



City of Ann Arbor
PLANNING & DEVELOPMENT SERVICES — PLANNING SERVICES

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AMENDED

APPLICATION FOR CHANGES IN OR ADDITIONS TO THE ZONING CHAPTER

See www.a2gov.org/planning/petitions for submittal requirements.

TO: The Honorable Mayor and City Council
City of Ann Arbor
Ann Arbor, Michigan

We, the undersigned, respectfully petition the Honorable Council of the City of Ann Arbor to amend the Zoning Map as it relates to the property hereinafter described.

(Give or attach legal description and include location of property)

The legal description and survey were previously submitted.

The petitioner(s) requesting the zoning/rezoning are:

*(List petitioners' name; address; telephone number; and interest in the land;
i.e., owner, land contract, option to purchase, etc.)*

1320 South University, LLC, a Michigan Limited Liability Company

610 Church Street, Ann Arbor, Mi 48104 Owner

Contact person: Susan Friedlaender Ph: 248-851-3434

Also interested in the petition are:

(List others with legal or equitable interest)

Mortgagee

The applicant requests that the Official City Zoning Map be amended to reclassify this property from D2 to D1 w/conditions to permit the following use(s): mixed use/residential

The amended conditions are attached as Exhibit 1

(state intended use)

Justification:

1. The extent to which the zoning/rezoning requested is necessary:
The D1 rezoning is necessary because the D2 zoning of the Property unduly limits the potential for the South University Character Area's overall growth and economic vitality while also failing to further the purpose of D2 Interface zoning. The D2 zoning unnecessarily and unfairly restricts the Owners' use of the Property because the restriction cannot reasonably further the intent of the D2 character district or Interface zoning. See Original Narrative pp 3-4, 14-34, 38-39

2. This zoning/rezoning will affect the public welfare and property right of persons located in the vicinity in the following ways:
The proposed rezoning would have a positive affect because the Property is better suited than most of the D1 zoned parcels in the South University Area to achieve Downtown and Transportation Plan goals designed to further the public welfare. The Property can achieve required density levels without parcel aggregation. The parcel is large enough to provide on-site parking and open space. The Petitioner is offering a deeper rear setback to the R4C parcel. See Original Narrative pp 7-13 and Exhibit 5

3. This zoning/rezoning will be advantageous to the City of Ann Arbor in the following ways:

The Property is located partially in the DDA. It is unique because all taxing units will benefit from the development of the Property under D1 densities. The rezoning supports transit oriented development that will encourage even less use of vehicles within the City. The rezoning advances the goals of the Downtown Plan. See Original Narrative pp 4-13, 27-33, 37-38

4. This particular location will meet the convenience and service requirements of potential users or occupants in the following ways:

The rezoning can meet service requirements because of its potential for mixed uses. The Property is located close to transit corridors and the City's major employment and activity centers.

The development would offer residents the opportunity to be within walking and biking distance to these locations. See Original Narrative pp 7-10

5. Any changed or changing conditions in any particular area, or in the municipality generally which may have bearing on the proposed zoning/rezoning are:

See Exhibit 3, Changed Conditions

See also Original Narrative, pp 10-13

6. Other circumstances and factors which will further justify the requested zoning/rezoning are:

See Generally Original Narrative pp 3-35 and accompanying tables for the factors and circumstances that support D1 zoning. The character and trends of the population and building in the area justify the requested zoning. Moreover, setbacks can serve as transition areas. See pp 34-35 Original Narrative and Exhibit 4, Comparison with E. Huron 1 District.

Attached is a scaled map of the property proposed for zoning/rezoning, showing the boundaries of the property, the boundaries of the existing zones, the boundaries of the proposed zones, and the public and/or private easements located within or adjacent to the property petitioned for zoning/rezoning.

The undersigned states he/she is interested in the property as aforesaid and that the foregoing statements are true and correct to the best of his/her knowledge and belief.

Dated: APRIL 22, 2011

Signature: 1320 SOUTH UNIVERSITY, LLC
A MICHIGAN LIMITED LIABILITY COMPANY
610 CHURCH STREET
ANN ARBOR, MI 48104
(Print name and address of petitioner)

By Philip Sotiroff
Signature: PHILIP SOTIROFF
ITS MANAGER
(Print name and address of petitioner)

SS
STATE OF MICHIGAN Florida
COUNTY OF WASHTENAW Collier

On this 22 day of April, 2011, before me personally appeared the above-named petitioner(s), who being duly sworn, say that they have read the foregoing petition by them signed, and know the contents thereof, and that the same is true of their knowledge, except as to the matter therein stated to be upon their information and belief, and as to those matters they believe it to be true.

Signature: Shanna N Short
Shanna Short
(Print name of Notary Public)

My Commission Expires: Nov. 28 2014



INDEX TO EXHIBITS

1. Amended Offer of Conditions
2. Response to Planning Review Memorandum
3. Changed Conditions
4. Comparison with E. Huron 1 District and attached illustrations
5. Schematic Setback Drawings
6. Revised Area Plan
7. Traffic Report
8. Addendum to Traffic Report

EXHIBIT 1 - AMENDED OFFER OF CONDITIONS

1320 S. University Offer of Conditions for Rezoning from D2 to D1

Height

The D1 ordinance permits 150 foot tall building. The Petitioner proposes limiting building height up to 145 feet. This will provide a 17 foot step-down from the 162.8 foot tall building approved for 601 S. Forest presently under construction.

Setbacks

The D2 ordinance requires a 40-foot setback from the side and rear building walls to the property line when adjacent to residentially zoned property. The D1 ordinance requires a 30 foot setback.

Side Setback to R2B

The Petitioner proposes a minimum 15-foot side setback that tapers to 30 feet from the North to Southeast. A sewer easement runs through the mud bowl and crosses the Property. The easement will likely prevent development of the mud bowl near the property line. The 40-foot side setback serves no beneficial purpose. The reduction of the side setback would permit the construction of below ground parking near the western boundary of the Property and more flexibility in design and construction of the above ground development. See Exhibit 3 - Schematic Drawing

Amended Condition Regarding Rear Setback to R4C Property Line

The easterly approximately 58 feet of the rear property line abuts the rear property line of 1321 Forest Court, which is the deepest lot on Forest Court and heavily forested. The building shown in the revised Area Plan attached as Exhibit 4 shows that there would be no building wall parallel with the rear lot line of 1321 Forest Court. The Area Plan and Schematic Drawing show that there would be an area approximately 137.3 feet deep with a width that tapers from approximately 75 feet along the rear property line up to approximately 15 feet. The Petitioner will also provide further screening at the R4C property line, which is to be determined.

There is a 38 foot setback from the R4C zoned property located south of the D2 zoned parcel (625 S. Forest)

Permitted Uses

The Petitioner proposes to limit the uses of the Property to those uses permitted by right or special use in the *D2 district*.

Exhibit 1

Permitted FAR

The Petitioner proposes to limit FAR to 700%.

Exhibit 2

Response to Planning Review Memorandum

Response to Planning Review Memorandum

1. Statement of Zoning Conditions:

The Petitioner has not received the draft statement of zoning conditions referenced under comment no.1 of the Planning Review Memorandum (“Memo”).

2. Proposed Rezoning Conditions:

Under comment no. 2, the planner requested that the Petitioner confirm the proposed conditions. *See Exhibit 1 for the amended proposed conditions.*

3. Schematic Drawing:

As requested under comment no. 3, the Petitioner has attached a schematic drawing, which depicts the developable area of the Property under the D1, D2 and C2A ordinances. *See Exhibit 5*
See also Revised Area Plan is attached as Exhibit 6.

4. Status of Current Zoning:

In comment no. 4, the Memo provides that “[a]rguments alleging a mistake or error that would be corrected by the proposed rezoning, per Section 5:108(2)(e) of the Zoning Ordinance does not apply to this rezoning petition.”

The Petitioner respectfully disagrees because Section 5:108 (2)(e) plainly provides that a petition for a zoning amendment shall contain “[t]he alleged error in this chapter, if any, which would be corrected by the proposed amendment together with a detailed explanation of such error in the chapter, which is alleged, and detailed reasons as to how the proposed amendment will correct the same”. Section 5:108 further provides that it contains the minimum requirements for submitting a rezoning petition “without limiting the right to file additional materials...”

5. Relationship to the Master Plan

In comment no. 5, the Memo provides that the Petition “overwhelmingly focus[ed] on master plan issues” and should be revised “to directly and concisely address Section 5:108(2)(f) which asks what “changed or changing condition, in the area or the municipality generally, make the proposed amendment reasonably necessary ”.

First, the Petitioner respectfully disagrees that it “overwhelmingly” focused on master plan issues. It is customary to demonstrate that a proposed rezoning is consistent with and promotes the master plan to justify a rezoning request.

Second, the Petitioner submits that it greatly focused its rezoning petition on the standards required under the Michigan Zoning Enabling Act, MCL 125.3101, et seq. The Michigan Zoning Enabling Act requires that “[t]he zoning ordinance shall be made with reasonable consideration to the character of each district, its peculiar suitability for particular uses, the conservation of property

Exhibit 2

values and natural resources, and the general and appropriate trend and character of land, building, and population development.” MCL 125.3203(1) The majority of the Petitioner’s rezoning request focuses on the applicable statutory standards that the City must consider and follow when zoning or rezoning property.

See Exhibit 3 For Petitioner’s Revision Addressing “Changed Conditions” Standard

6. Comparison to Other Character Overlay Districts

See Exhibit 4 For Response

The Traffic Report and an addendum to the Report are attached respectively under Exhibits 7 and 8

Exhibit 3

Changed Conditions

Changed Conditions That Support the Rezoning Request

Consistent with the city planner's request the Petitioner will address Section 5:108(2)(f) of the Zoning Ordinance. The "changed conditions" standard, however, is not easily applied to 1320 S. University because of its recent and unique rezoning history:

In October 2006, the City Council rezoned 1320 S. University from R4C to C2A. Under the C2A ordinance, the Property was not subject to any height restrictions. It was subject to a 30-foot rear yard setback and a minimum 26-foot side yard setback with at least one side setback equaling 12 feet when abutting residentially zoned property. The Planning Commission recommended the rezoning based upon:

- The need to redevelop downtown core parcels in an economically feasible manner given the age and condition of existing buildings.
- The existence of taller buildings on South University.
- A desire to increase housing opportunities in the South University area as a strategy to protect the neighborhoods further south of South University. The aim was to provide more opportunity for single-family housing towards the Burns Park area and preserve buildings in the Washtenaw/Hill Historic District

In November 2009, the City Council downzoned the Property to D2 without any discussion about changed or changing conditions that justified the downzoning. The same conditions in the municipality and the South University area that motivated the C2A zoning of 1320 S. University in 2006 still existed in 2009. The need to redevelop downtown parcels in an economically feasible manner still existed. The redevelopment was still necessary to achieve the goals of the A2D2 zoning initiative. The character of the area as a densely populated core downtown environment still existed. The demographic characteristics of the area remained the same. Those characteristics are detailed in the Original Narrative.

