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January 15, 2013

*via email*

City of Ann Arbor City Council  
City of Ann Arbor Planning Commissioners  
Matthew Kowalski, Planner  
Wendy Rampson, Planning Manager  
301 E. Huron Street  
Ann Arbor, MI 48104

Re: 624 Church Street Apartments – Failure to Comply with Site Plan Standards

Dear Honorable City Council Members, Planning Commissioners and City Planning Staff:

On behalf of Galileo Associates, LLC, the owner of Zaragon Place, I enclose a memorandum responding to the letter and statement of Opus Development Company regarding the 624 Church Street Apartments Project.

As set forth in the memorandum, we believe that the Project does not comply with City site plan approval standards, and the site plan should be tabled and not approved until the conditions listed in the attached memorandum are satisfied.

Representatives of Galileo Associates, LLC will attend the public hearing this evening to present its concerns to the Planning Commission.

Thank you for your consideration. If you have questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink that reads "Sandra Sorini Elser".

Sandra Sorini Elser

SLS:bk

Enc.

cc: Opus Development Corporation  
Tice Family LLC  
Stephen Postema, City Attorney  
Kevin McDonald, City Attorney  
Scott Munzel  
Laurence B. Deitch

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JANUARY 15, 2013

**624 CHURCH STREET APARTMENTS**  
**FAILURE TO COMPLY WITH SITE PLAN STANDARDS**

TO: City of Ann Arbor City Council, Planning Commission and Planning Staff

From: Galileo Associates LLC (“Galileo”) owner of Zaragon Place, a multi-story student apartment complex located at 619 East University

Re: Site Plan Submitted by Opus Development Corporation (“Opus”) for 624 Church Street Apartments (“624 Church Street Project”)

**I. FAILURE TO COMPLY WITH SITE PLAN STANDARDS**

On January 7, 2013, Galileo provided a memorandum of objections setting forth in detail the health and safety issues created by the proposed Site Plan for the 624 Church Street Project.

On January 10, 2013 Opus provided a letter and statement regarding Galileo’s objections. The Opus statement is non-responsive to the health, safety and other issues raised by Galileo, and its conclusions are not supported by the facts.

The Site Plan as submitted for the 624 Church Street Project does not comply with the standards set forth in the City Code Section 5-122(6) for approval of a site plan. These standards provide:

\* \* \*

“5-122(6) *Standards for site plan approval.* A site plan shall be approved by the appropriate body after it determines that:

(a) The contemplated development would comply with all applicable state, local and federal law, ordinances, standards and regulations; 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.”

\* \* \*

The Site Plan for the 624 Church Street Project should not be approved until Opus provides evidence of compliance with standards (a) and (c) above. The following is a brief

description of the failure of the Site Plan to comply with all applicable laws, ordinances and codes and its detrimental effect on the public health, safety and welfare of neighboring properties.

## **II. FALL ZONE SETBACK FOR CRANE SYSTEM**

- We are advised by Neumann Smith and O'Neal Construction that no crane system exists that can install heavy precast concrete panels on a zero setback property line without swinging the panels onto the neighboring property.
- Further, the fall zone for the proposed 9 foot 8 inch high and 26 foot long, heavy weight, load bearing precast concrete panels is at least 10 feet.
- MIOSHA Part 10 Lifting and digging equipment section 408.41023a (1) states, "Hoisting routes that minimize the exposure of employees to hoisted loads shall be used. An employee shall not be permitted under a suspended load."
- In addition, MIOSHA provides that no employee shall be within the fall zone of a suspended load that is not being moved except for certain employees engaged in hooking, unhooking, guiding or attaching the load to a structure or component.
- The residents of an adjacent property should be assured at least the protection afforded construction workers.
- To ensure the safety of the residents of Zaragon Place, the western wall of the 624 Church Street Project should be set back to accommodate the fall zone for the precast panels.
- Swinging heavy precast panels over the existing Zaragon Place building and the unprotected patios, bay windows, landscaped back yard area and underground parking areas will create a health, safety and welfare issue by endangering the residents of Zaragon Place, and constitutes a public and private nuisance.
- The existing easement agreement does not allow an exclusive construction easement area on Zaragon Place such as would be required if the western wall is not set back. Rather, the easement is limited to maintenance of the existing 2-story western wall and roof of the current Pizza House building by temporary placement of a ladder for no more than three (3) days with heavy equipment prohibited.

### **RECOMMENDED SITE PLAN CONDITION**

The Site Plan must be revised to provide at least a 10 foot setback of the western wall to allow installation of the precast panels in a manner that (a) complies with MIOSHA and other

applicable laws, ordinances and regulations, and (b) to protect the health, safety and welfare of the Zaragon Place improvements and residents, and (c) to avoid creating a nuisance.

### **III. EXTERIOR PRECAST PANEL SEALANT, WINDOW FRAMES AND GLAZING**

- We have been advised by Neumann Smith and O’Neal Construction that all precast panel systems require application of exterior sealant. In addition, window frames and window glazing (whether vision glass or spandrel glass) will require application of exterior sealant.
- Application of sealant on the western wall of the 624 Church Street Project, will require an exclusive construction access easement for use of the Zaragon Place back yard area, and no such easement exists.

#### RECOMMENDED SITE PLAN CONDITION

The Site Plan must be revised to provide at least a ten foot (10’) setback on the western wall to allow a construction access area for application of exterior sealant.

### **IV. MAINTENANCE OF WESTERN WALL**

- We have been advised by Neumann Smith and O’Neal Construction that the technology does not exist for a maintenance free precast panel system. Maintenance will be required, and such maintenance access is not available on the Zaragon Place property.
- The existing easement only provides for limited access for maintenance and repair by placement of a ladder for no more than three (3) days on the Zaragon Place property, and specifically prohibits heavy machinery, such as would be required to maintain a 13-story building. The maintenance easement is intended only for the existing 2-story Pizza House wall and roof, and does not provide access for other more extensive improvements that would require the use of heavy equipment.

