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**FACSIMILE TRANSMITTAL COVER SHEET**

Date: May 29, 2009

Transmittal to: Kevin S. McDonald  
Mayor John Hieftje  
City Council Members

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cc: Stephen K. Postema

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Destination facsimile number: as above

Transmittal from: Susan E. Morrison

Our client name: Whitaker File No. 1096-000

Matter: City Place Site Plan / Ann Arbor, Michigan / City File No. SP09-07

Number of pages (including cover sheet) 14

Comments: Please see enclosed letter and architect's report.

If you have any questions or did not receive a complete copy, please contact the sender at the number listed above. Thank you.

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ATTORNEYS AND COUNSELORS AT LAW  
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May 29, 2009

Mr. Kevin S. McDonald  
 Ann Arbor City Attorney's Office  
 City of Ann Arbor  
 100 N. 5<sup>th</sup> Avenue  
 P.O. Box 8647  
 Ann Arbor, MI 48107

Mayor John Hieftje and City Council Members  
 City of Ann Arbor  
 Guy C. Larcom, Jr. Municipal Building  
 100 N. Fifth Avenue  
 Ann Arbor, MI 48104

Subject: **City Place Site Plan / Ann Arbor, Michigan / City File No. SP09-07**  
**Our File Number 1096.000**

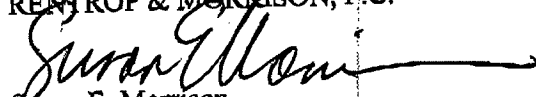
Dear Mr. McDonald, Honorable Mayor and Council Members:

As previously indicated in a letter submitted on May 27, 2009, our firm represents Thomas Whitaker, who is President of the Germantown Neighborhood Association. Attached to this letter is a report submitted to Mr. Whitaker from Architect Shaun P. Smith, who has provided a detailed analysis of the City Place site plan and describes how the proposal violates various provisions of the zoning ordinance -- including exceeding the maximum number of permitted dwelling units, exceeding the maximum height allowed, violating the setback requirements for front, side and rear setbacks, and failing to provide the required amount of open space.

We believe that Mr. Smith's analyses of the ordinance provisions as they relate to the City Place proposal are sound. Although we requested in our May 27<sup>th</sup> letter that this matter be remanded to the Planning Commission for a new public hearing for a procedural deficiency, the attached architect's report amply demonstrates that the proposed site plan is substantively deficient as well. Any one of these violations would also compel denial of site plan approval to the applicant if this matter is addressed substantively by City Council on June 1, 2009.

Please include this letter and the attached report as part of the record of the proceedings before City Council at its June 1, 2009 meeting.

Respectfully submitted,  
 RENTROP & MORRISON, P.C.

  
 Susan E. Morrison

Enclosure

cc: Stephen K. Postema  
 Thomas Whitaker

May 28, 2009

Tom Whitaker, President  
Germantown Neighborhood Association  
444 South 5<sup>th</sup> Avenue  
Ann Arbor, MI 48104

Dear-Mr. Whitaker:

Please find below my analysis of the City Place Site Plan submittal. The purpose of my review is to address the Germantown Neighborhood Association's concern that City Place might not fully conform with the Ann Arbor Zoning Ordinance. Although there has been quite a bit of debate regarding the appropriateness of the development and the current zoning processes, those are not the subject of this review. This review will focus solely on the requirements of the current Ann Arbor Site Plan and Zoning Ordinances.

**Applicable ordinances:** The application before the City Council is a Site Plan review and as such is subject not only to the Zoning Ordinance but also to the requirements of Chapter 57, Subdivision and Land Use Control where there is a provision requiring compliance with "all applicable" ordinances:

Subdivision and Land Use Control, Chapter 57, Section 5.122

(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; ...

As noted below, there are Housing Code provisions that affect the project's ability to comply with the Zoning Ordinance (Chapter 55). Where ordinances are cited in this review, the applicable code section will be identified.

