

816 Forest and 815 Church Street

Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this _____ day of _____, 2016, by and between the City of Ann Arbor, a Michigan municipal corporation, with offices located at 100 N. Fifth Avenue, Ann Arbor, Michigan 48107 (“City”), and S&H 816, LLC, a limited liability corporation, with principal address at 4350 Hilldale Drive, Ann Arbor, Michigan 48105, and Mollmax, LLC, a Michigan limited liability corporation, with principal address at 602 Soule Street, Ann Arbor, MI 48103, (“Developers”).

Recitals

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land when the City is amending its zoning map, or a conditional zoning when the city is zoning property in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developers, that certain conditions could be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On July 24, 2015, Developers applied for an amendment to the zoning map for certain land in the City of Ann Arbor at 816 Forrest Street and 815 Church Street as more fully described on the attached **Exhibit A** (the “Property”).
- D. Subsequently, Developers voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- E. On February 2, 2016, the Planning Commission, after public hearing, recommended denial of zoning of the Property to R4D with Conditions

(Multiple-Family Dwelling District). An area plan waiver was approved by the Planning Manager because no new development or improvements to the site are proposed in association with the requested zoning.

- F. On _____, the City approved the conditional rezoning subject to this Statement of Conditions.
- G. Based on the specific facts and circumstances regarding this Property, the City has decided to accept the Developers' offer of conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developers desire to set forth and confirm the conditions under which the City granted conditional zoning of the Property.

NOW, THEREFORE, Developers and City agree:

1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached Exhibit A. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developers and the City, and their heirs, successors and assigns, and shall run with the Property.
2. Site Plan. The conditional zoning was granted by the City based, in part, by the Developer's stated proposed use of the Property as multi-family residential and office.
3. List of Conditions. The conditional zoning was granted to the Developers based on conditions that were voluntarily offered by the Developers. The City and Developers agree that restrictions on the use and development of the land are necessary for consistency and conformance to the Master Plan – Future Land Use Element with regard to new development in the Central planning area. The conditions which form the basis of the City's grant of the conditional zoning are as follows:
 - i. If the owner of the lot seeks to combine the lot with one or more adjoining lots of record, the owner shall submit the combination request to the Planning Commission, which may evaluate the proposed lot combination based on consistency with the City's Master Plan and other relevant City ordinances and planning documents, and make a recommendation to the City Assessor regarding the proposed lot combination.

If the rezoning is approved, this condition shall be recorded with the Register of Deeds and shall run with the land so as to be binding on the owners and future owners of the parcels.

- ii. Any future construction of a new principal building on the lot (as opposed to construction of a permitted accessory structure, or any renovation of or additions to the principal building existing as of the date of the rezoning) shall be reviewed by the City Design Review Board (or equivalent board or commission), and the owner of the lot shall make good faith efforts to comply with the design suggestions of the Design Review Board.

If the rezoning is approved, this condition shall be recorded with the Register of Deeds and shall run with the land so as to be binding on the owners and future owners of the parcels.

4. Developers Acknowledgment. Developers acknowledge that it voluntarily offered and consented to the provisions contained in this Statement of Conditions. Developers agree that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional zoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.
5. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developers, and Developers acknowledge that they are the owners of the Property. Furthermore, the signatories for Developers acknowledge that they are authorized to enter and execute this Statement of Conditions on behalf of Developers, and bind the Developers to its terms.
6. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other characteristics regarding this Property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional zoning.
7. Obligation to Obtain Other Approvals. Developers acknowledge that any use or development approved by this conditional zoning that may require a special land use permit, a variance, or site plan approval under the terms of the Ann Arbor City Code, may only be commenced if such special land use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of the Ann Arbor City Code.

8. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.

9. Compliance with Statement of Conditions. Developers shall continuously operate and maintain the development and/or use of the Property in full compliance with all of the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained with the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.

10. Rezoning. Developers acknowledge that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the Property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developers to request a rezoning of the Property at any time, or to continue an existing nonconforming use as allowed by law if the Property is rezoned by the City.

IN WITNESS WHEREOF, the parties have caused this Conditional Zoning Statement of Conditions to be executed on the day and year recited above.

WITNESSES:

CITY OF ANN ARBOR
a Michigan municipal corporation

By: _____

By: _____

WITNESSES:

DEVELOPER

By: _____

WITNESSES:

DEVELOPER

By: _____

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing Agreement was acknowledged before me by Christopher Taylor and Jacqueline Beaudry, the Mayor and City Clerk respectively of the City of Ann Arbor on the _____ day of _____, 2016.

_____, Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing Agreement was acknowledged before me by Se Kim of S&H 816, LLC, on the _____ day of _____, 2016.

_____, Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing Agreement was acknowledged before me by Dina Cocco of Mollmax, LLC, on the _____ day of _____, 2016.

_____, Notary Public

My Commission Expires: _____

Exhibit A

Legal description of site

816 South Forest Avenue – Lot 22, Block 3, Hill's Addition to the City of Ann Arbor, as recorded in Liber 60 of Deeds, Pages 134-136, Washtenaw County Records, excepting the rectangular piece in the Northwest corner of the Lot measuring 20 feet in width on the alley at the West end of the Lot and 46 feet in length along the North line of the Lot.

AND

815 Church Street – The North 56 feet of Lot 3 and the south 8 feet of Lot 1 and of the Westerly 16 feet of Lot 5 2, Block 3, Hill's Addition to the City of Ann Arbor, as recorded in Liber 60 of Deeds, Pages 134-136, Washtenaw County Records.

PARCEL ID#: _____