The conditions that prompted the rezoning of 1320 S. University to C2A in 2006 still existed in 2009 and continue to exist today. Moreover, the conditions that support the requested rezoning have become more compelling based on the following developments that have occurred since the 2009 downzoning.

- When the City rezoned the Property to D2 it was not clear whether 601 S. Forest would be built. The development is now underway. There will now be an approximately 162-foot tall building next door to 1320 S. University.
- The relatively recent amendments of the Area, Height and Placement standards in the zoning ordinance also present changed conditions that support rezoning the Property to D1 with conditions.
 - The R4D and R4E zoning classifications encourage the development of

Exhibit 3

high-rise residential buildings in fringe areas (R4D) and on parcels near but outside of the core downtown areas (R4E). The mud bowl, which is adjacent to 1320 S. University could meet R4E standards and theoretically be developed with a residential building that exceeds the allowable height of new D2 construction on 1320 S. University.

- Most of the D1 zoned parcels in the South University Character District are undersized and require assemblage for any meaningful development. The Petitioner's Property is a rare downtown parcel that does not require assemblage to achieve viable density under the D1 designation.
- A market bias favors fringe development because of the expense and challenge of aggregating fragmented parcels located in city cores. The costs and inefficiencies of downtown core development encourage urban sprawl and the resulting disinvestment in city cores.
- The amended ordinances will make land assembly in the core downtown much less attractive if developers can find cheaper and larger parcels located outside of the DDA and in the fringe areas. The greater FAR in the core areas will not necessarily discourage outskirt development. A developer would need to assemble several small parcels in the South University Area to achieve any meaningful density. It would likely be more or equally profitable and efficient to develop under the R4E designation even without the increased D1 FAR. The price of downtown land and associated transaction costs could offset any increased FAR. Moreover, the small and fragmented parcels likely would not allow significantly more density than the R4D or R4E ordinance even with the increased FAR permitted under the D1 ordinance
- The purpose of the R4D and R4E amendments was to implement transit goals but there is no guaranty that residents in fringe developments will use public transportation to get to downtown activity centers even if bus transportation is an option. The City is poised to repeat the same pattern prevalent in the 1980s' that discouraged residential development in core areas, substantially increased vacancy rates for rental units and encouraged more automobile trips to reach campus from the outlying areas. *See 1992 Central Plan, pp. 11, 19.*
- The existing population in the South University Area is much less dependent on automobiles than the general Ann Arbor population. The City should increase residential density in proven transit oriented areas before allowing dense development in the outskirts or outside of the

Exhibit 3

Downtown Plan Area, even if the parcels are located on transit corridors.

- The City is also getting closer to downzoning parcels from R4C to R2A to encourage single family residential land uses in near downtown areas. The R4C/R2A initiative is part of the plan to encourage students to move closer to campus and into the core downtown areas.
 - The combination of the AHP amendments which encourage high rise developments outside of the downtown core and the downzoning of near downtown parcels create an even greater need to transfer density to 1320 S. University because it has the greatest potential for redevelopment consistent with downtown goals and plans.
 - New high-rise buildings in fringe areas are more likely to capture any density lost from the R4C downzoning than the undersized D1 parcels in the South University Core.

Finally, if there has been no change in the City's redevelopment, residential and transit goals in the South University Core, then the City should allow 1320 S. University to compete with the larger outlying parcels. Otherwise, the competition will be between larger and cheaper sites in the outlying areas and those undersized and more costly parcels in the South University Area. History has taught that the outlying areas will win that competition. The Property is the only parcel in the South University Area that can compete with the outlying areas because it is large enough to accommodate the desired residential density, mixed uses, open space and parking. It also has the additional benefit of being in walking distance to campus, retail, entertainment venues and cultural venues.

Exhibit 4

Comparison with East Huron 1 Character District

COMPARISON TO EAST HURON 1 CHARACTER DISTRICT

The Memo stated in part that

[T]he [Petitioner's] reasons for the proposed conditional rezoning appeared similar to the situation and conditions related to the East Huron 1 character overlay district. That character overlay district was established to strike a balance between appropriate density and placement of parcels in the downtown area that abut established residential neighborhoods. The streetwall and building height standards, and unique side and rear setback requirement in the East Huron 1 character overlay district provide a transition between downtown zoned properties on the north side of East Huron Street and the residentially zoned properties on the south side of East Ann Street which directly abut each other. This example may be illustrative for any conditions proposed in the rezoning request."

The Memo states that the building massing standards in the East Huron 1 district could serve as an example of conditions that could provide the required transition between downtown and residentially zoned properties. The massing standards in the South University D1 District, however, are nearly indistinguishable from those in the East Huron 1 Character District. The only differences reflect the different physical characteristics of the respective districts.

The following massing standards that apply in the South University and East Huron 1 Districts are nearly identical:

- *The minimum and maximum streetwall heights, the offset at the top of the streetwall and the maximum 150 foot building height in the East Huron 1 and South University D1 districts are the same. Both districts also require minimum 30 foot side and rear setbacks.*
- *In the South University D1 district, the 30 foot rear and side yard setback requirement is measured from rear and side exterior walls of the building to any R zoning district boundary on the same block as the building. In the East Huron 1 district, the rear or side exterior wall of the base and tower must be located at least 30 feet from a lot line abutting a residentially zoned parcel.*

There are two massing standards that are different:

- *The D1 South University zoning district has a maximum horizontal building module length. The East Huron 1 district has no module restriction. The module restriction reflects the existing character of traditional downtown buildings that front on South University. The same character does not exist on E. Huron.*
- *In the East Huron 1 District, the rear or side exterior wall of the tower cannot be located more than 150 feet from the East Huron property line. The restriction is meant to protect the southern parcels from the shadows cast by the taller buildings on the north side of East Huron.*

The latter standard does not apply to property on the south side of South University because a taller building on the Petitioner's Property will not cast a shadow on the southerly parcels.

There are no relevant massing standards in the East Huron 1 District that do not already exist in the South University District that could serve as additional proposed conditions for the rezoning of the Property. If the massing standards in the East Huron 1 District provide a sufficient transition between downtown zoned properties in that district and the adjoining residentially zoned properties then the existing South University D1 massing standards also provide a sufficient transition between D1 and residentially zoned parcels.

Moreover, the Petitioner has amended its offer of conditions (*Exhibit 1*) to provide an even greater open area adjacent to the single R4C zoned parcel that partially abuts the Property's southern boundary line. The revised *Area Plan*, which is attached as *Exhibit 6* and *Schematic Drawing*, which is attached as *Exhibit 5*, show the graduated setback that extends from the group housing structures located east of the Property to its southerly boundary line.

The conditions that the Petitioner has proposed which include: the open areas, reduced maximum building height and FAR provide a transitional area that is more extensive than the transition provided in the East Huron 1 District.

It is also significant that *1320 S. University is similar in size and depth to the parcels that front on E. Huron between Division and State Street. It does not abut a historical district.* In comparison, the D1 zoning of the East Huron 1 parcels impacts more residentially zoned parcels than would the D1 zoning of 1320 S. University.

See illustrations 1 (East Huron 1 District) and illustration 2 (South University D2 District) attached to this Exhibit. The illustrations show the following:

- Sloan Plaza and Campus Inn occupy much of the block between Division and State on E. Huron. Sloan Plaza and Campus Inn compare in size and depth to 1320 S. University. Sloan Plaza is approximately 200 feet deep and contains approximately .70 acres. It abuts residentially zoned parcels in the Ann Street Historic District. Campus Inn contains approximately .82 acres and a depth of 230 feet. It also abuts residentially zoned property in a historic district. Sloan Plaza is approximately 100 feet tall and the Campus Inn is approximately 133 feet tall.
- The parcel directly west of Sloan Plaza is comparable in area and depth to 1320 S. University. The parcel contains .755 acres and a variable depth between approximately 125 and 225 feet. The .755-acre parcel abuts residentially zoned land that is located in a historic district.
- There are 14 historically designated and residentially zoned parcels that abut the East Huron 1 Character District parcels.
- The Petitioner's Property is approximately .83 acres. It has a depth of approximately 260 feet. One third of its rear yard line abuts a residential structure zoned for multiple family uses. There are 5 single family residential structures zoned R4C that are located in the same block as 1320 S. University. The Property's side yard abuts the mud bowl and a fraternity

house. The west side of the Property abuts the under construction 162 foot structure on 601 S. Forest.

The City has found that the required 30 foot setback in the East Huron 1 District and the street wall, building height and offset standards that are identical to the South University D1 standards provide the necessary transition between the D1 and residential zoning districts. It bears repeating that if a 30 foot setback provides a sufficient transition between the D1 zoned parcels on E. Huron and the single family structures in the adjacent Ann Street Historic District then the expansive open area proposed as a condition of this rezoning provides an equal if not superior transition area between 1320 S. University and the single Forest Court parcel that abuts a portion of the Property's southerly lot line.

CONDITIONAL REZONING APPLICATION

1320 South University



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I. Zoning Ordinance Requirements For Narrative Accompanying Rezoning Request

Section 5:108 of Chapter 55 of the Ann Arbor Zoning Ordinance requires that the Petitioner address the following issues:

1. Identify the alleged error that the rezoning would correct.
2. Provide a detailed explanation of the error and the detailed reasons how the rezoning will correct the error.
3. Identify the changed or changing conditions that make the rezoning reasonably necessary.
4. Describe all other “circumstances, factors and reasons to support the rezoning.