**Reference Documents:** The City Place site plan was submitted for Planning Commission review on March 2, 2009, with additional required documents submitted on March 6, 2009 and other amendments submitted after that date. The Planning Staff completed their review and recommended approval to the Planning Commission. Final approval is required by City Council. The City Place drawings reviewed in this analysis are:

Number	Title	Date	Number	Title	Date
1	Cover Sheet	03/25/09	9	Landscape Plan	03/25/09
2	Existing Conditions	03/25/09	10	Miscellaneous Details	03/02/09
3	Removal Plan	03/25/09	11	Aerial Overlay Plan	03/02/09
4	Dimensional Site Plan & Alternate Layout	03/25/09	12	Photometric Plan	03/02/09
5	Grading Plan	03/25/09	A3.9B	Building Elevations	04/09/09
6	Utility Plan	03/25/09	A3.10B	Building Elevations	04/09/09
7	Drainage Are Plan, Storm Detention Calcs & Details	03/25/09	B1.0B	Floor Plans	04/09/09
8	Soil Erosion Control Plan	03/25/09			

**Summary:** After my review, I identified six examples of the City Place site plan's non-compliance with the Ann Arbor Zoning Ordinance, two of which also involve non-compliance with the Ann Arbor Housing Ordinance. My analysis of these violations has been organized into separate sections below, each addressing a specific issue within the Ordinance

ISSUE A. Use - Residential Occupancy, Chapter 55, Article II Section 5:7.....	See page 2
ISSUE B. Permitted number of units, Chapter 55, Article III, Section 5:34.....	See page 3
ISSUE C. Building Height, Chapter 55, Article III, Section 5:34.....	See page 4
ISSUE D. Setback location, Chapter 55, Article III, Section 5:34.....	See page 6
ISSUE E. Required Setback Line Min., Chapter 55, Article III, Section 5:34 & Article IV, Section 5:62	See page 7
ISSUE F. Required Open Space, Chapter 55, Article, III, Section 5:54.....	See page 10

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**ISSUE A. Use – Residential Occupancy, Chapter 55, Article II Section 5:7:** The applicant has requested approval of six-bedroom apartments whose "Permitted Use" is "Residential Occupancy" [underlines added for clarity]:

Ann Arbor Zoning Ordinance, Chapter 55, Article II, Section 5:7:

- (2) A dwelling unit may not be occupied by more persons than 1 of the following family living arrangements:
- (a) One or more persons related by blood, marriage, adoption or guardianship living as a single housekeeping unit, in all districts.
  - (b) Four persons plus their offspring living as a single housekeeping unit, in all districts.
  - (c) Six persons living as a single housekeeping unit in R4 districts.
  - (d) A functional family living as a single housekeeping unit which has received a special exception use permit pursuant to section 5:104.

To qualify for this provision, each apartment must be a "dwelling unit" which is defined in both the Zoning and Housing ordinances (although with slightly different terminology) as:

Ann Arbor Zoning Ordinance, Chapter 55, Article I, Section 5:1:

- "(14) *Dwelling unit:* One or more rooms with kitchen and sanitary facilities designed as a unit for occupancy by 1 family."

- and also as -

Ann Arbor Housing Ordinance, Chapter 105, Article I, Section 8:500:

- "(10) *Dwelling unit:* Any room or contiguous group of rooms located within a building and forming a single habitable unit with eating, living, and sleeping areas, a kitchen, and a bathroom for 1 family."

In addition to a limit of "Six persons," 5:7 (c) above also states that the occupants must be "living as a single housekeeping unit" which is defined in both the Zoning and Housing ordinances (again with slightly differing terms):

Ann Arbor Zoning Ordinance, Chapter 55, Article I, Section 5:1:

- "(23) *Housekeeping unit:* A dwelling unit organized as a single entity in which the members of the household share common facilities."

- and also as -

Ann Arbor Housing Ordinance, Chapter 105, Article I, Section 8:500:

- "(17) *Housekeeping unit:* A dwelling unit organized as a single entity, in which the members of the household share common kitchen facilities, and have access to all parts of the unit."

