

LAURENCE B. DEITCH
LDEITCH@BODMANLAW.COM
313-392-1055

CITY OF ANN ARBOR
CITY CLERK
REC'D
2013 MAR -1 PM 3: 17

February 28, 2013

BODMAN PLC
6TH FLOOR AT FORD FIELD
1901 ST. ANTOINE STREET
DETROIT, MICHIGAN 48226
313-393-7579 FAX
313-259-7777

via email and First Class Mail

City of Ann Arbor City Council
301 E. Huron Street
Ann Arbor, MI 48107

Re: Objections to 624 Church Street Apartments Site Plan

Dear Honorable City Council Members:

On behalf of Galileo Associates LLC, the owner of Zaragon Place located at 619 University, I write to once again express our objections to the proposed site plan submitted for 624 Church Street Apartments ("624 Project"). On January 7, 2013 and January 15, 2013 we provided you and the City Planning Commission with detailed objections to the 624 Project. Copies of these memoranda are attached.

The following is a brief summary of our key objections:

I. The 624 Church Project does not comply with site plan standards and required findings of the City Council Resolution

City Council Code Section 5-122(6)(c) requires City Council to determine that:

"(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."

In addition, the proposed City Council Resolution includes a finding by City Council that "the development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety and welfare."

The 624 Project is inconsistent with the City site plan standards and does not meet the findings set forth in the City Council Resolution for the following reasons:

A. **Endangering the Public Health, Safety, and Welfare.** The western wall of the 13 story tower proposed for the 624 Project is located within .02 feet of the western property line, immediately adjacent to the open backyard area of Zaragon Place. This backyard area includes patios, bay windows and outdoor gathering areas for student residents and other members of the public.

February 28, 2013

Page 2

No crane system exists that can install the heavy pre-cast concrete panels being proposed for the 624 Project western wall without swinging the panels over the Zaragon Place backyard area, and thereby endangering the safety and welfare of the Zaragon Place residents and other members of the public.

Further, the western wall of the 13 story tower cannot be maintained without encroaching on the Zaragon Place backyard and endangering the safety of Zaragon Place residents and other members of the public.

Under applicable construction and maintenance standards, a clear fall zone area must be available to protect the safety of workers and others on the ground, and this standard should also apply to protect the safety of adjacent residents and the public.

There is no easement or other legal access right over the Zaragon Place property, and Galileo cannot grant such an easement because to do so would endanger the health, safety and welfare of its student residents and other members of the public.

B. **Causing a Nuisance.** Development of the 624 Project as currently proposed will create a private or public nuisance as a result of the inevitable encroachments onto the Zaragon Place backyard area during construction and maintenance of the western wall.

Such encroachment will endanger the Zaragon Place residents and other members of the public, thereby creating a private or public nuisance and this encroachment and is not permitted by any easement or other property right available to the 624 Project.

II. **Conclusion**

In order to protect the public health, safety and welfare, to not create a private nuisance, to comply with the standards required by the City Code for site plan approval, and to comply with the findings in the City Council Resolution, the 624 Project Site Plan as presented should not be approved unless a condition of approval is a requirement that the western wall be set back at least ten (10) feet from the western property line.

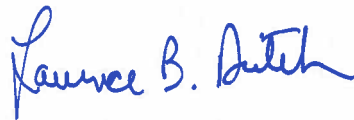
February 28, 2013

Page 3

A representative of Zaragon Place will attend the public hearing on March 4, 2013 to present these objections in person to City Council.

Thank you for your attention to this matter. If you have questions, please do not hesitate to contact me or my partner, Sandra Sorini Elser, (734) 930-2495 ssorini@bodmanlaw.com.

Very truly yours,



Laurence B. Deitch

LBD:bk

cc: Stephen Postema, City Attorney
Kevin McDonald, City Attorney
Wendy Rampson, Planning Manager
Matthew Kowalski, City Planner
Scott Munzel
James Reach
Galileo Associates LLC

JANUARY 7, 2013

OBJECTIONS TO SITE PLAN FOR 624 CHURCH STREET APARTMENTS

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: 624 Church Street Apartments (“624 Church Street Project”) a proposed multi-story student apartment complex located at 624 Church Street (Pizza House Addition), site plan dated November 26, 2012 (“Site Plan”), submitted by Opus Development Corporation (“Opus”) and the Tice Family LLC (“Tice Family”).

I. INTRODUCTION

Zaragon Place, an existing multi-story student apartment complex, is located immediately adjacent to the west side of the proposed 624 Church Street Project.