The Application For Changes To The Zoning Chapter further requires the Petitioner to address the justification for the rezoning as follows:

1. The extent to which the zoning/rezoning is necessary.
2. The ways in which the zoning /rezoning will affect the public welfare and property rights of persons located.
3. The ways in which the zoning/rezoning will be advantageous to the City of Ann Arbor.
4. The ways in which the particular location will meet the convenience and service requirements of potential users or occupants.
5. Same as 3 above.
6. Same as 4 above.

The following narrative provides a detailed analysis that addresses the latter questions.

II. Background

In 2003, the City Council appointed a task force to investigate barriers to downtown residential development. Based on the findings and recommendations of the task force, the City initiated the Downtown Development Strategies project later renamed "A2D2" to change zoning in the downtown areas. The A2D2 zoning amendments in part increased building height limits and density in the core downtown areas. The purpose of these changes was to better use land resources, encourage new housing, support retail businesses and entertainment venues, create a vibrant downtown atmosphere, reduce the need for vehicular trips, increase pedestrian activity, and encourage multimodal forms of transportation. 2009 Downtown Plan, p.22. The A2D2 changes were consistent with the findings of urban theorists who posit that increasing building heights and density in older urban areas can fight deterioration, raise revenues, and discourage urban sprawl by increasing scarce land resources.¹

The Downtown Plan identifies South University as a core downtown area. *Id.* at p. 28. The Petitioner's Property, 1320 S. University, is located on the "main street" of the South University downtown core. Recognizing the Property's redevelopment potential, the City rezoned the Property to C1A/R in 2006. The latter zoning designation had no height restrictions

¹ Restricting the heights of new building construction has been a source of controversy in Washington D.C. Critics charge that reducing the heights of buildings "promoted suburban sprawl, boxified the city's architecture and deadened Washington's downtown. [The limits on building heights have] inflated office rents, deflated the municipal tax base, limited affordable housing, contributed to the region's hideous traffic jams and generally helped keep Washington a second-tier city despite the unrelenting growth of its major industry -- the government." Michael Grunwald, Washington Post, July 2, 2006.

A land use professor recently commented that the D.C. height limitation controversy "crystallized many of the most significant and perplexing contemporary land use issues. The controversy is between maintaining the traditional and historic scale of the district or removing restrictions that [have] exacerbated the scarcity of urban land, inflated real estate prices, and helped cause the serious sprawl that has plagued the D.C. region over the past generation. It is also an interesting debate, considering that many leading urban theorists call for greater density and vertical development..." Matt Festa, "New York Times On DC Building Height Limits", Land Use Prof Blog, http://lawprofessors.typepad.com/land_use/2010/11/ny-times-on-dc-building-height-limits.html, November 14, 2010.

and provided for greater density. During the entire A2D2 planning process, the Planning Commission recommended D1 zoning for 1320 S. University. Despite the need for redeveloping South University to halt years of deterioration, some residents, who did not necessarily live in the immediate area, opposed D1 zoning in the South University area. The residents eventually gained support from the City Council, which resulted in an 11th hour zoning compromise. The compromise consisted of zoning two parcels in the South University downtown to D2 and the creation of the South University D2 Character District. ("SUD2CD") The Petitioner's Property is one of those parcels that the City downzoned to D2 and thereby restricted the beneficial use of the Property.

The Petitioner has filed this application to rezone the Property to D1 with conditions.

Ex. 1 South University Zoning Map ²

A. The D2 Zoning of 1320 S. University Was A Mistake Because It Unduly Limits The Potential For South University's Overall Growth And Economic Vitality While Also Failing To Further The Purpose of Interface Zoning

The purpose of the D2 zoning ordinance is to serve as an interface area between near downtown neighborhoods and D1 zoned property in core downtown areas:

Development within the DDA district, especially in the area which forms the Interface between the intensively developed Core and near-downtown neighborhoods, should reinforce the stability of these residential areas - ***but without unduly limiting the potential for downtown's overall growth and continued economic vitality.*** (Emphasis Supplied) 2009 Downtown Plan, p. 29

The description of the SUD2CD is as follows:

The South University D2 Character District lies just outside the DDA boundaries, adjacent to nearby residential neighborhoods. The intent for this district is to maintain a variety of small-scale commercial and retail enterprises mixed with some residential uses, minimizing the impact on nearby residential streets.

² Exhibits are attached under the "index to exhibits"

Under Michigan law, the imposition of an interface or buffer zone to shield a less intense zoning district from a higher intensity zone is unreasonable when the absence of a buffer would only incrementally affect a less intense area that is already subject to higher intensity uses.³ Considering the existing character and population of the South University area and the emerging trends of development in the South University Downtown Core, the D1 zoning of 1320 S. University will not have any impact that is appreciably different or greater than the impact of the D1 development within the entire South University Area. The D2 zoning of 1320 S. University cannot address any of the feared effects of D1 zoning. As further detailed in the following three sections, the D2 zoning of 1320 S. University, therefore, was a mistake because it unduly limits the potential for South University's growth without furthering any of the general goals of D2 zoning or the specific intent of the SUD2CD.

1. The Rezoning to D1 Will Be Advantageous to the City and Meet the Service and Convenience Requirements of Potential Users Because Compared to Other Parcels in The South University Area it Has The Greatest Potential for Implementing Downtown and Transit Oriented Goals

The City adopted the AD2D zoning regulations as the primary strategy for removing barriers to residential development in the core downtown areas. The City envisioned downtown residential development as the lynchpin that would enliven the core areas, increase affordable housing, move students out of residential neighborhoods and closer to campus, protect historical houses and encourage multi-modal transportation.

The A2D2 zoning regulations, however, cannot alone remove the formidable barriers that prevent achieving the goals of the Downtown Plan. Most of the parcels zoned D1 in the South University Core are undersized and fragmented. Meaningful redevelopment cannot be achieved without land assembly. Land assembly is "perhaps the single biggest obstacle to central city

³ *Janesik v Detroit*, 337 Mich 549, 556 (1953)

redevelopment....”⁴ Urban theorists assert that the need for and challenge of assembling small parcels to create sufficiently sized parcels for redevelopment is a cause of urban sprawl and disinvestment in city cores.⁵ The owners of the undersized parcels can steer economic development to urban fringes by refusing to sell or only for amounts that render a project infeasible.⁶ The high transaction costs and delay associated with assembling fragmented parcels in city centers encourage frustrated developers to invest in fringe areas. The City has witnessed this pattern of development for the last two decades as development boomed in adjacent and nearby townships.

The City Council originally voted to rezone 11 parcels in the South University Area to D2. As part of an 11th hour compromise, the City rezoned the Petitioner’s Property and 625 S. Forest to D2. The City rezoned to D1: five parcels on Willard, one on E. University and three on Church. These nine parcels are located outside of the DDA boundaries.

The compromise did not benefit the City or the South University Area. The largest of the 9 parcels that the City zoned to D1 is 6,294.4 square feet. It is improved with a 4-story apartment building constructed in 1999. It is not a likely candidate for redevelopment. The other 8 fragmented and undersized parcels have an aggregate area of approximately 34,376 square feet. The entire assembled area of these parcels is smaller than 1320 S. University, which contains approximately 35,719.2 square feet.

⁴ Donald Shoup, *Graduated Zoning Density*, Journal of Planning Education and Research XX, p.2 (2008) (“Shoup”)

⁵ Miceli and Sirmans, *The Holdout Problem, Urban Sprawl, and Eminent Domain*, pp. 5-6, 10-12 (2007).

⁶ *Id.* at 10-12.

Table 1: Undersized Parcels Zoned D1

Parcel Location	Size in Square Feet
627 E. University	2,801
1107 Willard	2,177.13
1109 Willard	2,640
1113 Willard	6,294.4
1117 Willard	4,835.16
633 Church	5,440.64
1207 Willard	2,718.14
621 Church	2,574.40
625 Church	4896
Total Square Feet	34,376.87 Square Feet

See Ex. 2 Map of Parcels

The need to aggregate the undersized parcels will likely stall redevelopment efforts. Moreover, even if the parcels can be redeveloped alone, the piecemeal development of individual parcels can cause “scattered overbuilding on small sites”, which is not a desirable alternative.⁷

The Petitioner owns the largest single parcel in the South University Area. No assembly is required for redevelopment. As stated, the parcel contains nearly an acre of land. It has 116 feet of frontage along South University. Moreover, approximately 40% of the developable area of the Property is presently located in the DDA and the DDA boundaries extend along the entire frontage of S. University to Washtenaw. The Property is the only parcel located within the DDA and on South University that is zoned D2. The unique size and location of the parcel would allow it to act as a gateway to the campus and SUD2C2 with prominent street level uses that would appreciably add to a vibrant and inviting downtown venue. The size of the parcel allows room for parking, open space, outdoor amenities and residential densities that will promote the essential goal of the Downtown Plan to populate and invigorate core downtown areas. The rezoning to D2 was a mistake because it impedes rather than encourages the redevelopment goals

⁷ Shoup, *supra* note 3, at p. 10

that the City has espoused. The elimination of the redevelopment potential of 1320 S. University not only hurts the owners of the Property, but is contrary to the public interest.

2. The D2 Zoning Of The Petitioner's Property Was a Mistake Because it is Located in One of The City's Most Densely Populated Areas Within the Downtown Core close to a Signature Transit Route and the City's Major Cultural, Employment, and Activity Centers.

The City's Master Plan and Downtown Plan Support D1 Zoning For the Property

The 2009 Ann Arbor Transportation Plan Update ("Transportation Plan") is an element of the City's Master Plan. The Transportation Plan repeatedly emphasizes the symbiotic relationship between land use and transportation. Transportation See e.g., [Transportation Plan](#), p. 3-3. "Land use and development patterns need to have adequate density, diversity of land uses and pedestrian oriented-design to make transit sustainable." [Transportation Plan](#), p. A-6 (Appendix)

The 2009 Ann Arbor Master Plan recommends low residential density for existing low-density areas in the City's Central Area and high-density development in areas in which high-density development presently exists. Master Plan, P. 60. The Master Plan further recommends that the City locate higher residential densities "near mass transit routes in proximity to commercial, employment and activity centers." 2009 Master Plan, p. 35. The goal is to "promote land use designs that reduce reliance on the automobile." *Id.* The Downtown Plan also recommends that the City locate the highest residential density and tallest buildings in the core Downtown areas. [Downtown Plan](#), p. 28

It was a mistake to restrict the residential density of the Petitioner's Property because it meets every planning criterion for higher density. First, consistent with the higher density recommendations of the Master and Downtown Area Plans, the property is located in one of the most densely populated nodes in the Central Area. There are 8 census tracts in the Central Area.