The developer, in statements made during the public participation meeting and reported to this author, noted that:

1. Each bedroom will have its own lease,
2. Each bedroom will have its own deadbolt lock,

**Conclusion A:** If a developer provides separate leases and separate locks, occupants are not "organized as a single entity" and do not have "access to all parts of the unit." The occupants do not therefore function as a single entity or "single housekeeping unit" as required for "Residential Occupancy" and thus the project is NOT a "Permitted Use" within the R4C zone.

<sup>1</sup> Chapter 55, Article II, Section 5:6 (1) uses the term "Permitted uses" however there is no definition in Chapter 55, Article I, Section 5:1 for the term. However the following term: "(40) *Principal Use:* The primary use of any lot." is defined and the two terms appear to be used interchangeably.

**ISSUE B. Permitted number of units, Chapter 55, Article III, Section 5:34:** The applicant has requested approval of 24 "dwelling units" each containing six bedrooms. The allowable number of "dwelling units" per Section 5:34 is 2,175 SF lot area per unit = 53,579 SF/2,175 SF per unit = 24.6 units.

As demonstrated previously, the 24 apartments do not qualify as dwelling units. However the developer, in his required public participation public meeting stated, and documented in his own meeting minutes (required submission)<sup>1</sup> that:

3. Each bedroom will have its own bath, and
4. Each bedroom will have its own small refrigerator and microwave.

A microwave is intended to heat food and together with a refrigerator, meet the definition of a "kitchen." These features when taken in context of the definitions below demonstrate that the bedrooms are actually "efficiencies."

Ann Arbor Housing Ordinance, Chapter 105, Article I, Section 8:500:

"(10) *Dwelling unit:* Any room or contiguous group of rooms located within a building and forming a single habitable unit with eating, living, and sleeping areas, a kitchen, and a bathroom for 1 family (see Chapter 55)."

"(11) *Efficiency:* A dwelling unit where the common living area and sleeping area is combined, (the area may be comprised of 2 contiguous rooms meeting the minimum habitable room area specified in subsection 8:503(1)(b)) and that has a bathroom and kitchen area (see 8:503(2))."

"(20) *Kitchen:* A room, or portion of a room, used for the preparation of food."

Ann Arbor Housing Ordinance, Chapter 105, Article I, Section 8:503:

"(5) *Kitchens.* All dwelling units must have a kitchen. All kitchens shall have adequate lighting and ventilation. Except in efficiencies, food shall not be prepared or cooked in any room used for sleeping purposes. A kitchen must have a range or similar device designed for cooking food, and a refrigerator and storage facilities for food and utensils. The range and refrigerator may be provided by the owner or the tenant."

**Conclusion B:** By providing a kitchen and bathroom within each "bedroom" the occupants will not "share common facilities." In fact, Section 8:503 explicitly states that ONLY in an efficiency can food be prepared in a "room used for sleeping purposes." Thus, there are actually 144 (6 efficiency dwelling units x 24 groups) "dwelling units" causing the project to **EXCEED the permitted number of units (24.6) for a lot of this size in the R4C zone.**

<sup>1</sup> Alex de Parry, Public Participation Report, February 20, 2009.

**ISSUE C. Building Height, Chapter 55, Article III, Section 5:34:** The applicant has requested approval of two 30 foot high buildings. The maximum height allowed in R4C is 30 feet as measured per:

Ann Arbor Zoning Ordinance, Chapter 55, Article I, Section 5:1:

- (9) **Building height.** The vertical distance of a building measured from the average elevation of the finished grade within 20 feet of the building to the highest point of the roof for a flat roof, to the deck line of a mansard roof, or to the midpoint elevation between eaves and ridge for a gable, hip or gambrel roof of a building.

The applicant submitted the following drawing to document the building's height of 30 feet as measured from the midline of the roof between the eave and the ridge.

