



DATE: 9 April 2013  
TO: Members of the City Council, Mayor  
RE: Site Plan Application, 413 East Huron Street  
FROM: Christopher Graham

I write you to suggest that you vote NOT to approve this site plan (as currently presented) and why, and I write to give you some suggestions about natural features and other site matters (for use in case of a re-submission or new petition for this site).

(I do apologize that I cannot say all of this personally in the time I would have at your hearing, nor say it in one page. Please do have this letter included in the public record.)

**The Standards:** I do not believe the plan is worthy of approval because it does not satisfy the requirements placed upon you by the standards for approval of site plans, in Chapter 57. These are the standards for approval:

***A site plan shall be approved by the appropriate body after it determines that:***

- (a) The contemplated development would comply with all applicable state, local and federal law, ordinances, standards and regulations; and***
- (b) The development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land, applying criteria for reviewing a natural features statement of impact set forth in this Chapter; and***
- (c) The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare.***

**Standard One:** You first must assure yourselves and the people of Ann Arbor that the proposal complies with all zoning and other applicable plans and code requirements of the City. While the building as proposed does appear to fall within the provisions of the D1 zoning of this site, there are other shortcomings in relation to other parts of the code and their intent:

1. **Major Conflicting Land Use.** One could not imagine a greater instance of conflicting uses of land, a key matter that underlies the reason we have zoning in the first place. This proposal would see a very tall, very shade-casting building built immediately adjacent to single family houses, at the very edge of the downtown district. A six foot fence and some trees planted between are of NO value in mitigating the conflicting use impact of a 150' tall building, south of and immediately next to 35 foot houses. Buildings at the edges of the downtown district should step down in height and mass significantly, to better make harmonious transitions. We hope these houses long remain!

Various parts of your code and precedent in approved plans are full with efforts to address adjacent, conflicting land uses. Why would such concerns not be paramount in the A2D2 zoning deliberations of this site, why did they not give you a huge “do not go there” pause? We want these houses to have great care and to long remain!

2. **A Notable Historic District is Immediately Adjacent.** Not only is the North Fourth Ward Historic District notable for its protected structures, it is the historic district which encompasses the original land plat of Ann’s Arbour. Not only are the specific, adjacent historic structures impacted by this development, but a building of such height is not a satisfactory gateway to one of the most elegant historic streets in town. Not only would the proposed building go up immediately adjacent to a very important historic district, but the specific houses to receive heavy impact from the shadows of this building are themselves very wonderful (one is a nationally registered historic structure, and is totally gorgeous inside). Not only are gardens of these houses to be heavily impacted by the shading from the building as proposed, but there grows within 50 feet of the proposed building, one of the great Burr Oaks from the original savanna, upon which Indians camped and Ann’s Arbour was platted. Why would a building of this height in this location be acceptable?
3. **Other Commission Action.** The Historic District Commission is very disturbed about this building at the height proposed, and voted unanimously to ask you to revisit the zoning decision for this site prior to any decision on this plan. This is a red flag?
4. **Other Commission Action.** The City Planning Commission did not recommend this project to you. There was significant testimony among Commissioners in opposition to it, as proposed. This is a red flag?
5. **Natural Features, NF Master Plan.** The Burr Oaks still extant in Ann’s Arbour are called out directly in the Natural Features Guidelines and Master Plan as of the very highest concern among all natural features in the City. This is a big deal.

If any single tree would rise to the level of being protected, no matter what, would not this tree and the others in this neighborhood -- the namesake trees of Ann’s Arbour?

6. **Design Guideline Review.** Although it seems there was much discussion about the character of the building proposed, and about its relationship to pedestrians on Huron and Division Streets (some changes in the building design were made), there was very little discussion about the CONTEXT into which this building as proposed is to be placed. Top of the list in that framework is Enriching Design Excellence: “Identify and reinforce the positive characteristics of adjacent sites.”

How could one conclude this building enriches, at this height and scale, the adjacent houses or the North Fourth Ward (Ann’s Arbour) historic district? How is this building, as proposed, an acceptable gateway for Division Street’s wonderful historic venue? Send this proposal back to the Design Review Committee for more work on this subject?

Altogether, it seems to me there are many aspects of code, of master plans, of clear intentions and sensitivities for historic districts and buildings, of a now enduring commitment to natural features -- that are NOT well satisfied in this standard. This standard does NOT say that if a

petitioner meets the zoning regulations alone, that a project then proceeds “by right:” What about other ordinances, Commission opinions, regulations, master plans, insensitive and conflicting land uses, potential harm to very important natural features and historic structures off site, or the overwhelming opinions of the residents of our fair City?