The City's greatest density of population is located in these tracts.⁸ See Ex 3, Map of Census

Tracts

Table 2 - 2010 Census Population Counts - Census Tracts

Census Tract 4001	1,755
Census Tract 4002	7,098
Census Tract 4003	6,222
Census Tract 4004	3,045
Census Tract 4005	6,088
Census Tract 4006	4,263
Census Tract 4007	2,649
Census Tract 4008	2,500

See Ex. 3 Population Density Map

The Petitioner's Property is located in Census Tract 4003. This tract has the second highest population density per square mile of land in the Central Area. The tract with the highest density has only about 876 more persons (4%) than Tract 4003. Tract 4003 also has the highest population in the Central Area/Downtown Tracts. Tract 4002, which has the highest population, contains mostly University property and dormitories. According to 2000 Census Data, Tract 4003 had the third highest amount of housing units in the relevant area. It had fewer housing units than Tracts 4005 and 4006 primarily because 24.7 % of the Tract 4003 population resided in group quarters. According to 2010 counts, 24% of the Tract 4003 population still live in group quarters. Tract 4003 has the second highest group housing population in the Centra Area.⁹

⁸ The U of M North Campus is the only area outside of the Central Area that contains one census tract with population density comparable to the Central Area tracts.

⁹ According to 2000 COUNTS, Census Tract 4002 had the highest population with 7,279 persons, 96.6% of whom live in group quarters. In 2000, Tract 4002 had only 89 housing units. According to 2010 Census counts, Tract 4003 has a group quarters population of 1493 persons.

2010 Group Quarters Population Count By Census Tract
Table 3

400100	2
400200	6882
400300	1493
400400	104
400500	148
400600	15
400700	225
400800	83

Moreover, consistent with the Master Plan recommendations for higher density, the Property is located close to transit corridors and the City's major cultural and employment activity centers. These uses include Central and South Campus, the Medical Center, and the South University Downtown Core.

The Transportation Plan Recommends The Highest Density For The Property

The D2 zoning of 1320 S. University is a mistake because it contravenes the land use recommendations of the Transportation Plan. The Transportation Plan contains several alternative recommendations for increased density to support transit goals. See Transportation Plan, pp. 5-4 to 5-6. Each of the alternative plans recommends the highest density for the Petitioner's Property likely because the Property meets and exceeds almost every benchmark for supporting transit goals.

The short and long-term recommendations for implementation of the Transportation Plan require increasing residential density in the Downtown Area and along Signature Transit corridors. Transportation Plan, p. 3-9. The long-term density recommendation for the Downtown Core areas is a minimum of 100 residential/employee units (REU) per acre to serve transit goals.

Transportation Plan, p. 48. The Transportation Plan recommends that the City provide density bonus incentives for developments located within ¼ mile of major transit routes using overlay zones that promote transit oriented design and land uses. Transportation Plan, pp 2-4, A-6 (Appendix). “The Overlay District could be written to apply to all properties that front on the designated corridor, properties within a ¼ mile of the corridor or properties within a ¼ mile radius of major transit stops.” p. A-6

- The Property is located approximately 180 feet from a Washtenaw Route #4 bus stop. It is located within the 500 foot buffer area of this proposed Signature Transit route. The Washtenaw Route #4 has the second highest existing ridership on AATA. 2009 Transportation Plan, p. 6-26, p. 4-15, p. C-22 (Appendix) (Ex. 4, Density Recommendations)
- The Property is located within one quarter mile of at least two of the highest volume bus stops in the AATA system. See p. C-20, (Appendix)
- The Property is served by both the AATA and University bus systems. See p. C-24 (Appendix) (Ex. 5 and 6)
- The Property is in the area that the Transportation Plan recommends for the highest REU per acre.
- The Property is located in one of the most densely populated areas of the entire City, within a downtown commercial district and near the City’s major cultural, activity and employment centers.
- The Property is within easy walking and biking distance to the City’s major activity generators. The Property is in an area in which pedestrian travel already is the primary form of transportation to work.
- As discussed later, the South University Area worker population age 16 and older walked, biked or used public transportation to get to places of employment in greater percentages than the other downtown and near neighborhood areas.

3. The D2 Zoning of the Property Was a Mistake Considering Recent Zoning Amendments That Permit High Rise Buildings on Transit Routes Outside of the Downtown Areas

The City recently enacted and amended zoning ordinances to implement some 2009 Transportation Plan recommendations. These actions were premature and will make redevelopment in the South University area even more challenging and less attractive. The amendments encourage dense residential development in areas outside of the downtown area but located on or near signature transit routes. The R4D amendment permits 120-foot tall residential

buildings on large sites in fringe areas. The new R4E zoning ordinance has no height limitations. The ordinance standards require that R4E zoned sites are located along signature transit routes with nearby access to schools, public land, and shops outside of the DDA boundary. The minimum lot size is 14,000 square feet. The minimum width requirement is 120 feet. The allowable density is 75 units per acre based upon a minimum 580 square foot dwelling unit.

The City erred by restricting the Petitioner's Property to medium residential density while simultaneously encouraging new incentives for fringe development. The Petitioner's Property is a rare downtown parcel that does not require assemblage to achieve viable density under the D1 designation. A market bias favors fringe development because of the expense and challenge of aggregating fragmented parcels located in city cores.¹⁰ The costs and inefficiencies of core development encourage urban sprawl and the resulting disinvestment in city cores.¹¹ The new ordinances will make land assembly in the core downtown much less attractive if developers can find cheaper and larger parcels located in the fringe areas. The greater FAR in the core areas will not necessarily discourage outskirt development. A developer would need to assemble several small parcels in the South University Area to achieve any meaningful density. It would likely be more or equally profitable and efficient to develop under the R4E designation even without the increased FAR. The price of downtown land and associated transaction costs could offset any increased FAR. Moreover, the small and fragmented parcels likely would not allow significantly

¹⁰ See Miceli & Sirman, *supra* note 3, at 5-6, 12. The authors posit that urban sprawl is a form of market failure that results from the difficulty of developing fragmented downtown parcels that require aggregation to achieve any reasonable density. The authors argue that urban areas can fight sprawl by making fringe development more costly relative to core development. The City has taken the opposite approach with the Petitioner's property by restricting the development of the single largest core parcel while expanding the opportunity for new fringe development. It is very likely that many of the small parcels zoned R4C never developed under that designation because of the bias towards fringe development and the many economic and political barriers to aggregating parcels for such development. Moreover, the City now seems to be adopting policies to prevent the aggregation of small parcels in the near downtown area.

¹¹ See generally, Miceli & Sirman, *supra* note 3.

more density even with increased FAR. The fragmented parcels also will be unlikely to offer open space amenities and onsite parking, as would the larger outlying parcels.

It could be a huge mistake to encourage dense housing in outlying areas before exhausting the potential for infill development in the core areas. There is no guaranty that residents in fringe developments will use public transportation to get from the outlying areas to the campus and downtown activity centers even if bus transportation is an option. Cheap and plentiful parking will allow tenants to store automobiles on site and commute to the University, Medical and City Centers. The existing population in the South University Area already uses public transit and is much less dependent on automobiles than the general Ann Arbor population. The City should increase residential density in these proven transit oriented areas before allowing dense development in the outskirts.

The City is poised to repeat the same pattern prevalent in the 1980's that impeded residential development in core areas caused a substantial increase in vacancy rates for rental units and encouraged more automobile trips to reach campus from the outlying areas. See 1992 Central Plan, pp. 11, 19. According to the 1992 Central Plan, "[t]he 1980's building boom saw a significant increase in units on the periphery of the City. As more students move out from the Central Area, vacancies increase. More than a 42 percent increase in vacant units occurred between 1980 and 1990." *Id.* at p. 19 The City has also found that automobile congestion and parking conflicts in near downtown neighborhoods escalated **"as more students move[d] out of the central campus area and rent[ed] apartments on the periphery of the City, to in turn drive to campus for class."** 1992 CAP, p. 23 (Emphasis added) The 2009 Master Plan contains almost identical language. See Master Plan, p. 60

It is a mistake and unreasonable to restrict 1320 S. University to D2 as a means of ameliorating alleged vehicular affects in residential neighborhoods when the City is encouraging new high-density fringe development that it has long identified as a source of conflict with those neighborhoods. If the City wants to encourage redevelopment in the South University Core and meet companion transit goals of reducing reliance on automobiles, it is even more important that the City allow 1320 S. University to compete with the larger outlying parcels. Otherwise, the competition will be between larger and cheaper sites in the outlying areas that will offer marketing amenities, such as on site parking and open space and the more expensive and smaller parcels in the South University Area with no parking or open space that require assemblage and higher transaction costs. History has taught that the outlying areas will win that competition. The Property is the only parcel in the South University Area that can compete with the outlying areas because it is large enough to accommodate the desired residential density, mixed uses, open space and parking. It has the additional benefit of being in walking distance to campus, retail and entertainment venues and cultural amenities. The Petitioner's Property holds much more promise for supporting public transit and other non-motorized transportation goals because of its frontage on a core downtown street and location within 180 feet from a planned signature transit corridor. It is merely speculative whether new residents in the fringe areas will use public transportation. History has taught that these residents will likely rely on automobiles as their transit choice.

The planned downzoning of parcels zoned R4C located in residential neighborhoods provides an additional sound reason for transferring that lost density to the downtown areas that can best use the density to add more housing units closer to campus, major activity centers, downtown areas and the transportation system.

B. The D2 Zoning Of The Property Was a Mistake Because It Cannot Advance The Intent of Interface Zoning or the SUD2CD

The intent of the D2 “Interface between the intensively developed Core and near-downtown neighborhoods [is to] reinforce the stability of these residential areas - *but without unduly limiting the potential for downtown’s overall growth and continued economic vitality.*” The intent for the SUD2CD “is to maintain a variety of small-scale commercial and retail enterprises mixed with some residential uses, minimizing the impact on nearby residential streets.” Based on the intent of D2 zoning, the only legitimate reason for sacrificing the development capacity of the Petitioner’s Property, which meets every standard for increased residential density, would be an overriding and compelling need to protect the stability of near downtown neighborhoods, which means minimizing the impact of vehicular use on nearby residential streets.