The Zaragon Place building is set back from its eastern property line to provide its student residents with light, air and a landscaped “back yard” with patios and bay windows for socializing and gathering. This setback area is between 15 feet and 23 ½ feet wide and is also used by Zaragon Place to ensure that its construction, maintenance and repair activities do not encroach upon the neighboring Church Street properties.

Conversely, the 624 Church Street Project is proposed to be constructed with a zero setback on its west side, having its 13 story western wall within .02 feet of the eastern boundary of the Zaragon Place. This zero setback raises a number of health and safety issues for the student residents of Zaragon Place, as well as issues of potential trespass and encroachment on the Zaragon Place property during construction and future repair and maintenance of 624 Church Street.

The 624 Church Street Project should not be allowed to proceed and the Site Plan should not be approved until all of the following issues are addressed in a manner that comports both with applicable law and urban planning best practices:

II. HEALTH AND SAFETY ISSUES

With a zero setback, it will be impossible to construct the western wall of the 624 Church Street Project without swinging a crane holding 9 foot 8 inch high and 26 foot long, heavy weight, load bearing precast concrete panels over the Zaragon Place property, including the Zaragon Place building and landscaped rear yard area, as well as student patio areas and bay windows, and the below grade parking areas of Zaragon Place located beneath its back yard area. In addition, scaffolding will be required for applying sealant for the precast panels, and for other installations along the western wall, which will encroach on and may result in the danger of

debris being dropped on the Zaragon Place landscaped area, the patios and bay windows of student residents, and potentially piercing the below grade parking areas. These encroachments raise serious safety concerns for the student residents both within and outside the building. In addition, once constructed, the western wall with zero setback would be impossible to maintain without access upon or over the Zaragon Place property raising additional security and safety concerns for the residents of Zaragon Place arising from maintenance equipment and personnel.

To address these health and safety issues, the proposed new western wall of the 624 Church Street Project must be set back at least ten feet (10') to enable construction, maintenance and repair on the 624 Church Street property without affecting the safety and security of Zaragon Place residents.

III. TRESPASS

With a zero setback, it will be impossible to construct or reconstruct the western walls of the proposed 624 Church Street Project without trespassing on the Zaragon Place property. In order to protect the safety and security of its residents, the owner of Zaragon Place will **not** grant either temporary or permanent access to its property for purposes of such construction and future maintenance or repair. Instead, the 624 Church Street Project must be set back from its western boundary to allow for necessary construction and future maintenance access on its own property. Any entry on the Zaragon Place property for purposes of such construction, maintenance or repair of the 624 Church Street Project will constitute a trespass, and if necessary, the owner of Zaragon Place will bring an action for an injunction prohibiting any such trespass.

It should be noted that there is an existing easement agreement recorded in January of 2007 between the Tice Family and Galileo at the time of construction of Zaragon Place. This easement grants the Tice Family a 0.65 foot easement to allow the existing Pizza House caissons and retaining wall to encroach on the Zaragon Place property, together with a limited 5 foot wide maintenance easement for temporary placement of a ladder on the Zaragon Place property for no more than three (3) days at a time to maintain the existing 2 story western wall and roof of the current Pizza House building. This easement only exists as long as the Zaragon Place property is not improved in that area and specifically prohibits any heavy machinery within this 5 foot limited access easement area. The easement also prohibits further attachments to the western wall of the Pizza House building. Thus, the easement provides no basis for access to Zaragon Place for the major construction contemplated for the 624 Church Street Project.

To avoid these trespass issues, the western wall of the 624 Church Street Project must be set back at least ten feet (10') so construction, maintenance and repair can occur within the land owned by the Tice Family.

IV. EXHAUST VENTS

Sheet A2.3 of the Site Plan shows large aluminum louver exhaust vents located on the western property line, which appear to be designed to vent exhaust from the Pizza House restaurant directly on to the Zaragon Place property. The placement of the exhaust vents so close

to the property line violates building code section 506.3.12.3 which requires exhaust vents to be located at least ten feet (10') horizontally from adjacent property lines. These exhaust vents will create a nuisance on the Zaragon Place property and will adversely affect the health of student residents of Zaragon Place.

These exhaust vents must be relocated or the 624 Church Street Project set back at least ten feet (10') from its western wall.

V. WINDOWS ON WESTERN WALL; NO VARIANCE AVAILABLE

The Site Plan shows windows on the western wall of the Project along the entire 13th floor, as well as windows in bedrooms at all levels. According to applicable building and fire codes, a zero setback wall must be a firewall and windows whether sprinklered or not, are prohibited. See Section 602 and Table 705.8 of the 2009 Michigan Building Code. Windows on a zero setback wall present a fire, smoke, and safety hazard for the Zaragon Place residents.

