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January 7, 2013

CITY OF ANN ARBOR
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via email and First Class Mail

City of Ann Arbor City Council
City of Ann Arbor Planning Commissioners
Matthew Kowalski, City Planner
Wendy Rampson, Planning Manager
301 E. Huron Street
Ann Arbor, MI 48107

Re: 624 Church Street Apartments; Site Plan Dated November 26, 2012
Submitted by Opus Development Corporation and the Tice Family LLC

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

On behalf of Galileo Associates LLC, the owner of Zaragon Place located at 619 East University, I enclose a memorandum of objections to the proposed site plan submitted for 624 Church Street Apartments.

The objections set forth a number of significant health, safety, security and other issues related to the proposed 624 Church Street project. The project should not be allowed to proceed and the site plan should not be approved until all of these objections are addressed in a manner providing sufficient security and safety for the residents of Zaragon Place, consistent with applicable law and urban planning best practices.

Thank you for your attention to this matter. If you have question, 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: Opus Development Corporation
Tice Family LLC
Stephen Postema, City Attorney
Kevin McDonald, City Attorney
Scott Munzel
Sandra Sorini Elser

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: *Ralph W. Perlman*

Its: *President & Manager*

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

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