As fully detailed in the next sections, the D2 zoning is a mistake because no compelling or even minimal need exists to convert the Property into a buffer zone to protect neighborhoods that the Property would not adversely affect.

1. The Intent of the Interface Zone Is To Preserve The Stability of Near Downtown Neighborhoods

The premise for the D2 zoning of 1320 S. University and its inclusion in the SUD2CD is that nearby and stable residential neighborhoods and streets need protection from the more intense development of the South University Downtown Core. The 1992 Central Area Plan and 2009 Master Plan identify the Central Area as composed of the 1) downtown cores, 2) “stable residential neighborhoods where there are virtually no commercial uses” and 3) “transition areas that fall between the downtown and the neighborhoods.” The transition areas have

no sharp contrast or dividing line between commercial and residential, but rather a gradual transition. Houses are turned into small shops, small offices are built among the groups of residences, and surface parking lots tend to be widespread. In other places, the contrasts are extreme, where one side of the street is commercial or institutional and the other residential, which can sharply divide a neighborhood.

2009 Master Plan, p. 61. See also 1992 Central Area Plan, p. 39.

The City's primary strategy for preserving stable residential neighborhoods is to restrict commercial and institutional uses from encroaching into those neighborhoods. See 1992 Central Area Plan, pp. 19-20; 2009 Master Plan, p. 61.

The City has also cited conflicts with student housing as threatening the stability of established near downtown neighborhoods. 1992 Central Area Plan, p. 20, 21, 23; 2009 Master Plan, p. 60. The 1992 Central Area Plan noted that student households were typically located between established residential neighborhoods and the campuses. 1992 Central Plan, at p. 23 In other words, the student household were located in the transition areas.

The impact on close-in neighborhoods [from the student population] is significant. One of the most common problems is parking and the congestion on the street where residents compete with student commuters, University faculty and staff for the limited supply of on-street spaces. This competition results in insufficient off-street parking for residents. This is especially true around fraternities and sororities and where single-family houses have been converted to apartment or rooming houses without adequate parking. *These problems have escalated in recent years as more students move out of the central campus area and rent apartments on the periphery of the City, to in turn drive to campus for class. These parking and traffic impacts significantly detract from the quiet residential character of this area.* " 1992 CAP, p. 23 (Emphasis added) The 2009 Master Plan contains almost identical language. See 2009 Master Plan p. 60.

As discussed below, 1320 S. University is not geographically situated to protect the near downtown neighborhoods from parking, traffic, and student conflicts or the encroachment of commercial and institutional land uses. On the contrary, it is well situated to discourage those

conflicts and encroachments and benefit the near downtown neighborhoods by providing more housing units and commercial uses closer to campus.

2. The Property Is Not Located Next to or Near any Stable Residential Neighborhoods That It Can Protect If Zoned D2 or Allegedly Harm If Zoned D1

The historic and more recent demographic data from the U.S. Census Bureau confirms that the Petitioner's Property is not located next to any stable residential neighborhoods. It is located in the South University Downtown Core and next to transition areas that are predominantly populated by a highly homogenous and migratory population.

The Land Use Character of The South University and Surrounding Area

The Petitioner's Property borders D1 zoned property on its northern and western boundaries; D2 and R4C zoned property on its southern boundary and R2B zoned property on its eastern boundary.¹² Ex. 7 Existing Zoning Map. The eastern boundary of 1320 S. University is 276 feet deep. It borders the mud bowl and the SAE fraternity house, which are zoned R2B. The rear property line is 178 feet long. Approximately 48 feet of the rear property line borders the rear yard of 1321 Forest Court, which is zoned R4C. The balance of the rear property line abuts the parking lot of 625 S. Forest, which is zoned D2.¹³ Ex. 8, Map of Existing Uses; Ex. 9,

Aerial Photo

12 The 2009 Master Plan characterizes the area surrounding the eastern and southern portion of the Property as populated predominantly by group housing quarters. (See Central Area Future Land Use Map, Area 16) A focus group studying Areas 16 and 17 of the Master Plan observed that Area 16 consists mostly of group housing quarters and no single-family uses. The focus group is concerned with creating a buffer between Area 16 and the "stable residential" areas south of Hill Street in the North Burns Park neighborhood. The Petitioner's Property is not geographically positioned to provide any buffer between those group housing quarters and Burns Park.

13 The City zoned 1320 S. University D2 in part to protect the SAE house and mud bowl from the D1 zoning in the South University core. The SAE/ mud bowl property, however, meets the location requirements for the new R4E zoning classification. The site contains nearly an acre of land and over 120 feet of frontage on a Signature Transit route. It is located outside of the DDA and near public land and activity centers. Even with the R2B zoning adjacent to its side yard, which would require one foot of additional setback for every foot of building greater than 30 feet, the SAE site could accommodate a building at least twice as tall as any building permitted on the Petitioner's property.

The relevant demographic data demonstrates that 1320 S. University is not located in a transitional or Interface area. The data shows a gradual change in character from the transitory student population to the more stable neighborhoods located south, east and southwest of the Petitioner's Property. The population in and immediately near the South University Area, including the transition areas north of Hill Street and closest to the Petitioner's Property is not composed of families, diverse age groups, owner occupied housing units and the long-term residents that characterize the City's stable single-family residential neighborhoods.

*Demographic Character of the South University Area and Environs*¹⁴

The South University Core Downtown is primarily located within Block Groups 2 and 3 of Census Tract 4003 ("BG 4003-002" and "BG 4003-003" respectively).¹⁵ Block Group 4, Census Tract 4003 ("BG 4003-004") is located directly south of BG 4003-003, between Hill Street and Cambridge and between E. University and Washtenaw. Block Group 6, Tract 4003 ("BG 4003-006") is located east of Washtenaw between South University and Hill Street. Block Group 1, Census Tract 4003 ("BG 4003-001") is located north of South University and east of Washtenaw. Block Group 5, Census Tract 4003 ("BG 4003-005") is located south of Hill Street,

14 The demographic data uses 2010 Census counts when available. The demographic profile references some 2000 Census data for comparison purposes. The profile is based primarily on data from the 2005 to 2009 American Community Survey, which has replaced the long form decennial census sample data. "While the main function of the decennial census is to provide counts of people for the purpose of congressional apportionment and legislative redistricting, the primary purpose of the ACS is to measure the changing social and economic characteristics of the U.S. population." ACS GENERAL HANDBOOK, p. 4 "The ACS was designed to provide estimates of the characteristics of the population, not to provide counts of the population in different geographic areas or population subgroups." p. 25 This accounts for some discrepancies between the 100% 2010 Census counts and the ACS estimates. The Census Bureau provides the margin of error for all ACS estimates. The ACS estimates have a 90% confidence interval. This means that a 90% probability exists that the true count lies somewhere between the margin of error intervals. The important point is that the data is not meant to provide exact counts but a way to measure the social and economic characteristics of people in specified geographic areas. This Zoning Application uses the ACS 2005 to 2009 data available for block groups and census tracts.

15 Census Block Groups are smaller units of Census Tracts. Census Blocks are even smaller units of Census Block Groups. The ACS data is only available at the Census Tract and Block Group level.

west of East University and north of Hill Street between Tappan and Packard. Ex. 10 Census Block Group and Tract Maps

Census Tract 4004 Block Group 1 ("BG 4004-001") is in North Burns Park. It is located directly south of BG 4003-004. The BG 4004-001 neighborhood is south of Cambridge, north of Granger, west of Ferdon and east of S. Forest and E. University. Block Group 2, Census Tract 4004 ("BG 4004-002") is located in Lower Burns Park and is directly south of BG 4004-001. The established and stable residential neighborhoods in BG 4004-001 are located approximately one quarter to one half mile or 1,320 to 2,640 feet from the Petitioner's Property and the South University Core. Ex. 11 - Distance to Neighborhoods Map

The Petitioner's Property is not located next to or even near any residential streets in the downtown residential neighborhoods that the D2 zoning and SUD2CD is intended to protect. BG 4003-004 is the transition area located between the Downtown Core and the near downtown neighborhoods south of South University. BG 4003-004 contains a mixture of student group quarters and stable residential households. BG 4003-004 is populated by long-term residents, but still includes a strong student and group housing population. It is an area much more likely to experience conflicts between the transitory student population and the established neighborhoods than is the South University Area, which is much more homogenous and geographically removed from the near downtown neighborhoods. The D2 zoning of 1320 S. University can do nothing to ease the conflicts in BG 4003-004 or preserve the stability of the established residential neighborhoods subject to those conflicts. BG 4003-006 is the transition area between the South University Core and the residential neighborhoods east and southeast of Washtenaw.

There is no doubt that BG 4003-002 and 4003-003 are in the heart of the Downtown Core. There is a gradual change in the population characteristics of BG 4003-002 and 4003-003 that begins south and east of the South University Area in BG 4003-004 and 4003-006 respectively. BG 4004-001 marks the beginning of the significant character change from BG 4003-002 and 003. The significant difference in characteristics encompass age, tenure, mobility, school enrollment and modes of travel to work.

Age Comparisons

The population in Census Tract 3 is primarily between the ages of 18 to 24 years. The age of the population becomes somewhat more diverse in the transition block groups 4003-004 and 4003-006. The age composition changes to primarily persons over 35 years of age in BG 4004-001 and 002.

Table 4 Age Comparisons

Source: 2005 to 2009 ACS	Total Population	Percentage between Ages 18 to 24	Percentage Between Ages 35 to 59	Percentage Between Ages 5 to 14
Block Group 1, Census Tract 4003	629	99%	0%	0%
Block Group 2, Census Tract 4003	910	96%	4%	0%
Block Group 3, Census Tract 4003	632	96%	2%	1%
Block Group 4, Census Tract 4003	1110	84%	2%	4%
Block Group 5, Census Tract 4003	749	85%	6%	0%
Block Group 6, Census Tract 4003	1796	87%	6%	3%
Block Group 1, Census Tract 4004	1121	35%	33%	19%
Block Group 2, Census Tract 4004	811	6%	49%	23%

The Table shows that almost 100% of the population that lives closest to and within the South University Area is between the ages of 18 to 24 years. The age group characteristics of the population gradually begins to age and diversify in the the 4003-004 and 4003-006 transition block groups and shifts to the older and more diverse age groups in BG 4004-001 and 4004-002. The majority of the population in BG 4004-001 and 4004-002 is over 35 years of age. The latter block groups also have more persons under age 14 than the Core Downtown South University population.

