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CITY OF ANN ARBOR
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August 5, 2009

To Mayor Hiefje and Members of the Ann Arbor City Council and the Ann Arbor Planning Commission:

I am writing on behalf of my clients, Beverly I. Strassmann and her husband, Claudius Vincenz who reside at 545 S. 5th Avenue, Ann Arbor. This letter sets forth the harm that my clients foresee to their health, safety, and welfare if you approve the Planned Unit Development (PUD) known as the "Moravian." My clients reviewed the most recent documents in the petitioner's file on August 3, 2009. Their concerns are about the current version of the Moravian that the petitioner has been discussing with Planning Department Staff, as detailed in memoranda and other documents from March to August 2009.

1. **Zoning.** My clients purchased their home knowing that the zoning was R4C. They had a reasonable expectation that the City would not change the zoning--especially without following the City's own zoning ordinance. Section 5:10.27 (page 30) of the Ann Arbor zoning ordinance states that a PUD "will be developed in a compatible way with surrounding uses... This zoning district shall not be allowed where this zoning classification is sought primarily to avoid the imposition of standards and requirements of other zoning classifications or other city regulations..." (enclosure 1). My clients feel that the Moravian PUD is being sought so that the developer can avoid the R4C requirements for building height and density. Such a goal violates the zoning ordinance. Furthermore, in publicly available documents (enclosure 2) the developer has asserted that the Moravian is in the downtown and that his project will help to achieve the goal of creating density in the downtown. My clients, however, point out that numerous city documents state that the location in question is outside the downtown, and the maps show that it is outside the DDA (enclosure 3). My clients object to any attempt to increase the density of housing at their expense. They expect the City to respect its own ordinances and maps. The Moravian targets the student population (enclosure 4) and my clients point out that it is therefore unlikely to reduce carbon emissions from workforce commuters.
2. **Building Mass.** The proposed Moravian project has four stories of probable student rental apartments and one story of parking for a total of 5 stories. Surrounding houses are two or two and a half stories and many are owner occupied. My clients point out that the Moravian will tower above existing houses and take up the entire block of Madison between 4th and 5th Avenues. They have retained an architect who has demonstrated this point with a drawing that shows the impact of the Moravian on the streetscape. They say

that the developer has not provided drawings that are to scale and that show the true impact on the neighborhood. My clients believe that the mass of the building is incompatible with the residential community and will diminish their continued enjoyment of their home on a street that is presently an intact example of 19th and early 20th century architecture. The houses date from 1838 through the Victorian and Arts and Crafts eras. They further believe that the loss of aesthetics and the change in the scale of the neighborhood is inconsistent with zoning as well as the Central Area Plan.

3. **Noise.** My clients say that the proposed structure will bring about a massive increase in density beyond what is allowed by current zoning; many of the units will be shared by six unrelated persons and their guests, and there will be many more units than is presently permissible. They anticipate that this increase in density will produce noise from student parties that will interrupt their sleep. The developer's memorandum of May 6, 2009 states that the impact of noise on the neighborhood has been viewed as less important than the goal of creating more open space for the renters (enclosure 5). My clients say that this space will be in a pocket park, sidewalks, setbacks, and even on rooftop terraces where the sound will carry far and wide, entering their bedroom through the sky lights. They say that the noise would disturb people's sleep and have other adverse health effects, and that a less dense project, in conformity with zoning, would not generate as much noise and would be more compatible with the neighborhood.
4. **Light.** My clients say that the building will potentially reduce the sunlight that reaches their home from the west, and that other neighbors will suffer even more emphatically. The medical literature on how the loss of light can lead to adverse health consequences is available for consideration in this regard.
5. **Floodway/Floodplain.** The petitioner's project lies within the floodway and floodplain of the Allen Creek, a tributary of the Huron River. My clients point out that residential construction in such areas is not permitted by law and is incompatible with the City's own flood plan. They believe that elsewhere in the City the removal of houses in the floodway has been City policy due to the threat to health, safety, and welfare.
6. **Traffic Safety.** The proposed project is intended for South Fifth Avenue, Madison, and 4th Avenue. South Fifth Avenue is a major artery through Ann Arbor that is used during rush hour for vehicles speeding toward the major interstates south of town. My clients believe that traffic flow will be interrupted by vehicles hunting for parking on the lot to be provided on S. 5th Avenue. The hill is steep and traffic speeds are high, making 5th Ave an undesirable location for an entranceway to a parking lot. They anticipate that the increase in local traffic will aggravate the confusion at the intersection of 5th and Madison, an intersection that is already accident-prone. It has a sign that is not very clear or visible that says: "south-bound traffic does not stop." The situation will be aggravated when S. 5th becomes not only a rush hour thoroughway but also the site of a major new destination. Ms. Strassmann and Mr. Vincenz foresee a problem of run-away vehicles during winter road conditions when S. 5th Avenue becomes icy and they personally observed several car accidents this past winter.