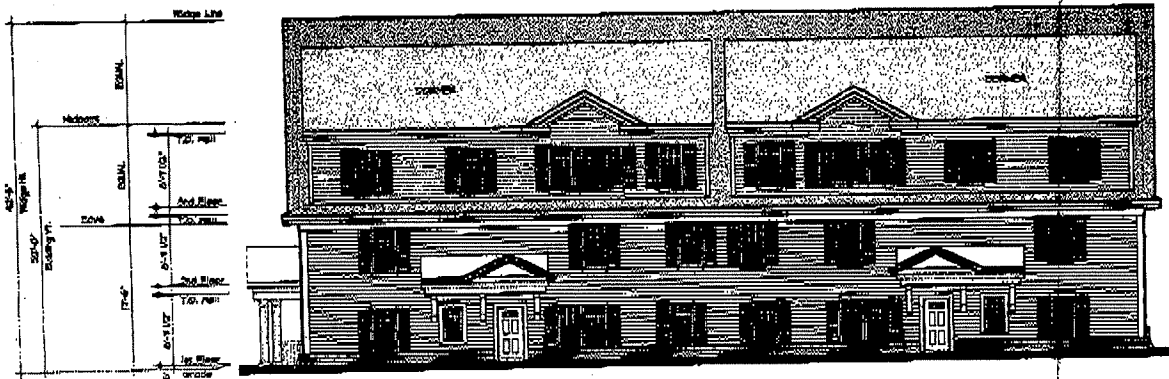


Illustration 1: West Elevation facing 5th Avenue. (Composite based upon City Place Site Plan submittal sheet A3.9b. Material notes have been removed for clarity and the dimensions string moved.)

In this drawing the building appears to be a two-story structure with two large dormers set into a roof with the eave line occurring at the top of the second floor. The definition critical to the building height measurement is the 'eave'. The Ann Arbor Zoning ordinance does not have definitions for roof, dormer or eave, however common definitions from the Merriam-Webster Online Dictionary are:

- ROOF:** the cover of a building
- DORMER:** a window set vertically in a structure projecting through a sloping roof
- EAVE:** the lower border of a roof that overhangs the wall

Based upon these common definitions, the eave is a portion of the roof that extends beyond the exterior wall, therefore if the eave is removed, the roof will remain. The following illustration (illustration not created by the applicant) is an example of that logic as applied to this project.

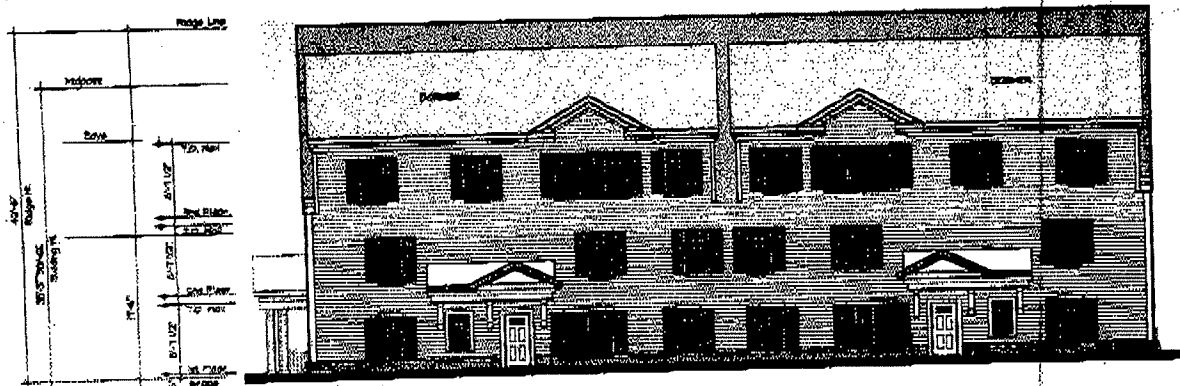


Illustration 2: Hypothetical West Elevation with the proposed eaves removed. (Composite based upon City Place Site Plan submittal sheet A3.9b. The eave has been removed and replaced with siding.)