Age group demographics and its relationship to household composition

The age distributions in the Tract 4004 block groups reflect the higher percentage of family households in the stable residential neighborhoods. The vast majority of households in BG 4003 002 and 003 are composed of non-related persons between the ages of 18 to 24 years old. The number of family households increase in BG 4003-004 and 006. In contrast to BG 4003-002 and 003, which are mostly composed of nonfamily households, BG 4004-001 and 002 are composed mostly of family households.

Table 5 Household Composition

Source: 2005-2009 ACS	Total Households	Family households	Percentage Family Households	Non-family Households	Percentage Non-family Households
Block Group 1, Census Tract 4003	172	0	0%	172	100%
Block Group 2, Census Tract 4003	357	0	0%	357	100%
Block Group 3, Census Tract 4003	226	18	8%	208	92%
Block Group 4, Census Tract 4003	338	34	10%	304	90%

Block Group 5, Census Tract 4003	246	0	0%	246	100%
Block Group 6, Census Tract 4003	249	85	34%	164	66%
Block Group 1, Census Tract 4004	295	193	65%	164	66%
Block Group 2, Census Tract 4004	303	249	82%	102	35%

The age group demographics and its relationship to household composition is further illustrated by school enrollment characteristics.

The vast majority of the population in BG 4003-003 and 004 is enrolled in undergraduate and graduate school. In contrast and consistent with the family household composition in the near downtown neighborhoods, the school age population in BG 4004-001 and 002 is primarily enrolled in middle and high school. The majority of the student population in the transition block groups, BG 4003-004 and 4003-006 are enrolled in undergraduate or graduate school but these blocks also have younger students than the Downtown Core neighborhoods.

Table 6 - School Enrollment

Source: 2005-2009 ACS	Population 3 years and over	Enrolled in School	Nursery and Kindergarten	%	Grades 1 to 8	%	Grades 9 to 12	%	Undergrad and Grad school	%
4003001	629	629	0	0%	0	0%	0	0%	629	100%
4003002	910	794	0	0%	0	0%	0	0%	794	100%
4003003	632	604	0	0%	0	0%	0	0%	604	100%
4003004	1110	919	0	0%	22	2%	22	2%	875	95%
4003005	749	733	0	0%	0	0%	0	0%	733	100%
4003006	1757	1549	8	1%	0	0%	13	1%	1528	99%
4004001	1057	605	23	4%	111	18%	48	8%	423	70%
4004002	772	217	38	18%	80	37%	40	18%	59	27%

Tenure Characteristics

Renter occupied housing is the predominant domicile for nearly 100% of the population in and surrounding the South University Area.

Table 7 Tenure

Source: 2005-2009 ACS	Occupied housing units	Occupied housing units: Owner occupied:	Percentage Owner Occupied
Block Group 1, Census Tract 4003	172	0	0%
Block Group 2, Census Tract 4003	357	0	0%
Block Group 3, Census Tract 4003	226	0	0%
Block Group 4, Census Tract 4003	338	45	13%
Block Group 5, Census Tract 4003	246	0	0%
Block Group 6, Census Tract 4003	249	74	30%
Block Group 1, Census Tract 4004	295	209	71%
Block Group 2, Census Tract 4004	303	284	94%

The tenure statistics show the same gradually changing pattern from the Core Downtown block groups 4003-002 and 4003-003 and the transitional areas, BG 4003-004 and 4003-006, to the stable residential neighborhoods in BG 4004-001 and 4004-002. There is virtually no owner occupied housing in BG 4003-002 and 4003-003. There is more owner occupied housing in the transitional block groups BG 4003-004 and 4003-006. Owner occupied households dominate in BG 4004-001 and 4004-002.

Table-8 Total Population in Owner Occupied Housing Units

Source: 2005-2009 ACS	Total population in occupied housing units	Total population in occupied housing units owner occupied	Percentage	Total population in occupied housing units renter occupied	Percentage
4001	996	149	15%	847	85%
4002	101	0	0%	101	100%
4003	4591	307	7%	4284	93%
4004	2735	1979	72%	756	28%
4005	8189	206	3%	7983	97%
4006	3937	1710	43%	2227	57%
4007	1985	946	48%	1039	52%
4008	2512	36	1%	2476	99%

Table 8 illustrates the predominance of renter occupied housing in the census tracts with the greatest concentration of the college age population. The college age population is most prevalent in Tracts 4002, 4003, 4005 and 4008.

Stability and Mobility

The South University Area population in BG 4003-002 and 003 is highly transitory. According to the 2000 Census, 80% of the householders in the entire South University area moved into housing units in the period between 1999 and March 2000. Ex 13 Map Ninety-five percent of the residents who lived in BG 4003-003, moved into their housing units between 1995 and 2000. Ninety-eight percent of the residents in BG 4003-002 moved in between 1995 and 2000. The 2005-2009 ACS 5-year estimates shows that the transitory cycle continued throughout the next decade. Ex 12, 2000 Census Map, Ex. 13 2005-2009 ACS Map

The areas with the most renter occupied units have the most transitory neighborhoods. Nearly the entire population changes in relatively short time periods.

Table 9 - Tenure By Year Moved In Renter Occupied Units

Source 2005-2009 ACS	Occupied housing unit renter occupied	Moved in 2005 or later	Moved in 2000 to 2004	Total Moved in 2000 or later	Moved in 1990 to 1999	Moved in 1980 to 1989	Moved in 1970 to 1979	Moved in 1969 or earlier
4003001	172	74%	26%	100%	0%	0	0	0
4003002	357	85%	15%	100%	0%	0	0	0
4003003	226	96%	4%	100%	0%	0	0	0
4003004	293	90%	10%	100%	0%	0	0	0
4003005	246	92%	8%	100%	0%	0	0	0
4003006	175	93%	7%	100%	0%	0	0	0
4004001	86	78%	13%	91%	9%	0	0	0
4004001	19	100%	0%	100%	0%	0	0	0

Table 10 - Tenure By Year Moved In Owner Occupied Units

2005-2009 ACS	Moved in 2005 or later	Moved in 2000 to 2004	Moved in 1990 to 1999	Moved in 1980 to 1989	Moved in 1970 to 1979	Moved in 1969 or earlier
400301	0%	0%	0%	0%	0%	0
400302	0%	0%	0%	0%	0%	0
400303	0%	0%	0%	0%	0%	0
400304	0%	0%	47%	0%	53%	0
400305	0%	0%	0%	0%	0%	0
400306	0%	26%	22%	0%	11%	41.9%
400401	8%	22%	49%	8%	10%	4.31%
400402	6%	22%	32%	27%	7%	5.28%

The data demonstrates that nearly 100% of residents in the renter occupied households in almost all block groups in tracts 4003 and 4004 moved into their respective units in 2000 or later. There is a clear relationship between tenure and mobility in these particular block groups. The owner occupied households in the transitional areas, BG 4003-004 and 4003-006, and Tract

4004 near downtown residential neighborhoods have a more stable population than the renter occupied households.

There is more data that confirm the transitory character of the South University Area population. According to the ACS 2005-2009 data, 83% of BG 4003-002 residents lived in a different house in the preceding year of the survey and 76% of the BG 4003-003 residents lived in a different house in the preceding year. In comparison, only 25% of BG 4004-001 residents and 8% of 4004-002 residents moved into a new house in the preceding year of the survey.

Table 11 - Population One Year and Older Different House One Year Ago

Source: 2005-2009 ACS	Population 1 year and over	Population 1 year and over Same house 1 year ago	Different House	Percentage Different House
4003001	629	317	312	50%
4003002	910	92	759	83%
4003003	632	134	479	76%
4003004	1110	284	793	71%
4003005	749	221	516	69%
4003006	1788	456	1332	74%
4004001	1113	823	279	25%
4004002	805	739	66	8%

The South University Area, BG 4003-002 and 4003-003 had the highest household turnover in the one year period compared to the other Block Groups.

C. The D2 zoning of the Property Will Not Ease Any Perceived Parking or Vehicular Conflict Between The Stable Residential Neighborhoods And Student Neighborhoods Located In The Transition Area Between The Downtown Core And Neighborhood Edges

The stated goal of the SUD2CD is to encourage land uses that allegedly minimize the impact on nearby residential streets. The streets in and near the South University Core are located within the transition areas between the downtown and the established neighborhoods. The residential or local streets closest to the Petitioner's Property are not located within the stable residential neighborhoods that the City wants to protect from vehicular intrusions and parking conflicts.

Restricting the use of 1320 S. University "to a variety of small-scale commercial and retail enterprises mixed with some residential uses" is unreasonable because these use restrictions cannot possibly protect any nearby residential streets from any alleged vehicular intrusions that more dense and predominantly residential development might cause.

The residential or local streets in and near the South University Area include E. University, S. University, S. Forest, Forest Court, Willard, and Church. Every parcel with frontage on the North side of Willard, and on both sides of Church Street, north of Willard, is zoned D1. Every parcel on S. University except for 1320 S. University is zoned D1. Every parcel on S. Forest except for 625 S. Forest is zoned D1. Almost every undersized and fragmented parcel with direct vehicular access to streets such as S. Forest, E. University and Church, which all extend south of Hill Street into the near downtown neighborhoods, are zoned for D1 densities. 1320 S. University, however, is one of the only parcels large enough to accommodate onsite parking, which would minimize the likelihood that residents of any future development on the Petitioner's Property would park on nearby residential streets. The same

cannot be said about the D1 developement of the smaller parcels on Willard and Church with direct street connections to the neighborhoods south of Hill Street.

1. The South University Area is not the likely source of vehicular conflicts as its population mostly uses non-motorized transportation even when vehicles are available for travel.