7. **Illusory Meetings.** My clients say that Mr. Helminski held all meetings with the neighborhood at short notice and at inconvenient times. They report that the first was December 23, 2008 and the second was February 26, 2009. They point out that the first conflicted with the Christmas holiday and the second was during the University of Michigan and Ann Arbor Schools Spring/Winter break. My clients state that they and most of their neighbors had already made plans to be out of town. Ms. Strassmann requested that a meeting be held with the neighborhood at a more convenient time. The petitioner responded by offering only one-on-one meetings, which she did not feel comfortable with because there would be no witness or collective presence of neighbors. My clients say that the petitioner then disparaged her to the Planning Department and did not offer another neighborhood meeting. My clients also contend that at all meetings, the petitioner refused to answer reasonable questions about number of stories, height, number of units and the like saying he did not have the facts at his fingertips. My clients feel that the developer did not consider the concerns of neighbors, and they report that he stated that several persons were in favor of the project when in fact those persons were opposed. A third meeting was held at the home of Newcombe Clarke. If Mr. Clarke is an interested party in the Moravian development, then this meeting was not held in neutral territory. My clients feel that the meeting cannot qualify as a true public meeting given the lack of notice by the petitioner and the uninformative manner in which the meeting was conducted. My clients believe that Mr. Helminski's unwillingness to conduct proper public meetings and to consider the input from neighbors is one of many negative factors that City Council should consider before granting him an exemption from the proposed Moratorium on major development.

8. **Impact on Neighborhood Stability and Property Values.** My clients point out that the Moravian is out-of-scale to the neighborhood and that it will decrease the attractiveness of the neighborhood to families and others seeking an R4C living experience. They say that the proposed project will tip the balance irrevocably toward renters and away from permanent residents—instead of the congenial mix that currently prevails. Mr. Vincenz and Ms. Strassmann have invested in a large two-story addition, replacement of a paved parking lot with a porous, natural surface, landscaping, a new roof, new wiring, plumbing, heating, cooling and countless other improvements. Rather than enjoying the benefits of these improvements, they believe they will become the owners of a house on a blighted block. They also fear that their property values will decrease, but not their taxes.

In sum, my clients believe that the Moravian project will deprive them of the enjoyment of their property, and that it is a threat to their health, safety, and welfare. They are requesting that the City include the project in the proposed moratorium on major development, and require that the project comply with the Central Area Plan and the City's Zoning Ordinance.

Mr. Vincenz and Ms. Strassmann believe that the benefits claimed by the developer are not benefits at all. For example, they question the asserted benefit of an increase in affordable housing; they say that the project will take away more affordable housing than it creates. They

also believe that the claimed mitigation of contaminated soil is not a benefit; they say there is no contaminated soil, and that the notion of soil contamination is an urban legend and no documented brown site actually exists. They also say that the claimed removal of an industrial building is not a benefit because the structure is a small apartment building and has been exclusively in residential use for at least 20 years. In addition, they say the claimed benefit of a pocket park is actually a cost because the park will be the site of parties and noise. Finally, they say that the claimed benefit of providing an environmentally sound building is not a benefit because no PUD belongs in the floodplain/floodway.

Sincerely yours,


Fred S. Steingold

Enclosure 1

7. Machinery, such as: engines and turbines; farm machinery and equipment; industrial machinery and equipment.
 8. Transportation equipment, such as: motor vehicle equipment and parts, motorcycles, bicycles and parts.
- (f) Gasoline service stations.
- (g) Any of the following uses as special exception uses pursuant to Section 5:104.
1. Scrap and waste materials.
 2. Asphalt and concrete mixing plants.
 3. Sand and gravel pits.
 4. Slaughterhouse.
- (3) Permitted accessory uses.
- (a) Those allowed in the M1 district.

5:10.27. PUD Planned Unit-Development District.