#### RECOMMENDED SITE PLAN CONDITION

The Site Plan must be revised to provide at least a ten foot (10’) setback of the western wall to allow access for building maintenance.

### **V. ZERO SETBACK STANDARDS**

- Notwithstanding the possibility of a building with zero setbacks under the current D-1 zoning, such a setback must be consistent with public health, safety and welfare, and applicable laws and ordinances.

- When a neighboring property has an open and active landscaped back yard with patios and bay windows used by building residents, safety requirement for construction, maintenance and repair dictate that a setback area be required in order to protect the existing neighboring uses, not create a nuisance, and comply with applicable law.

**RECOMMENDED SITE PLAN CONDITION**

The Site Plan must be revised to provide at least a ten foot (10') setback of the western wall to protect the existing neighboring residential use of the Zaragon Place back yard area and to not create a nuisance or health and safety issues.

**VI. NO EASEMENT FOR CONSTRUCTION AND MAINTENANCE**

- As noted above, construction of the 624 Church Street Project will require a substantial, exclusive construction access area. This construction access area must be provided on the 624 Church Street Project, because no construction easement area is available on the Zaragon Place property.
- The existing easement only allows for a temporary maintenance access in a five foot (5') wide area by placement of a ladder for no more than three (3) days without use of heavy equipment and with no damage to the landscaping or other improvements.
- This minimal maintenance easement was designed for maintenance of the existing 2-story Pizza House wall and roof, and is insufficient for the multi-story improvements contemplated by the Site Plan.
- The easement reference to a possible fifteen (15) story building has to do with lateral force standards only, as described below.

**RECOMMENDED SITE PLAN CONDITION**

The Site Plan must be revised to provide at least a ten foot (10') setback of the western wall to allow for maintenance in a manner that does not create a private nuisance on the Zaragon Place property or adversely affect the health and safety of Zaragon Place residents.

**VII. EXHAUST VENTS**

- The louvered exhaust vents on the western wall do not meet Building Code requirements.

- The louvers will do more than screen the HVAC units; they will allow intake and exhaust fumes to vent at the western property line contrary to the Building Code. Such vents must be at least ten feet (10') from the property line.

RECOMMENDED SITE PLAN CONDITION

To comply with applicable Building Code provisions and not create a nuisance on the Zaragon Place property, the Site Plan must be revised to remove louvers on the western wall or the western wall must be set back ten feet (10').

**VIII. WINDOWS ON WESTERN WALL; NO VARIANCE**

- No Building Board of Appeals variance is available to Opus for vision windows on the western wall because placement of such windows on a zero set back wall is a self-created condition that would create a fire and safety hazard for the adjacent Zaragon Place residents.

RECOMMENDED SITE PLAN CONDITION

The Site Plan should be amended to provide for no vision windows on the western wall or the building must be set back ten feet (10') to comply with applicable fire and safety codes.

**IX. STRUCTURAL INTEGRITY**

- The Zaragon Place building was constructed in a manner that would meet the lateral force requirements of the proposed 624 Church Street Project.
- Similarly, to protect the safety of Zaragon Place and not create a public nuisance, the 624 Church Street Project must provide engineering calculation to confirm that the lateral force of the 624 Church Street Project will not adversely affect Zaragon Place.

RECOMMENDED SITE PLAN CONDITION

Site Plan approval must be conditioned on Opus providing engineering plans and calculations to the City engineering department and Galileo confirming no adverse effects on Zaragon Place due to lateral forces that will be exerted by the 624 Church Street Project.

**X. STORMWATER**

- City Code requires that impervious surfaces not drain off site.
- The December 27, 2012 report from the City Systems Planning Unit requires changes in the Site Plan to confirm all building and roof drainage will flow to the underground detention system.

### RECOMMENDED SITE PLAN CONDITION

Opus must provide engineering plans and calculations and a revised Site Plan to the City and Galileo confirming that the proposed impervious surfaces at the 624 Church Street Project will not drain off site.

#### **XI. INACCURATE DEPICTION OF ZARAGON PLACE**

- City Code requires an accurate description of existing neighboring conditions, including building wall locations, landscaping and grading to allow the City to accurately assess the impact of new construction on neighboring uses.
- This is especially important in the context of a zero setback building.

### RECOMMENDED SITE PLAN CONDITION

Opus must revise the Site Plan to accurately depict Zaragon Place so the City can assess the effect of the 624 Church Street Project on the Zaragon Place back yard, patios, bay windows, landscape area and underground parking.

#### **XII. GENERATOR**

- The emergency generator must be accurately depicted on the Site Plan, along with evidence of operating conditions, including noise levels, to ensure no disturbance of neighboring uses.

### RECOMMENDED SITE PLAN CONDITION

Prior to Site Plan approval, Opus must provide information on the location, noise level, performance and operation of the proposed emergency generator, along with visual and acoustical screening for review by the City and Galileo.

#### **XIII. CONCLUSION; NO SITE PLAN APPROVAL**

Planning Commission consideration of the 624 Church Street Project should be tabled and the Site Plan should not be approved until such time as Opus has submitted a new Site Plan creating at least a ten foot (10') setback on the western side of the property sufficient to allow construction, maintenance and repair without encroaching on Zaragon Place, to ensure security and safety for the residents of Zaragon Place, and to address the other Site Plan conditions described in this memorandum.

Respectfully submitted,

GALILEO ASSOCIATES LLC  
Owner of Zaragon Place

cc: Opus Development Corporation  
Scott Munzel  
Tice Family LLC  
City attorneys Stephen Postema and Kevin McDonald