The City's longstanding assumption that student households cause traffic conflicts in the established neighborhoods is not necessarily accurate. The data demonstrates that the population in the South University Area (Tract 4003) and the other predominantly College Tracts (4002, 4005 and 4008) have more households with no vehicles available than the population in Tracts 4004, 4006, and 4007. The College Tracts and Neighborhood Tracts however generally have a comparable number of vehicles per household. The distinguishing factor, however, is the College Tract population makes less use of their vehicles than the population in the residential neighborhoods.¹⁶ Despite the availability of vehicles, the residents in Tracts 4002, 4003 and 4005 generally walk more and rely less on vehicular transportation than those residents in the stable residential neighborhoods. The data demonstrates that the South University Tract 4003 population makes less use of automobiles than the residents of the near downtown residential neighborhoods. The Tract 4003 population is more apt to walk to work and less apt than the stable residential population to drive alone when driving to work.

2. Vehicular Characteristics and Travel to Work

Table 12 - No Vehicles Available

Source: 2005-2009 ACS	Workers 16 years and over in households	Workers 16 years and over in households no vehicle available	Percentage
4001 Core	354	170	48%
4002 Core/ University*	0	0	0
4003 SU Core	1521	269	18%

¹⁶ Not all data is available at the Census Block Group Level.

4004 Near Neighborhood	1583	29	2%
4005 Student	3693	228	6%
4006 Near Neighborhood	2263	64	3%
4007 Near Neighborhood	1225	55	4%
4008 E. Huron Core	1311	164	13%

* There was no data for Tract 4002

The Core Tracts 4003 and 4008 had the most households with no vehicles. The Neighborhood Tracts 4004, 4006 and 4007 had the least amount of households with no vehicles available.

Table 13 - Number of Vehicles

Source: 2005-2009 ACS	Workers 16 years and over in household s	Workers 16 years and over in households: 1 vehicle available	Percentage	2 vehicles available	Percentage	3 or more vehicles available	Percentage
4001	354	175	49%	9	3%	0	0%
4002	0	0	0%	0	0%	0	0%
4003	1521	322	21%	254	17%	676	44%
4004	1583	466	29%	793	50%	295	19%
4005	3693	682	18%	580	16%	2203	60%
4006	2263	1003	44%	829	37%	367	16%
4007	1225	411	34%	549	45%	210	17%
4008	1311	590	45%	295	23%	262	20%

Table 14, which follows, shows that households in the Downton Core Tract 4001 had the least amount of vehicles available on average per household. College Tract 4005 had the highest average number of vehicles available per household. Tract 4004 had the highest average numbers of vehicles available per household in the near downtown Residential Neighborhood Tracts. Tract 4003 had third highest average number of vehicles per household in the comparison group.

Table 14 - Aggregate Number of Vehicles

Source 2005-2009 ACS	Aggregate Number of Vehicles: Total Households	Avg. No. Vehicle per Household
4001	797	1.021794872
4002	29	1
4003	2747	1.729848866
4004	2041	1.855454545
4005	5701	1.929925525
4006	3036	1.48097561
4007	1655	1.525345622
4008	1807	1.544444444

Table 15 - Means of Transportation to Work Population 16 and Over

Source 2005 - 2009ACS	Workers 16 years and over	Car, truck, or van	%	Drove Alone	%	Public Transp	%	Bike or Cycle	%	Walked	%
4003001	196	36	18%	36	18%	44	22%	0	0%	116	59%
4003002	387	78	20%	78	20%	11	3%	34	9%	264	68%
4003003	156	19	12%	15	10%	10	6%	0	0%	127	81%
4003004	310	222	72%	159	51%	0	0%	7	2%	81	26%
4003005	208	105	50%	105	50%	23	11%	0	0%	80	38%
4003006	602	184	31%	168	28%	20	3%	81	13%	290	48%
4004001	583	211	36%	195	33%	0	0%	85	15%	260	45%
4004002	472	422	89%	361	76%	8	2%	14	3%	14	3%

Table 15 shows that the South University Area population in the Petitioner's Block Group had the highest percentage of workers that walked or used other non-motorized transportation to get to work and the lowest percentage of workers who drove alone to work.

Only 12% of workers in the Petitioner's Block Group drove to work alone. Eighty-seven percent (87%) of the workers walked or took public transportation. Twenty percent (20%) of the workers in BG 4003-002 drove and 72% walked or used public transportation. In the transition Block Groups, a greater percentage of persons drove to work than in the Core Block Groups: 72% of workers in BG 4003-004 and 31% of workers in BG 4003-006 drove alone to work. The worker population in the near downtown Residential Neighborhoods also drove to work alone in greater percentages than the South University Area population. Cumulatively, 60% of workers in BG 4004-001 and 002 drove to work alone. Only 2% of that population used public transportation, but 45% of workers in BG 4004-001 walked to work.

A greater percentage of workers in the near downtown Neighborhood Block Groups drove alone to work than the population in the Downtown and Student Block Groups. At the Census Tract level, 60%, 50% and 47% of the workers in the near Neighborhood Tracts 4004, 4006 and 4007 respectively drove alone to work. In comparison, 29% of the population in Census Tract 4003 drove alone to work, but only 20% and 10% of the population in the South University Area Blocks, 4003-002 and 4003-003 respectively drove alone to work.

Table 16 - Drove Alone to Work By Tract

Source 2005-2009 ACS	Workers 16 years and over in households: Car, truck, or van drove alone:	Percentage
4001	52	15%
4002	0	0
4003	444	29%
4004	942	60%
4005	1101	30%
4006	1125	50%
4007	577	47%
4008	416	32%

The next table shows the relationship between the number of vehicles available and the means of transportation to work. As the number of vehicles per household increased in Tract 4004 so did the number of workers driving rather than walking to work. The same is not true in Tract 4003. The population in this tract did not drive more when the number of vehicles per household increased.

- In Tract 4004, the workers in 59% of households with 2 or more vehicles drove alone.
- In comparison, 26% of workers in Tract 4003 households with 2 or more vehicles drove alone.
- In Tract 4003 households with 3 or more cars available, only 32% of workers drove alone.
- In contrast, 86% of workers in Tract 4004 with 3 or more vehicles drove alone to work.
- Households in Tract 4005 on average have more vehicles available per household than the near Neighborhood Tracts, but do not use those vehicles to travel to work in as great percentages as the workers in the Neighborhood Tracts.
- In Tract 4005 only 25% of households with 3 or more vehicles drove alone to work.
- In contrast, 67% of the 3 or more vehicle households in Neighborhood Tract 4006 drove alone to work
- 70% of the 3 or more vehicle households in Tract 4007 drove alone to work.
- 86% of 3 or more vehicle households in the Burns Park neighborhoods drove alone to work.
- Only 32% of the 3 or more vehicle households in Tract 4003 drove alone to work.

Table 17 - Drove Alone By Number of Vehicles Available

2005-2009 ACS	Workers 16 years and over in households drove alone: 1 vehicle available	Percentage	Drove alone: 2 vehicles available	Percentage	Drove alone: 3 or more vehicles available	Percentage
4001	43	25%	9	100%	0	0%
4002	0		0		0	0%
4003	117	36%	65	26%	217	32%
4004	220	47%	467	59%	255	86%
4005	232	34%	314	54%	555	25%
4006	412	41%	468	56%	245	67%
4007	170	41%	260	47%	147	70%
4008	134	23%	96	33%	148	56%

Table 18 - Walked to Work By Number of Vehicles Available Per Household

Source 2005- 2009 ACS	Workers 16 years and over in households	Walked Total	%	No vehicle available	%	1 vehicle available	%	2 vehicles available	%	3 or more vehicles available	%
4001	354	149	42%	107	63%	42	24%	0	0%	0	0%
4002	0	0	0%	0	0%	0	0	0	0	0	0%
4003	1521	813	53%	159	59%	130	40%	157	62%	367	54%
4004	1583	316	20%	12	41%	103	22%	161	20%	40	14%
4005	3693	1970	53%	162	71%	284	42%	261	45%	1263	57%
4006	2263	638	28%	33	52%	414	41%	151	18%	40	11%
4007	1225	286	23%	32	58%	183	45%	71	13%	0	0%
4008	1311	561	43%	52	32%	281	48%	171	58%	57	22%

Table 18 shows that the more vehicles available to Tract 4004 households, the fewer amount of workers that walked to work. In comparison, the number of walking trips in Tract 4003 was stable and fluctuated little based on the number of vehicles available.

The data therefore shows first that there is a greater percentage of households in the South University Area that have no vehicles available than households in the near downtown Residential Neighborhoods. Moreover, even if households in the South University Area and

other College Tracts on average have a comparable amount of vehicles per household available as the Residential Neighborhoods, the population in the South University Area and other College Tracts use those vehicles less frequently during the busiest travel hours. The most vehicular trips to work during peak travel hours originate from the near downtown neighborhoods. If the South University Area workers use less vehicles during these peak travel times, they also are not competing for parking spaces during those hours.

D. The Creation of the SUD2CD Was a Mistake And Unreasonable Because a Setback Can Serve the Same Purpose as D2 Zoning.

The City justified the creation of the SUD2CD based on an alleged need to protect the households in the residentially zoned land next to the South University core. The SUD2CD however, does not interface with most of the residentially zoned and used land next to the South University Area boundaries.

- There is no Interface zoning between the northeast boundary of the D1 district and the South University Neighborhood Association (“SUNA”) households located northeast of Washtenaw between S. University and Geddes.
- Census Block 4003-3004 ¹⁷ is zoned R4C and is located directly south of Willard between Church and Forest and north of Hill Street. Block 4003-3004 is zoned R4C. East Quad is located next to Block 3004. It is residential use of land but it is zoned PL. According to the 2000 Census, 833 persons lived in East Quad.

It should be irrelevant that the dormitory is not zoned for residential uses. If the alleged D1 externalities cause any concern, the important issue should be the number of people affected by those externalities and not the zoning designation.

1. A Setback Can Serve As An Interface

The City did not have to down-zone 1320 S. University to the much more restrictive D2 zoning classification and sacrifice its development potential to create a buffer for Forest Court,

¹⁷ Census Blocks are smaller components of Census Block Groups. Block 3004 is located within BG 4003-003

which is **not** “a near downtown residential neighborhood.” A setback alone can serve as an Interface area. The 1988 Downtown Plan, p. 22 recognized that areas existed in which

[T]here is little dimension available to make the transition between the Core and neighborhood edges – for example between Huron and Ann Street where the Interface is a shared property line. In such cases, transitions in scale and height can be made by stepping the architecture of Core area Buildings up as the distance from the neighborhood edge increases or by providing an open space buffer.