**Standard Two:** You must assure yourselves and the people of Ann Arbor that the project proposed actually does minimize damage to natural features, while allowing a reasonable use of the land.” A building on this site of some size is a reasonable use, given the natural features present. Does that mean a building so tall as to all but completely shade a great, old and very important tree, on adjacent property -- where the owners and lots of other interested people in the City are NOT amenable – is an acceptable impact?

1. **Off-Site Impacts.** Thank you for requesting a natural features analysis, when last you met with this petitioner. It was needed. The provision to present information about natural features on adjacent property was placed in the Land Development Regulations more than a decade ago to make certain there would be no strongly negative, off-site impacts, from a proposed development.
2. **The Dettter Burr Oak.** Isn't the Burr Oak on the Dettter property one which rises to the very highest level of concern among all natural features in the City? Such natural features are “not to be disturbed.” Among all of those in Ann Arbor that have high concern, these are among the very most important.

It does appear that impacts on the root zone of this tree are, in part, to be minimized by pulling back the parking garage, in that corner, nearly away from the CRZ. This seems especially true, since fill was placed in that corner, out to the property lines, some years ago.

But, depending upon HOW the building is constructed, HOW construction activities are conducted in that corner, HOW securely through all stages of construction tree roots are defended against soil compaction and excavation – impacts on roots could still be damaging, or even fatal to the tree.

3. **Shadow is a true problem.** The shadow that would to be cast over this great tree by the proposed building at this height would remarkably alter its habitat (from full sun all the time, to shade much of the year). It would be hard to get this species of tree to grow in this location again, to this stature, in this much shade. Isn't it likely the tree will decline slowly and then at an accelerating pace, for lack of direct sun, if this building as proposed is constructed? Why would that be acceptable?
4. There is also a landmark-sized Walnut at the south Bellock property line that seems destined to have both heavy impacts on its root structure, and high levels of shade cast upon it most of the time. This tree is not in the highest level of concern, but it is on a neighbor's property. Therefore protections for it must be the best that are possible.
5. **The “Unhealthy” Burr Oak.** Were the Burr Oak that is dismissed and scheduled for removal not actually removed, and the right things are done around it and the right care given for it – it could last quite some time. Is it necessary to dismiss it and remove it?

6. The Bellock Walnut. Does the plan truly minimize CRZ disturbances to this tree? How will work under it actually be accomplished?

**Standard Three:** The proposed project must not be a nuisance or issue of health or safety or welfare. That should simply mean, at the very least, a project should not be approved if it infringes unduly upon the well-being of immediate neighbors.

1. **Shadows Are a True Problem.** Wouldn't the shadows cast most of the year northward, directly over three wonderful, loved, historic houses and gardens -- by the proposed tall building -- be devastating to the quality of life of the people who own them?

Their old gardens, the plants and trees in them will much diminished by the shade which arrives, not again will they be what they have been. The palette of plants which grow in the shade is far less than what is possible in the sunshine. The expense involved is significant for each property.

Won't it be dark inside these houses, by comparison -- even on sunny days? What happens if a similarly sized building is constructed across Division Street? There would almost never be sunshine on these properties!

2. **Relative Scale is a True Problem.** Why ever would such a jarringly tall building be allowed on property immediately adjacent to such treasures as these houses and gardens, at the gateway to one of the great historic streets in Ann Arbor?

Don't these impacts represent true nuisances? Won't they be forever damaging to these folks?

Again, looking at the three standards, don't they offer ample capability to say no to this plan, suggest the petitioner offer a step down, lower building on this site?

**Detailed Questions on the Documents:** Here follow a few of the suggestions and questions about the site plan, as presented, that I would make. They are not intended to give a green light to approving this plan, but should be used to inform an amended (much lower and more interesting) proposed building.

1. **North Property Line Grade Change.** Are there not grade change issues nearly all along the north property line in need of a retaining wall? Isn't some retaining wall work needed all along that line, not just along the driveway from Division Street? Why is the retaining wall concrete block? Is that a material in use when the historic, adjacent houses were constructed? Shouldn't these materials be native, glacial erratic boulders or some other relatively local stone (laid in very carefully in the two CRZs with tracked vehicles or by hand)?
2. **The Burr Oak Back Corner.** There is two feet of fill over the CRZ on this property of the Deter Burr Oak. Why can't much of this be pulled gently back, with the asphalt? How would grading and excavation work actually be accomplished in this corner (tracked

vehicles, no digging downward)? How will roots of trees to be cut down be removed (grinding, no digging)? How will the existing fence posts be removed (pulling, no digging)? This area especially needs a retaining wall, where the fill remains.