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This illustration demonstrates that the "dormers" do not "project through a sloping roof" and instead actually support the roof. The same can also be seen in the South Elevation (below) where the west (left) and east (right) walls are shown to be continuous from the foundation up to top of the third floor.



ALT. 'B' RIGHT SIDE ELEVATION-SOUTH (south building) PITCHED ROOF  
SCALE: 1/8" = 1'-0"

Illustration 3: South Elevation (from City Place Site Plan submittal sheet A3.9b)

Together, the illustration and drawing show that the "dormer" structures are so large that they make up the highest percentage of roof area and should thus be considered the roof.

**Conclusion C:** The eave line for this project does not occur at the top of the second floor, it occurs at the top of the third floor where the bulk of the roof structure is supported therefore the actual building height is  $((42'-6'' \text{ [ridge]} - 28'-0'' \text{ [eave]}) / 2) + 28'-0'' \text{ [eave]} = 36'-3''$  which **EXCEEDS** the maximum allowable height of 30 feet.

**ISSUE D. Setback location, Chapter 55, Article III, Section 5:34:** The applicant intends to combine 7 existing, recorded lots that are entirely rectangular and regular. The lots vary in depth but all have rear lot lines that are parallel to the front lot line. The Ann Arbor Zoning Ordinance defines the rear lot line as:

Ann Arbor Zoning Ordinance, Chapter 55, Article I, Section 5:1:

(28) Lot line, rear. The lot line opposite and most distant from the front lot line; or in the case of irregularly-shaped lots, a line 10 feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

It appears that the applicant is using the "irregularly-shaped" clause rather than the actual rear property line to determine the setback location in the southeast corner of the property. The Ann Arbor Zoning ordinance does not have a geometric definition for 'regular' however a common definition from the the Merriam-Webster Online Dictionary is:

*REGULAR: (1): both equilateral and equiangular <a regular polygon>*

Since all 7 lots meet this, the setbacks should be located relative to the existing rear property lines.

**Conclusion D:** The rear lot line, for the purposes of determining the setback location, has been **INCORRECTLY identified in the southeast corner of the property.** As a result, the proposed building is located within 21 feet of the adjoining property thus placing an increased burden on the neighboring property by **NOT affording the required minimum setback of 38.285 feet (see Conclusion E2 below for minimum setback calculations.)**

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**ISSUE E. Required Setback Line Minimum, Chapter 55, Article III, Section 5:34 & Chapter 55, Article IV, Section 5:62:** The applicant has requested approval of the following setbacks for the South Building:

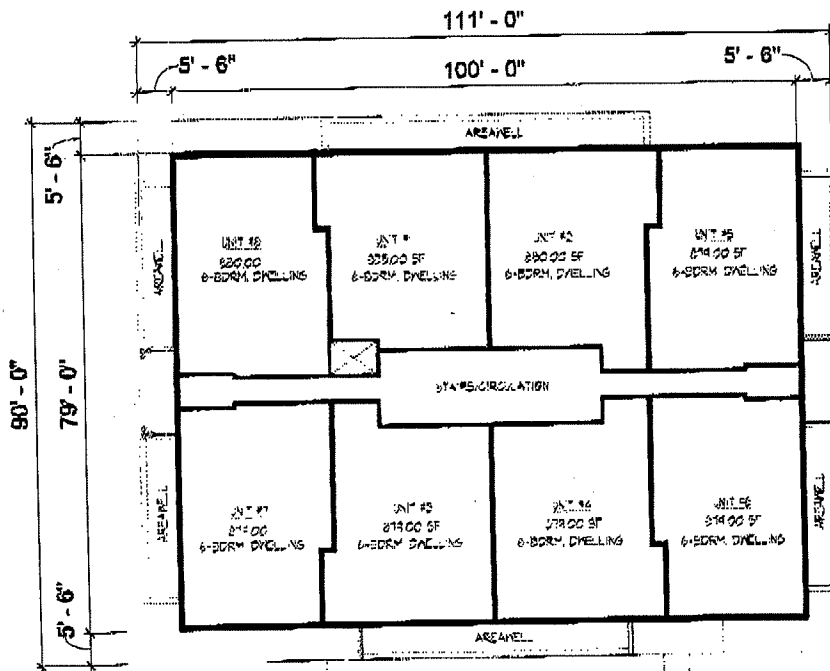
	Proposed	Minimum Required = Permitted + Required Additional Setback (per applicant)
Front Yard	32'	32' = 25' + 7"
Side Yard		
Least of one	22.5'	16' = 12' + 4'
Total of two	34'	30' = 26' + 4'
Rear Yard	37.5'	37' = 30' + 7"

