

OPUS DEVELOPMENT COMPANY

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January 10, 2013

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: Response to Bodman Attorneys & Counselors letter dated January 7, 2013

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

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

On behalf of Opus Development Company, we want to first and foremost thank you for your involvement thus far in our 624 Church Street Apartments project.

In addition, we want to confirm receipt of the *memorandum of objections* provided by Bodman Attorneys & Counselors dated January 7, 2013. Upon thorough review of the memorandum, we have provided our responses in the enclosed document.

In summary, our responses are based entirely on the facts of the project design and projection construction, while taking into account building and zoning codes, as well as the health and safety of persons involved in the project, including but not limited to neighboring civilians and construction workers.

The 624 Church Street Apartments project will be constructed with an unwavering detail to health and safety. We look forward to continuing to work with you, in order to develop a leading, Class A project.

Thank you for your consideration and review of our project. If you have any immediate questions, please feel free to contact me at 847.318.1670, mark.bell@opus-group.com.

Kind Regards,



Mark J. Bell

Cc: Tice Family LLC
Stephen Postema, City Attorney
Kevin McDonald, City Attorney
Scott Munzel
Bodman Attorneys & Counselors

OPUS RESPONSES TO ALLEGATIONS CONTAINED IN ZARAGON PLACE LETTER DATED JANUARY 7, 2013

I. 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.

- **Opus Response:**
 - **Opus will be utilizing a crane system whose swing area has been engineered not to encroach onto the Zaragon Place property. We recognize the West elevation is a near zero lot line condition. An appropriate construction phasing plan, including crane selection and placement program, will be implemented to ensure the health and safety of all persons and property.**
 - **Opus has significant experience constructing high-rise projects in dense urban areas. As with all Opus projects, a safety protocol program has been established. Said program has been developed with input from Opus' insurance carrier and safety director. The safety program will utilize best practices, safety protocol, and will comply with all applicable laws and regulations, including health and safety codes. To that end, any potential safety risk to any persons or property on the jobsite or neighboring properties will be mitigated.**

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 patio student residents, and potentially piercing the below grade parking areas. These encroachment raise serious safety concerns for the student residents both within and outside the building.

- **Opus Response: No scaffolding will be utilized during the construction process. Opus will be utilizing a precast wall panel system, which will not require any type of external sealant applications.**

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.

- **Opus Response: The precast wall panel system is maintenance free, as with any reinforced architectural precast panel. Thus, there should be no maintenance safety issues associated with building skin materials. In any case, there is an existing maintenance easement described below benefitting the subject property, which permits required maintenance along the West elevation.**

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.

- **Opus Response: Setback requirements are established by the City of Ann Arbor and the building will be constructed in accordance with the requirements established and approved by the City of Ann Arbor.**

II. 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.

- **Opus Response: Construction of the proposed building is not dependent upon the existing easement agreement, and will be coordinated accordingly. The existing easement agreement contemplates construction and maintenance of a 15-story building on the subject property, and maintenance is not limited to the existing improvements, but rather covers any above-ground improvements, and has no vertical limits. There will be no attachments to the Western wall of the type that are prohibited by the existing easement agreement.**

III. 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.

- **Opus Response: The louvers shown are not exhaust vents. There are existing roof-top mounted HVAC units on the roof of the second floor of the existing pizza house restaurant that will remain in place. The louvers shown are to screen these units from view while allowing for the free movement of air around the units.**

IV. 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.

- **Opus Response: Windows on the West elevation are currently designed as a combination of spandrel and vision glass. In the event that Opus is unsuccessful in receiving a BBA variance during the building permit review process, the existing west elevation design may be replaced with spandrel glass with fire rating systems behind it. The building interior plans do not depend on this glass wall being vision glazing.**

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.

- **Opus Response: The building will be constructed in accordance with all codes, setbacks and standards as established and enforced by the City of Ann Arbor.**

V. 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.

- **Opus Response: Appropriate engineering design standards will be utilized, all by a Michigan licensed structural engineer. All engineering plans and calculations will be submitted to the City of Ann Arbor for comment and approval following City Council action. As mentioned above, Opus has significant experience in the design and construction of buildings of a type and character similar to the proposed building, and a safety protocol program will be implemented prior to commencement of construction. The existing easement agreement requires the owner of Zaragon Place to have designed and constructed Zaragon Place to meet lateral support standards as would permit construction of a 15-story building on the subject property.**

VI. 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.

- **Opus Response: The intent of the stormwater design as submitted on the site plan is for all roof and pavement stormwater runoff to be collected in the stormwater system and conveyed into a containment vault. This vault will then outlet to the East and into the Church Street storm sewer system. Per municipal requirements, the vault is designed to encourage stormwater to infiltrate into the ground. Final detailed grading and storm system design will be provided with engineering plans, as required by the City, after site plan approval and prior to construction.**

VII. 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.

- **Opus Response: The site plan depiction prepared and submitted by The Atwell Group and Bradley J. Moore & Associates simply provides a contextual relationship of surrounding buildings, in accordance with City requirements.**

VIII. 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.

- **Opus Response:**
 - **In the event Opus is unsuccessful in receiving a BBA variance during the building permit review process to allow vision windows as shown on the west elevation, walls within the building can be re-configured so as to make these windows unnecessary as vision panels. As an alternative, spandrel windows can be provided at the same locations with all code compliant fire ratings included inside the wall assembly, so as to maintain the visual appeal of the project design with the required fire rating.**
 - **A LEED Silver density premium has been included for this project.**
 - **Bradley J. Moore & Associates, a local architect familiar with Ann Arbor zoning requirements, developed all measurements and calculations presented in the project submittals. Opus has reviewed all project submittals, and stands by the submitted calculations.**

IX. 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.

- **Opus Response: The existing fence condition will remain “as-is” with a fence in place. The black square is simply a symbol to convey an "open to the air" area. The fence location is clearly depicted on the plans submitted.**

X. 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.

- **Opus Response: The generator will be located generally within the first floor tower footprint, near the middle of the building. All code requirements will be met.**