3. **Fence.** Why spec only 6 foot privacy fence instead of an 8 foot fence? With what materials, design and finish work is the fence made (painted, cedar, opaque, done in keeping with woodwork on the historic structures)?
4. **Utilities.** On what route will electric, telephone, and cable feeds come into the building (underground across the north where they are now overhead)? How to do this without excavating a trench?
5. **Pilings.** Will pilings be used for the parking garage excavation? How will they be installed and where relative to the building footprint? How will materials on the north side be applied to that face of the building, many stories overhead? What vehicles will be carrying them, on what route (no wheels, no soil compaction, and pilings driven just outside the foot print)?
6. **The Burr Oak Corner II.** Why is the second, smaller Burr Oak being removed (it is admittedly for having fill placed upon the roots years ago)? In a suggested management plan, no live stems should be cut from the Detter Burr Oak. Only dead wood should be removed, with great care not to damage shoulder bark. Why not cut and kill buckthorns underneath this great tree, root feed it gently in the Spring and Fall)?
7. **Police the Root Zones.** There is need for a plan to carefully monitor what wheeled vehicles and what digging, parking, storage, soil compacting goes on in the CRZ of both the big Oaks, and the Walnut. It only takes one uninformed subcontractor digging a ditch or moving around with wheels, or a bunch of guys parking their trucks, or wheeled lifts carrying bricks, or lots of spilled mortar and washings, to compact soils -- kill a tree.
8. **Street Trees Proposed Inappropriate, Unavailable?** The street trees proposed are a hybrid of English Oak and our native Swamp White Oak. The plants of this cultivar readily available in this area are columnar, and branched very near the ground. Is this an appropriate street tree? Perhaps better to use Burr Oaks (they are now very readily available)? What sort of soils, drainage, and irrigation will be provided for these trees (we need much better efforts in our tree wells, downtown)?

**North Property Line Trees?** It is nice to specify native Lindens on the north property line along the western driveway, but they are not readily available in the trade, at size, as far as I know. It would NOT be acceptable to substitute European Lindens, which will not do well in these soils, in the root zone of the Walnut, in the shade, without much irrigation. Better to use understory trees more adapted to lower light like Witchhazel and Amelanchier? Will White Pine and Spruce do OK in the shade, behind the building? If they do gain some size, won't they increase the shade problem in gardens to the north?

Plantings around this building will be in tough places to thrive, because of the north side shade, or the impacts of an unrelentingly hard streetscape. It will take capable, ongoing effort to keep plantings for this building nice, past the initial installation.

9. **Enforce the HOW in Site Plan Approvals?** For a building such as this, the space is tight to build it. Even when space is not tight, site concerns (such as for trees) are lower on the totem pole of our inspector's concerns, are lower in the attention of most contractors, and are very low (if not non-existent) in the knowledge and attention of many subcontractors. As a result, even though everyone agrees here and up front to protect certain trees – that often, in fact, does not happen. How can this problem be remedied?

**A Last Problem:** As I understand it, Council and the CPC had a D2 zone applied to this property, as a result of the recent downtown planning and zoning process. Then along came an interested party, the owner of part or all of the property in this site plan, -- telling you that you must zone the property D1, that you must act to get “the highest fiduciary gain for the City.”

Then, as I understand it, you got advice from your attorneys either that this person was correct, or that you should succumb to his demand anyway -- in view of his threat to sue the City.

If this story is true or close to true, then you are in a mess.

Actually, the Council has complete power given to you by the State to zone lands within the boundaries of the City as you see fit – provided you are not spurious, not conflicted personally, and do so in accordance with good planning principles and your plans. No lawsuit would have gotten anywhere against that power, in this case.

I would submit to you (very strongly) that you got poor advice. You did not take the right course. There was no reason to expect a suit to be won on this threat, and/or you should not have avoided the legal matter.

Were we now to zone the City on the basis that your first priority is to get all the tax income out of a piece of land that you can, we would fall quickly into greed and chaos. I suspect it would not be wise to come into my (or any) neighborhood in the City with that approach.

If this story is more or less true for this situation, then I humbly suggest you need to find a way and the courage to correct a major mistake. Drive a hard bargain!

So.....Don't all of the concerns I have expressed here signify you need to find a way to get a much lower building on this site – perhaps one more fitting for its context, as a gateway to a grand historic street?

They certainly mean, I would suggest, that you can say NO to this plan as proposed. You can move on with a careful review of zoning at the edges of the downtown (thinking carefully about sites that can be aggregated, about shadows and scale transitions, and about conflicting land uses and contexts).

Thank you.