- (1) Intent. The purpose of this district is to permit flexibility in the regulation of land development; to encourage innovation in land use and variety in design, layout and type of structures constructed; to achieve economy and efficiency in the use of land, natural resources, energy and the provision of public services and utilities; to encourage provision of usable open space and protection of natural features; to provide adequate housing, employment and shopping opportunities particularly suited to the needs of the residents of the City; to expand the supply of affordable housing for lower income households; and to encourage the use, reuse and improvement of existing sites and buildings which will be developed in a compatible way with surrounding uses but where the uniform regulations contained in other zoning districts do not provide adequate protections and safeguards for the site or surrounding area. The district is intended to accommodate developments with one or more land uses, sites with unusual topography or unique settings within the community or sites which exhibit difficult or costly development problems or any combination of these factors. This zoning district shall not be allowed where this zoning classification is sought primarily to avoid the imposition of standards and requirements of other zoning classifications or other city regulations rather than to achieve the stated purposes above.
- (2) Permitted uses:
- (a) Any use or combination of uses and accessory uses permitted in the supplemental regulations for the PUD zoning district adopted pursuant to Section 5:80.

(Sections 5:21, 5:22 and 5:23 repealed; new Sections 5:10.1 through 5:10.27 added, Ord. No. 6-84, 4-9-1984; Section 5:10.27 amended, Ord. No. 22-92, 5-18-1992; Section 5:10.27 amended, Ord. No. 49-98, 1-19-1999.)

AREA, HEIGHT AND PLACEMENT REGULATIONS

5:24. Establishment of Area, Height and Placement Regulations.

- (1) Except as otherwise provided herein, regulations governing lot size, lot area per dwelling unit, required usable open space, required setback lines, building height, and other pertinent factors are as shown in the Schedule of Area, Height and Placement Regulations.
- (2) The determination of the permitted number of dwelling units in the "R" Residential Dwelling Districts shall be made in the following manner: The gross lot area of the parcel in question is divided by the "Minimum Lot Area per Dwelling Unit" for the type of unit desired (or by the average for a variety of types) with the quotient being the number of dwelling units permitted. Gross lot area does not include

Enclosure 2

**The Moravian's Response to Ann Arbor Planning Staff
Comments Dated March 26, 2009**

Date: May 6, 2009

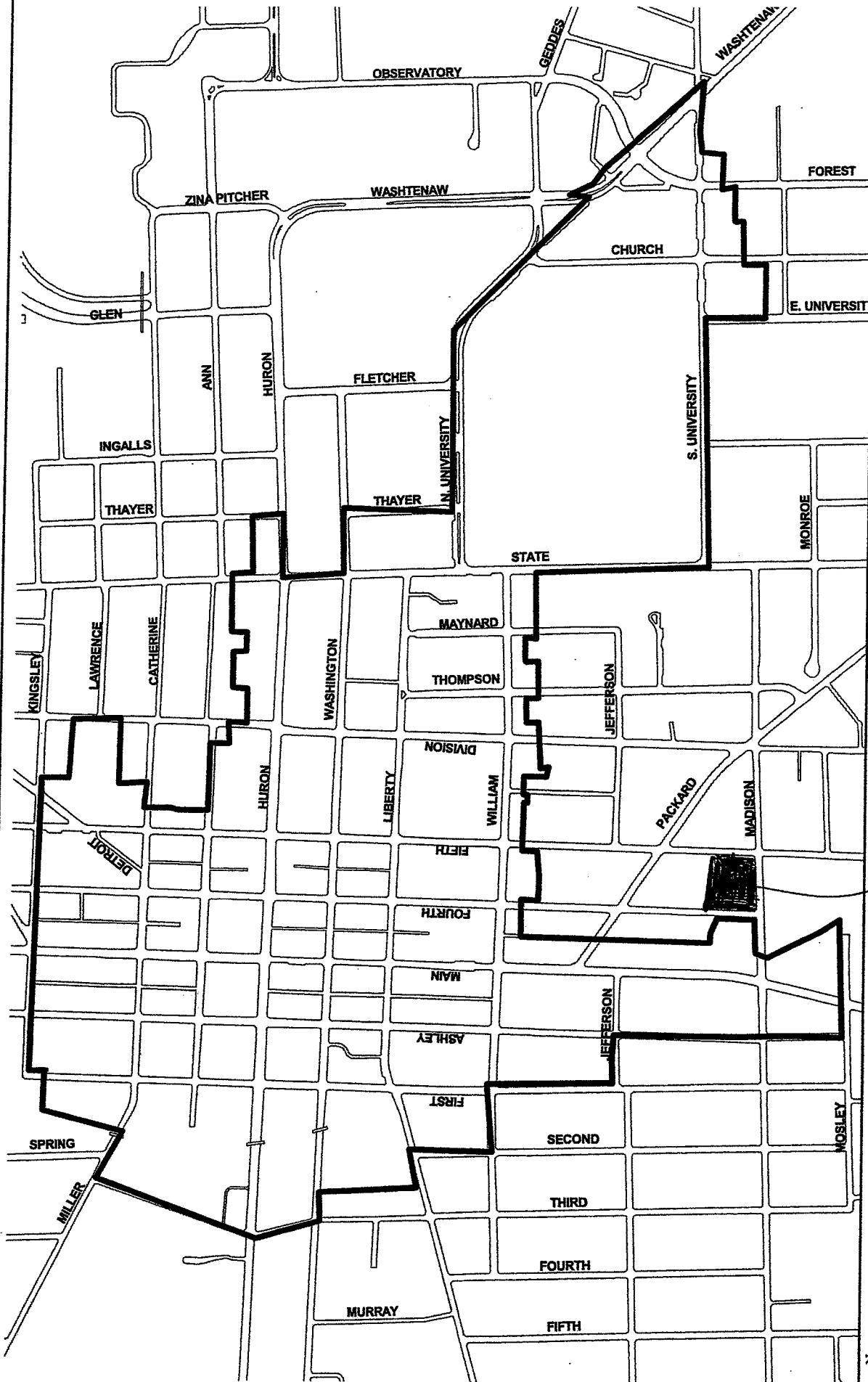
To: Planning & Development Services, C/O Alexis DiLeo, City Planner

