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June 1, 2009

Mr. Kevin S. McDonald
Ann Arbor City Attorney's Office
City of Ann Arbor
100 N. 5th Avenue
P.O. Box 8647
Ann Arbor, MI 48107

Subject: **City Place Site Plan / Ann Arbor, Michigan / City File No. SP09-07
Our File Number 1096.000**

Dear Mr. McDonald:

I have reviewed your letter dated May 29, 2009 responding to my letter dated May 27, 2009. I respectfully disagree with the conclusions you have reached and ask that you reconsider your position. You indicate you have reviewed the "requirements of the ordinance and the facts regarding the placement of this site plan," but do not provide any specific facts upon which you base your conclusion that the Planning Commission procedure was acceptable. I have attached an affidavit of Thomas Whitaker listing what City Place documents were on display in the lobby of City Hall even as late as May 11, 2009.

I would note that under Michigan law the rules governing construction of statutes apply with equal force to the interpretation of municipal ordinances. Gora v. City of Ferndale, 456 Mich 704 (1998). One rule of statutory construction equally applicable to Ann Arbor's ordinances is that words are to be given their natural and ordinary meaning. The requirement in the ordinance is that a site plan shall be "displayed" 24 hours a day, 7 days a week for at least one week prior to a planning commission and council public hearing. Ann Arbor Code, Chap. 57, Sec. 5.136(2). The word "displayed" cannot logically be construed as allowing as a substitute for an accurate site plan a stamped notice on a document referring someone to check for later revisions at an office which is closed after 5 p.m. and on weekends.

Your letter does not dispute that outdated plans were on display prior to the Planning Commission public hearing on April 21, 2009, but provides as justification that Council has the final authority to approve site plans. However, the fact that City Council makes the final decision regarding a site plan does not excuse an earlier failure to comply with this ordinance requirement. It is clear that the City Council can only review a site plan after receiving a report and recommendation from the Planning Commission. Ann Arbor Code, Chap. 57, Sec. 5.122(3). Because the ordinance *requires* a Planning Commission recommendation, any recommendation that is based on a procedure contrary to ordinance compels Council to remand this matter so that the ordinance procedure can be properly followed. Just as failing to strictly adhere to a statutory procedure can cause an ordinance to be void, so too the City's failure to adhere to the site plan procedure in its own ordinance causes the Planning Commission recommendation

to be void¹.

After Mr. Whitaker alerted the City to the outdated plans on display in the City Hall lobby, the City sometime after May 11, 2009 replaced the site plan on display with a newer version. However, there is still confusion existing with what is on display. It should be noted that as of Friday May 29, 2009 several pages of the site plan on display in the City Hall lobby have different revision dates than the pages of the plan (in reduced format) included in the City Council packet for June 1, 2009. If Council were to act on the plan pages included in the Council packet, there is the potential for a new violation of Chapter 57, Sec. 5.136(2) because three of the plan pages on display (A3.9B, A3.10B and B1.1) are revisions dated April 9, 2009, and the counterpart pages in the Council packet for A3.9B and A3.10B are revisions dated March 6, 2009, and for page B1.1 a revision dated March 13, 2009².

In fairness to Ann Arbor's citizens, we ask that you reconsider your response and request that City Council remand the City Place site plan for a new hearing before the Planning Commission that complies fully with Ann Arbor ordinances.

Please include this letter and attached affidavit as part of the record of City Council proceedings on June 1, 2009.

Respectfully submitted,
RENTROP & MORRISON, P.C.



Susan E. Morrison

Enclosure

cc: Mayor John Hieftje
City Council Members
Stephen K. Postema
Thomas Whitaker

¹See, e.g. Keating International Corporation v Orion Township, 51 Mich App 122, 125 (1974) aff'd 395 Mich 539 (1975)

Failure to strictly adhere to the requirements of an enabling act voids any zoning ordinance passed pursuant to that enabling act.

* * *

Therefore, because of someone's failure to fill in the blanks on a standard notice form, the attempt to rezone plaintiffs' property is void.

²Mr. Whitaker's attached affidavit also describes the confusion in exhibit dates between the on-line staff report and the copy of the staff report delivered to the Planning Commission members prior to the April 21, 2009 Planning Commission meeting.