The Required Additional Setback calculation increases the minimum required setback for structures that exceed certain height, length and widths. A "structure" is defined as:

Ann Arbor Zoning Ordinance, Chapter 55, Article I, Section 5:1:

(52) *Structure*: A combination of materials to form a construction for use, occupancy or ornamentation whether installed on, above or below the surface of land or water.

In accordance with this definition, the proposed "South Building" is 111 feet (length) x 90 feet (width). The dimensions were scaled from the drawings prepared by the applicant and are illustrated below (illustration not created by the applicant)



**MAIN FLOOR PLAN-SOUTH BUILDING**

Illustration 4: First Floor Plan. (Illustration based upon City Place Site Plan submittal sheet B1.1. Dimensions have been added.)

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Applying the additional setback formulas results in the following minimum setbacks:

Ann Arbor Zoning Ordinance, Chapter 55, Article IV, Section 5:62:

**Front:** 25 feet + (1.5 inches x 61 feet [width over 50 feet] x 1 foot/12 inches) + (1.5 inches x 5.25 feet [height over 30 feet] x 1 foot/12 inches) = 25 + 7.625 + .66 = 33.285 feet

**Side, least one:** 12 feet + (1.5 inches x 40 feet [length over 50 feet] x 1 foot/12 inches) + (3 inches x 5.25 feet [height over 30 feet] x 1 foot/12 inches) = 12 + 5 + 1.3 = 18.3 feet

**Rear:** 30 feet + (1.5 inches x 61 feet [width over 50 feet] x 1 foot/12 inches) + (1.5 inches x 5.25 feet [height over 30 feet] x 1 foot/12 inches) = 30 + 7.625 + .66 = 38.285 feet

These values differ from those of the applicant as summarized below:

	Minimum Proposed (per applicant)	Minimum Provided (including area wells)	Minimum Required (per above calculation)	Minimum Required (per applicant)
Front Yard	32'	26.5'	33.285'	32'
Side Yard				
Least of one	17'	15.88'	18.3'	16'
Rear Yard	37'	31.4'	38.285'	37'
Rear Yard @ south east corner	16'	21'	38.285'	16'

When calculating the additional setbacks, it appears that the applicant did not include the 'area wells' in the overall dimensions. The 'area wells' are fundamental structural elements of the building (since they are necessary to meet the light, ventilation and egress requirements of the Housing and Building Codes) and must therefore be considered when determining setbacks.

**Conclusion E1:** The South Building overall dimensions must take into account all elements of the building, including the area wells. Therefore, the front, side and rear setbacks have been **INCORRECTLY** calculated

**Conclusion E2:** When all elements are taken into account, *the project VIOLATES the front setback by 6.785', the side setback by 2.42' and the rear (at the south east corner) by 17.8' as shown in the illustration on the following page (not created by the applicant).*

