH AVE.**





**SUPPLEMENT TO SECTION 3 OF APPLICATION FOR ADMINISTRATIVE APPEAL**

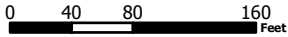
In addition to the arguments regarding City Council's Resolution in File No. 11-1345 (enactment No. R-11-449) set forth in Section B of Section 3 of the Application for Administrative Appeal, the following paragraph 4 to Section B is hereby added:

4. Applicants incorporate by reference herein all other provisions of Section 3 of Application for Administrative Appeal in ZBA File No. 11-020. The approval by Council in Resolution No. R-11-449 was also erroneous, contrary to the City Code and other applicable law, improperly and wrongfully granted, not supported by competent, material and substantial evidence, and/or was arbitrary, capricious and an abuse of discretion because the approved amended elevation drawings (shown in Exhibit B) contain errors in depicting buildings ("west elevation both buildings" and "east elevation both buildings") which show a porch with columns on the south side of the south building which is inconsistent with other portions of the site plan; and to the extent the drawings intended to show covered porches without columns facing both the south and north side lot lines, such changes would either interfere with the required landscape buffer as described in Section A and/or violate setback/open space requirements, and also would be a change that cannot be approved administratively under City Code Chap.57, Sec. 5:122(5).

# City Place -Zoning Map-



-  City Boundary
-  Railroads
-  Huron River
-  Parcel Property



City of Ann Arbor Map Disclaimer:  
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