The City has not required any Interface other than a 30-foot rear yard setback between the D1 zoning on Huron and the residentially zoned Ann Street, which is located in a historic district. The City Council also suggested that Washtenaw, which varies in width between approximately 70 to 80 feet, serves as an Interface between the Northeast boundary of the South University Area and the SUNA. The Petitioner can achieve the goals of Interface zoning by providing an open space buffer as the first step down from the intensity of the South University Core to the adjacent transition areas, which then provides further incremental reductions in density and scale to Hill Street. No zoning classification buffer is required because the area abutting the South University core is itself the Interface for the stable residential neighborhoods located south of Hill Street.

2. It is a Mistake to Scale 1320 S. University to Forest Court

Another purpose of the D2 zoning ordinance is “to encourage a gradual increase in scale and density between the neighborhood edges and the Core.” **Downtown Plan, p. 41.** The SUD2CD is also arbitrary because unlike any other D2 character district it contains only two parcels. These two parcels do not have the depth or breadth to provide a gradual density change between the neighborhood edges and South University. It is a mistake to downscale 1320 S. University to match the density and bulk of Forest Court when Forest Court is out of scale with its existing

surroundings and the plan for the immediate area west and north of Forest Court. Forest Court is an anomaly and does not represent the dominant character of existing or future development in the South University and surrounding areas. It is highly unlikely that the large parcels with 3-5 story multiple family developments and group housing quarters that abut Forest Court will ever be subdivided as single-family houses on small lots, consistent with the character and scale of Forest Court. It is more likely that the parcels on Washtenaw, east of Forest Court would be redeveloped under the R4E zoning classification as dense high rises along the signature transit route than as single family homesites. A much better chance also exists that Forest Court eventually will be redeveloped in character and scale with the predominant land use trends if the City discourages fringe development. The 2009 Transportation Plan includes Forest Court in the area recommended for the highest density to support public transit. The Transportation Plan is a part of the City's Master Plan. It would be more rational to zone Forest Court to D2 consistent with the Transportation Plan and to blend with its surroundings than to zone 1320 S. University to D2, which is inconsistent with the dominant character and trend of development in the area. The D2 zoning is also contrary to the intent of the City's Master Plan, Downtown Plan and Transportation Plan.

E. The D2 Zoning of 1320 S. University Is Not Consistent With Its Character or the Character of Other Areas Zoned D2

The Main Street, Midtown, State Street, and Liberty/Division Character Areas are located mostly in Tract 4001 and parts of Tract 4005. These areas are zoned D1 except for the William Street Historic District, which is in the Liberty/Division Area. The Kerrytown Character Area is located mostly within Tract 4007 and is zoned D2. The Huron Character Areas are located in

partially in Tracts 4001 and 4008. They are zoned D1. The First Street Character Area is located mostly in Tract 4006 and a small part of Tract 4005. It is zoned D2.

The demographic data demonstrates that Tracts 4004, 4006, and 4007 share similar age, tenure, household composition, stability and vehicular use characteristics. These characteristics are consistent with stable residential neighborhoods. Census Tract 4003 and especially Blocks 2 and 3 in the South University Area do not share the demographic characteristics of the D2 zoned property in Tracts 4006 and 4007. The South University Area Block Groups share the characteristics of the Downtown Core property zoned D1. Moreover, the South University Area has a denser population and housing base than Tract 4001 in which most of the other Downtown Character Areas are located. The City's Downtown Plan, Central Area Master Plan and Transportation element recommend higher density zoning in areas with the greatest concentration of population and housing. Tract 4003 has a substantially more dense population and housing base than Tract 4001.

The Petitioner's Property does not abut any stable residential neighborhoods, has no historic districts, and is located approximately one half to three quarters of a mile from the closest near downtown neighborhood. The Property abuts the transitory student neighborhoods that comprise the actual Interface zone between the Downtown Core and established residential neighborhoods. The D1 zoned parcels south of 1320 S. University are located closer to the established neighborhoods than is 1320 S. University. The new high rise construction on 601 S. Forest, is located next door to 1320 S. University. It is at least the same distance to the established neighborhoods as is 1320 S. University. There is no meaningful or justifiable reason for zoning 1320 S. University in a different classification from 601 S. Forest and the parcels located outside of the DDA within the South University Area.

It was a mistake and unreasonable for the City to downzone the Property to D2 when the premise for such zoning does not exist as applied to the Property. Restricting the population and housing density of 1320 S. University will not preserve the stability of near downtown residential neighborhoods. Moreover, the D1 zoning of 1320 S. University cannot threaten the stability of these neighborhoods with spillovers of commercial and retail land uses because the Property is not adjacent to these neighborhoods. Increased residential density for 1320 S. University could reduce neighborhood conflicts by providing students and University staff with housing and parking closer to campus. The Planning Commission envisioned D1 zoning for South University and the Petitioner's Property as a part of a strategy to reduce neighborhood conflicts by moving students closer to campus. The Planning Commission also believed that increased density in the core could lead to the conversion of student housing in the stable neighborhoods to single-family use. The Transportation Plan recommends the highest density for 1320 S. University because such development could also further reduce vehicular trips by moving the population closer to employment, educational and entertainment centers. The data demonstrates that the vast majority of the population in the South University Area already primarily uses non-vehicular transportation during peak travel hours. It also demonstrates that the South University Area is already the densest Core area in the City.

In comparison, the D2 zoning of 1320 S. University cannot help minimize any impacts from vehicular traffic in neighborhoods located one half to three quarters of a mile from the Property. The data demonstrates that the student population is not a primary cause of the traffic congestion in near downtown neighborhoods. The D2 zoning of 1320 S. University does not act as a buffer for the near residential neighborhoods south of Hill Street. It only acts as an interface to the existing Interface area. The City can accomplish the goals of the Central Area Plan and

Interface zoning to prevent the encroachment of incompatible uses into the neighborhoods south of Hill Street by focusing on the land use patterns of those parcels south of Willard between East University and Washtenaw in closest proximity to the near downtown neighborhoods that the City wants to protect.

F. The D2 Zoning Unreasonably Interferes With The Owner's Property Rights

The down-zoning to D2 of 1320 S. University is not only contrary to the public interest, but also has an unduly harsh impact on the Petitioners. First, 1320 S. University is the only parcel in the South University Area that must meet side and rear yard setback requirements. The D2 setback requirements result in the loss of approximately 12,653.36 square feet of land. To put that loss in perspective, it exceeds the aggregated square footage of four out of the five lots that front on the north side of Willard between E. University and Church. The four lots contain approximately 11,715 square feet. The height limit in the D2 zone prevents recapturing any square footage lost to the setback requirements.

Second, the D2 zoning will discourage the redevelopment of 1320 S. University. The height limitation coupled with the setback requirements makes it impossible to achieve any FAR greater than 200%. A new building could have at most 40-44 units, depending on whether the first floor houses retail or residential uses. The existing building has 36 units. The prospect for this limited increase in income affords little incentive to take the substantial economic and market risks associated to demolish the building and redevelop the site to achieve more units, when a developer could construct a building with more density in the outlying areas under the new R4E classification without demolition costs and the loss of rents during the two-year construction period. ***Due to this quirk, theoretically, a developer could even construct a taller and denser building next door to 1320 S. University on the SAE / Mud Bowl parcel.*** The R4E zoning classification has rendered 1320 S. University even less marketable as zoned because a

developer could achieve greater density on a similar sized site located outside of the South University Area with R4E zoning.

The unduly harsh treatment of 1320 S. University makes no sense when it is better poised to improve the South University core than the undersized and fragmented parcels zoned D1. It can provide open space amenities, street level uses on the main street of this downtown area, and onsite parking that can make an inviting and handsome entrance to the South University Downtown Core. It makes no sense to restrict residential density at this location when such density would support downtown housing goals, retail business, entertainment, multi-modal transportation and pedestrian activity.

III. How the Rezoning Can Correct The Error in the Zoning Ordinance

The City could correct the mistake of zoning 1320 S. University D2 by rezoning the property to D1 with the proposed conditions:

Height

The D1 ordinance permits 150 foot tall building.

The Petitioner proposes limiting building height up to 145 feet. This will provide a 17 foot step-down from the 162.8 foot tall building approved for 601 S. Forest presently under construction.

Setbacks

The D2 ordinance requires a 40-foot setback from the side and rear building walls to the property line when adjacent to residentially zoned property. The D1 ordinance requires a 30 foot setback.

Side Setback to R2B

The Petitioner proposes a 15-foot side setback to the mud bowl. A sewer easement runs through the mud bowl and crosses the Property. The easement will likely prevent development of the mud bowl near the property line. The 40-foot side setback serves no beneficial purpose. The reduction of the side setback would permit the construction of below ground parking near the western boundary of the Property and more flexibility in design and construction of the above ground development.

Rear Setback to R4C Property Line

The east 46 feet of the rear property line abuts the rear property line of 1321 Forest Court, which is the deepest lot on Forest Court and heavily forested. The Petitioner proposes to provide a minimum rear setback of 40 feet to the R4C property line which is in line with the existing D2 requirement. The Petitioner will also provide further screening at the property line, which is to be determined.

The conditional zoning can still provide an Interface area with an increased setback and landscaping. The proposed setback is more than the depth of the setback between the D1 zoned parcels on Huron and the historic district properties on Ann Street. The Petitioner's Property is approximately the same size as the D1 zoned parcels on Huron. The D1 zoning of the Property also will result in a narrower footprint than a building developed under D2. A narrower footprint will provide more open space and a wider view corridor from Forest Court to South University especially since the footprint of any new building would narrow next to the mud bowl.

See Ex. 15, Model with 145 foot building

CONCLUSION

It was a mistake to down-zone 1320 S. University to D2 because it sacrifices the redevelopment potential of the parcel without furthering any of the goals of D2 zoning. The D2 zoning does not provide any community wide benefit because it is contrary to the intent of the Downtown Plan, the City's Master Plan and the 2009 Ann Arbor Transportation Plan. The D2 zoning also hurts the property owner because it is not economically feasible to redevelop the property as zoned. The zoning not only treats 1320 S. University in a disparate manner from other parcels in the South University Area but also does so without any rational basis for the difference in treatment. There is no rational basis for the disparate treatment because the zoning of 1320 S. University to D2 cannot further any goals related to interface zoning. The City can correct the mistake by rezoning the Property to D1 with the proposed conditions.