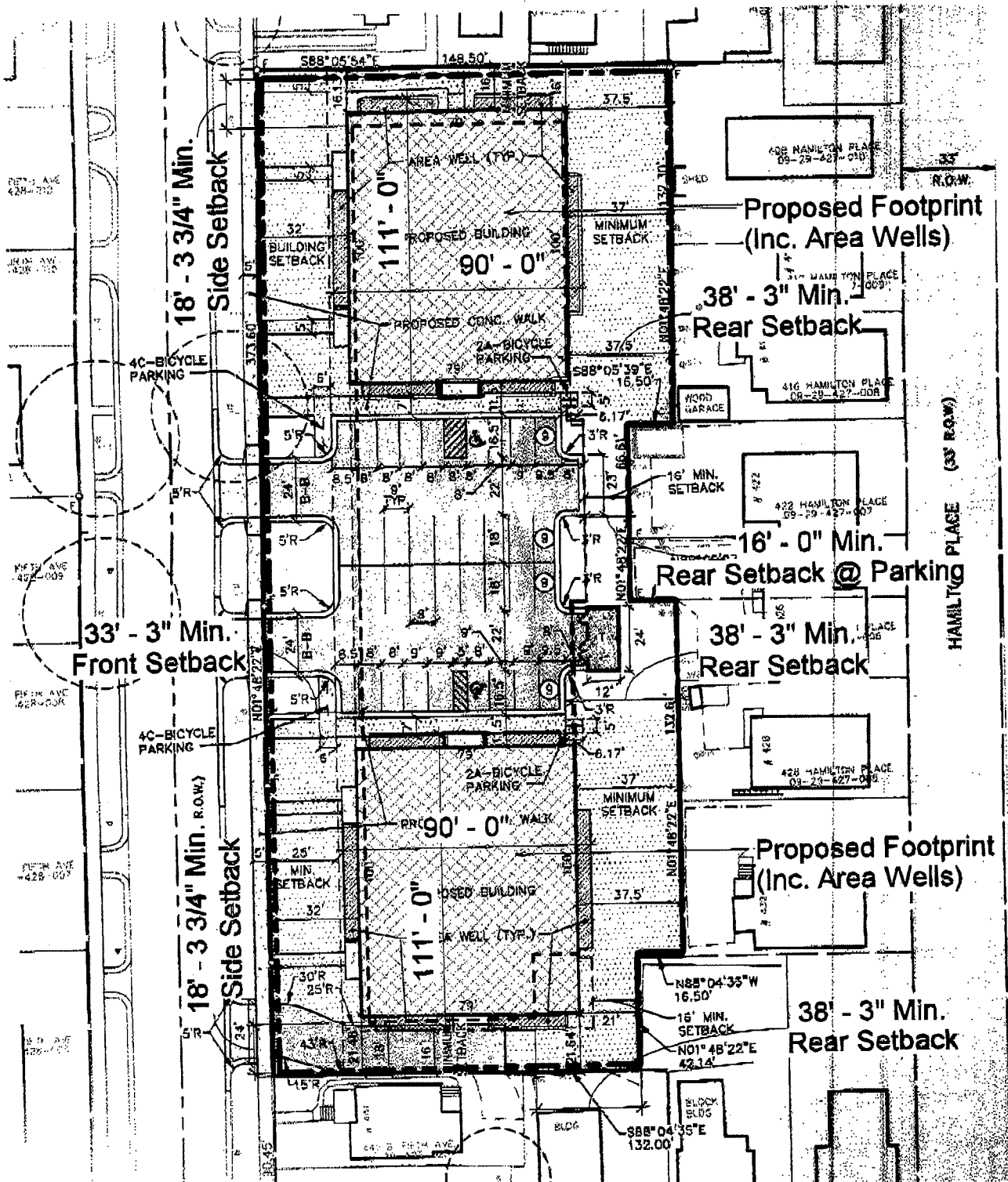


Illustration 5: The dashed blue line indicates the property calculated and applied minimum setbacks. The red cross-hatching shows the footprint of the proposed structures.

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**ISSUE F. Required Open Space, Chapter 55, Article, III, Section 5:54:** The Ann Arbor Zoning Ordinance requires that the the required open space be "unoccupied by any permanent structure":

Ann Arbor Zoning Ordinance, Chapter 55, Article III, Section 5:54:

(1) Except as specifically provided in this chapter, required open space shall be open, unoccupied, and unobstructed by any permanent structure or any part thereof from the ground to the sky.

(2) Exceptions.