From: Jeff Helminski

Re: New Residential Planned Unit Development ("PUD") Zoning District and PUD Site Plan
The Moravian, 201 East Madison Street
File SP08-022 and Z08-036

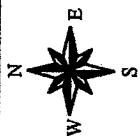
1. a. Location of the Project in the Downtown Area: We disagree with Staff's comments that the Project is "not located in the downtown area." It is most appropriate to consider the project in the Downtown Area.

City of Ann Arbor Downtown Development Authority Area



Project Site: Moravian

500 0 500 Feet



Enclosure 4

The Monrovia (Formerly The Madison) PUD Site Plan
Project SP08-022
Parks and Recreation Services Comments:

March 12, 2009

All comments below have been addressed.

January 9, 2009

1. If the building is truly pedestrian oriented, then please consider placing the pedestrian entrance on Fifth Avenue rather than from the driveway to the parking lot.
2. There may not be enough room for bicycles to negotiate the space next to the parked cars in the parking garage. The area with the 17 bike racks looks too tight. If a car does not pull in exactly as specified, or as will most likely happen, a larger car pulls in the space, there is a danger that the bicycles will be hit and that there will not be enough room for bicyclists to pull park their bicycles or remove them from the space. Would it be possible to trade places with one of the barrier free spaces to allow for just one vehicle and a pedestrian walk rather than two smaller vehicles in those spaces?
3. As this will primarily be student housing and there will probably be unrelated students living in the bedrooms, can you please add several on street bicycle parking spaces to serve the population?
4. Is the roof of the building accessible for residents, or only the 1st floor patio for 1st floor residents?
5. Park contribution for 60 units would be $60 \times .0124 = .744$ acres \times \$40,000/acre = \$29,760. Need to have a discussion concerning credit for the plaza space, and if roof top is available for resident open space.

Enclosure 5

The Moravian's Response to Ann Arbor Planning Staff Comments Dated March 26, 2009

Date: May 6, 2009

To: Planning & Development Services, C/O Alexis DiLeo, City Planner

From: Jeff Helminski

Re: New Residential Planned Unit Development ("PUD") Zoning District and PUD Site Plan
The Moravian, 201 East Madison Street
File SP08-022 and Z08-036

Much discussion has centered on the inclusion of additional open space in the form of balconies and rooftop terraces all of which would increase the quantity of open space on site. After thoughtful consideration and in large part based on the comments from our neighbors and from the planning commission working sessions, it has been decided that the potential detrimental effects of these additional forms of open space (visual and noise) are not outweighed by the benefits they would provide or the quantitatively measurable technical increase in open space.

* We object to the noise from balconies
& terraces.