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May 6, 2013

Via E-mail

The Honorable Mayor and City Council
of the City of Ann Arbor
301 East Huron Street
Larcom City Hall, 1st Floor
Ann Arbor, MI 48104

Re: 413 E. Huron Street Site Plan

Dear Mayor Hieftje and Council Members:

I had expected that the last letter I wrote you on the 413 E. Huron Street Site Plan would be my last letter. However, the developer's attorneys on Friday, May 3 and this morning, sent you letters which require response.

The developer is greatly inconvenienced because it has two attorneys writing you separately. This, of course, makes it much easier to speak out of both sides of one's mouth. The first letter, sent to you May 3 from attorney Patrick Lennon went to great lengths to tell you that you are compelled to comply with the Zoning Ordinance, and that you are therefore required to approve the site plan before you. Mr. Lennon's letter was followed by attorney Susan Friedlaender's May 6 letter. Ms. Friedlaender told you that, in fact, you should not comply with the express standards set forth in the Zoning Ordinance.

The Zoning Enabling Act requires that if a municipality wishes to provide for site plan approval, it must in its zoning ordinance set forth the standards for approval of the site plan¹.

The City Council complied with the Zoning Enabling Act and set forth the standards for approval of a site plan. The Zoning Ordinance expressly sets forth the standards which

¹ The Hessee Case, referred to by Ms. Friedlaender, was decided before the standards mandate was added to the Zoning Enabling Act. The legislature amended the Act to add the standards requirement which Hessee ruled should be included in the Zoning Enabling Act. The Hessee decision is therefore irrelevant.



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must be complied with and which you must find must have been met in order to approve the site plan. Section 5:122(6). Those standards have not been met.

It is not for you to decide which requirements of the Zoning Ordinance to follow and which not to follow; as Mr. Lennon points out, you must follow the requirements of your Zoning Ordinance.

Ms. Friedlaender, in her letter, stands the Zoning Ordinance on its head. No one has the burden to show that the site plan will impair public health, safety, and welfare. Contrary to Ms. Friedlaender's suggestion, the Zoning Ordinance is explicit – the developer has the **affirmative** obligation to show that the site plan meets the standards of the Zoning Ordinance, including, among others, that: *“the development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare”*, and you cannot approve the site plan if the developer has failed to meet its burden.

We submit that you cannot make the required findings under the Zoning Ordinance and you must, therefore, deny approval of the site plan.

Very Truly Yours,

STROBL & SHARP, P.C.

By:

Norman Hyman

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NH/kva

cc: Mayor and City Council Members (via e-mail)
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