(a) The following types of structures may be located anywhere on a lot: open and unroofed terraces, patios, stoops and steps, ramps for building access, awnings, flag poles, trellises, retaining walls, fountains, outdoor cooking equipment, sidewalks, mailboxes, light poles, and fences in accordance with Chapter 104. Parking lots and drives may be located in required open space if permitted by Chapter 59.

(b) In residential zoning districts, the following types of structures may be located anywhere on a lot except the required front open space: solid waste containers (unless approved under Section 2:4 of Chapter 26), fire escapes, and mechanical equipment.

(c) Certain architectural features, such as cornices, eaves, gutters, and chimneys may project 2 feet into required open space.

By not including the "area wells" within the building footprint, the applicant has placed them within the minimum required setback and thus into the required open space.

**Conclusion F:** The "area wells" are permanent structures and as such cannot be located within the Required Open Space. By locating them within the minimum required setback, *the project VIOLATES the Required Open Space.*

Shaun P. Smith | Architecture  
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**In Closing:** Mr. Whitaker, as you have requested on behalf of the Germantown Neighborhood Association, I have reviewed the site plan drawings submitted by the developer of the City Place project. In my professional opinion, based upon my 15 years of experience working in multiple states and municipalities (see attached resumé), and as a licensed Architect in the State of Michigan, City Place, as proposed, does not meet all of the requirements of the current Ann Arbor Zoning Ordinance and therefore by reference, the Subdivision and Land Use Control Ordinance.

If you have any questions about the analysis or conclusions above, please feel free to call.

Respectfully submitted,



Shaun P Smith, AIA .

Attachment: Shaun P Smith Resume

Shaun P. Smith | Architecture  
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**Shaun P. Smith, AIA**

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shaun@shaunsmith.com

**Education**  
09.85 - 05.92

**UNIVERSITY OF MICHIGAN**, Ann Arbor, Michigan  
College of Architecture and Urban Planning  
Master of Architecture  
Bachelor of Science in Architecture

**Professional Affiliations:** American Institute of Architects  
**Professional Licensure:** Michigan

**Experience**

- 07.08 - Present **Shaun P. Smith Architecture**, Ann Arbor, Michigan  
*Principal:* Private practice focused on bringing preservation/adaptive reuse, planning and permitting services to small projects in established neighborhoods.
- 05.08 - 07.08 **QUINN EVANS ARCHITECTS**, Ann Arbor, Michigan  
This two-office, 55 person firm specializes in the preservation/adaptive reuse of historic structures and integration of new construction within local communities and cityscapes.  
*Project Architect/Manager:* Responsible for coordinating large teams of specialized consultants for complex projects including new construction and renovation of existing structures. Project types include Institutional, civic and multifamily.
- 07.04 - 05.06 **LORD, AECK & SARGENT**, Ann Arbor, Michigan  
This 125 person, three office design firm provides expertise in a wide range of projects including Science, Historic Preservation, Education, Arts & Culture, and Housing & Mixed -Use.  
*Laboratory Architect:* Responsible for programming, designing, detailing and constructing state-of-the-art teaching and research laboratories. Focused on complex engineering/lab systems coordination.
- 05.97 - 05.04 **SRG PARTNERSHIP INC**, Portland, Oregon  
This 85 person, two office, design firm provides architectural, interior design and master planning services to the educational, civic, science & technology, and health care communities.  
*Project Architect/Project Manager:* Worked independently and in small teams to provide technical design leadership throughout the life of each project. Responsible for client & user group interaction, consultant coordination and in-house team management. Produced drawings and specifications for all phases. Reviewed documents for design and technical compliance and performed construction administration. Prepared strategic zoning integration plans and master plans.
- 05.94 - 05.97 **SERA ARCHITECTS INC**, Portland, Oregon  
This 45 person firm specializes in urban revitalization through reuse, redevelopment, historic preservation, and contemporary infill.  
*Job Captain & CAD Lead:* Projects include Institutional and Civic planning and design with a focus on urban infill and revitalization.