Further, because it is feasible for the developer to provide a setback along the western property line to enable placement of windows in compliance with the building code, no variance is available under the building code. The standards for granting a variance under the building code include a demonstration that (i) there is a hardship or practical difficulty other than the mere inconvenience to the developer or inability to obtain a higher financial return, (ii) the variance does not adversely affect neighboring properties, and (iii) the variance is caused by the physical characteristics of the property, and not by a self-imposed condition. The 624 Church Street Project meets none of these standards. The location of the western wall at the property line is a self-imposed condition, windows on such wall would create a fire safety hazard for the Zaragon Place residents, and the location is merely a convenience for the developer designed to obtain a higher financial return.

Thus, the western wall must be set back at least ten feet (10') to comply with the fire and building code requirements and to protect the safety of Zaragon Place residents.

VI. STRUCTURAL INTEGRITY; RETAINING WALL

It is not clear from the Site Plan that the design of the 624 Church Street Project will protect the structural integrity of Zaragon Place. It is well established that owners of neighboring land have a right of support of their land from the neighboring property owners. Opus or the Tice Family must provide engineering drawings and calculations showing the lateral force that will be exerted by the 624 Church Street Project and that the structural integrity of Zaragon Place will not be adversely affected. Such information should be provided to the Planning Commission, the City Engineering Department and Zaragon Place for review and approval.

This is particularly important in the area of the existing retaining wall separating Zaragon Place from the 624 Church Street Project. Detailed plans and specifications must be provided to confirm that any proposed reconstruction of the retaining wall will be consistent with the requirements of the existing easement, will not create a trespass, and will not adversely affect the

stability of the Zaragon Place landscaping and improvements, and the safety of its student residents. This information should be provided to the Planning Commission, City Engineering Department and Zaragon Place for review and approval.

VII. STORMWATER

It is not clear from the Site Plan that the stormwater along the west side of the Project will be properly retained on site or directed away from Zaragon Place. This is especially important because Zaragon Place is located at a lower elevation than the proposed 624 Church Street Project. Opus or the Tice Family must provide engineering drawings and detailed calculations demonstrating the capacity and placement of stormwater detention on site, and that there will be no stormwater or flooding issues resulting from construction of the 624 Church Street Project. This information should be provided to the Planning Commission, City Engineering Department and Zaragon Place for review and approval.

VIII. INACCURATE DEPICTION OF ZARAGON PLACE

The Site Plan for 624 Church Street does not accurately depict the location of Zaragon Place, including its several different planes, bay windows and patios on the eastern side, as well as below grade parking and earth retention areas. The Site Plan should be revised to accurately reflect the differing planes of the Zaragon Place eastern wall and the patios, bay windows and landscaping and amenities of the Zaragon Place “backyard,” as well as below grade parking and earth retention areas. These revisions must also demonstrate that the 624 Church Street Project will not adversely affect the existing Zaragon Place improvements.

IX. RESIDENTIAL USE PREMIUM

The 624 Church Street Project density is proposed to be 665% FAR, which exceeds the 400% FAR in the D-1 District unless density premiums exist. It is not clear whether the 624 Church Street Project claims a residential premium for the bedroom windows along the western wall. Opus or the Tice Family should submit premium calculations based on no windows along the western wall, or preferably relocating the western wall at least ten feet (10') from the property line so the windowed bedrooms can be counted in the premium.

X. BLACK SQUARE IN WEST ELEVATION

Sheet A2.3 of the Site Plan shows a black square at ground level on the western elevation of the 624 Church Street Project. It is not clear if this is a window or an opening onto the Zaragon Place property. Opus or the Tice Family should provide clarification. Any open areas at grade level should be fenced or otherwise secured to prevent access to the steep grade separating the 624 Church Street Project from Zaragon Place and to protect the security and privacy of Zaragon Place residents.

XI. GENERATOR

It is not clear from the Site Plan where the generator for the 624 Church Street Project will be located. Opus or the Tice Family should provide generator information confirming that it will not create a nuisance or adversely affect Zaragon Place.

XII. 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 and the Tice Family have 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, and sufficient security and safety for the residents of Zaragon Place, in addition to addressing the other issues raised in this memorandum.

Respectfully submitted,

GALILEO ASSOCIATES LLC
Owner of Zaragon Place

By: *Rick Perlman*
Its: *President of Manager*

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

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