AFFIDAVIT OF THOMAS WHITAKER

Thomas Whitaker, being duly sworn, deposes and states:

1. I, Thomas Whitaker, am of full age and am competent to make this affidavit.
2. I reside in the City of Ann Arbor, Michigan and own property located at 444 S. Fifth Street and 450 S. Fifth Street, across the street from the proposed project on Fifth Street known as City Place. I am President of the Germantown Neighborhood Association.
3. Pursuant to the Code of the City of Ann Arbor a site plan is required to be "displayed in a location in City Hall open to the public 24 hours per day, 7 days each week, for at least one week prior to the City Council and Planning Commission public hearings."
4. I reviewed what had been on display in the City Hall lobby for the City Place site plan Planning Commission public hearing and discovered that on May 4, 2009 and even as late as May 11, 2009 the version of the site plan on display in the lobby was still a version of the site plan with a cover sheet dated March 2, 2009. Stamped on the site plan pages was a message stating "See planning dept. for latest revisions". I made a video recording showing the dates of site plan pages on display on May 4, 2009. The dates on the sheets of that site plan are as follows:

- 1 Cover Sheet 03/02/09
- 2 Existing Conditions 03/02/09
- 3 Removal Plan 03/02/09
- 4 Dimensional Site Plan & Alternate Layout 03/02/09
- 5 Grading Plan 03/02/09
- 6 Utility Plan 03/02/09
- 7 Drainage Are Plan, Storm Detention Calcs & Details 03/02/09
- 8 Soil Erosion Control Plan 03/02/09
- 9 Landscape Plan 03/02/09
- 10 Miscellaneous Details 03/02/09
- 11 Aerial Overlay Plan 03/02/09
- 12 Photometric Plan 03/02/09
- B1-0B Floor plans 2/25/09
- A3.4B and other elevation drawings showing a flat roofed, brick structure, as well as multiple "alternate" configurations. All dated 3/6/09.

5. In contrast, the excerpts of the City Place site plan (in reduced format) attached to the staff report that was distributed to Planning Commission members for the April 21, 2009 meeting consisted of the following documents:

- 4 Dimensional Site Plan & Alternate Layout 03/25/09*
- 9 Landscape Plan 03/25/09*
- A3.9B Building Elevations 03/06/09
- A3.10B Building Elevations 03/06/09
- B1.1 Floor Plans 3/13/09*
- B1.2 Accessory Building 04/15/09*

6. As can be seen by the dates of the documents delivered to and acted on by the Planning Commission, only the 2 drawings dated 3/06/09 were part of the documents on display in the City Hall lobby. None of the other drawings (marked with asterisks) were available for review by the public after business hours, and in addition, drawing B1.2 (prepared 4/15/09) was not available for a full 7 days prior to the public hearing.

7. In addition, it should be noted that there was a discrepancy between the on-line version of the site plan attachments to the planning staff report compared with the hard copy delivered to Commission members. A copy of the on-line version of the City Place staff report attachments which I printed from the City's website on 4/20/09 is attached as Exhibit A. This included revision dates of 4/9/09 on pages A3.9B and A3.10B, whereas the version of the staff report delivered to the Planning Commission members had revision dates of 03/06/09 for those pages (see paragraph 5 above).

8. After I alerted the City to the outdated site plan on display in the City Hall lobby a newer version of a site plan for City Place was put on display sometime after May 11, 2009, this time without the phrase stamped onto it as described in paragraph 4 above.

9. The City Council packet for its June 1, 2009 meeting has included a planning staff report on the City Place site plan with the same site plan excerpts as included in the packet to Planning Commission members (see paragraph 5 above). However, several of these pages have a different revision date than the comparable pages of the City Place site plan on display in the City Hall lobby which I reviewed on May 29, 2009. Three of the plan pages on display (A3.9B, A3.10B and B1.1) have revisions dated 4/9/09, whereas the comparable pages in the Council packet (a copy of which I reviewed from the City of Ann Arbor website) have revision dates of 3/06/09 for pages A3.9B and A3.10B and a revision date of 3/13/09 for page B1.1.

Further Affiant Sayeth Not.

Date

Thomas Whitaker

STATE OF MICHIGAN)
)SS
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2009.

_____, Notary Public
State of Michigan, County of _____
Acting in the County of _____, Michigan
My commission expires: _____

City Place

Zoning Map



200 0 200 400 Feet



Prepared by Ann Arbor City Planning Department

City Place PUD



0 100 200 400 Feet

Map Legend
— Railroads



Maps available online:
<http://gisweb.ewashtenaw.org/website/mapwashtenaw/>

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LEGEND

- CONCRETE PAVEMENT
- HEAVY DUTY CONCRETE PAVEMENT
- RETAINMENT WALL
- ASPHALT DRIVE
- TRUCK AREA
- BARBER PRIZE PARKING SPACES
- BACK OF CURB TO BACK OF CURB
- NUMBER OF PARKING SPACES

DEVELOPMENT SUMMARY

Category	Area (sq ft)
Site Area	100,000
Impervious Area	80,000
Permeable Area	20,000
Roof Area	15,000
Other	5,000


ALTERNATIVE ANALYSIS NOTES

- The proposed building is a 10-story office building with a total floor area of approximately 1,000,000 sq ft. The building is located on the corner of Hamilton Place and Jefferson St. The building is proposed to be constructed in two phases. Phase 1 will consist of the first five floors and Phase 2 will consist of the remaining five floors. The building is proposed to be constructed in accordance with the City of Madison Building Code. The building is proposed to be constructed in accordance with the City of Madison Building Code. The building is proposed to be constructed in accordance with the City of Madison Building Code.
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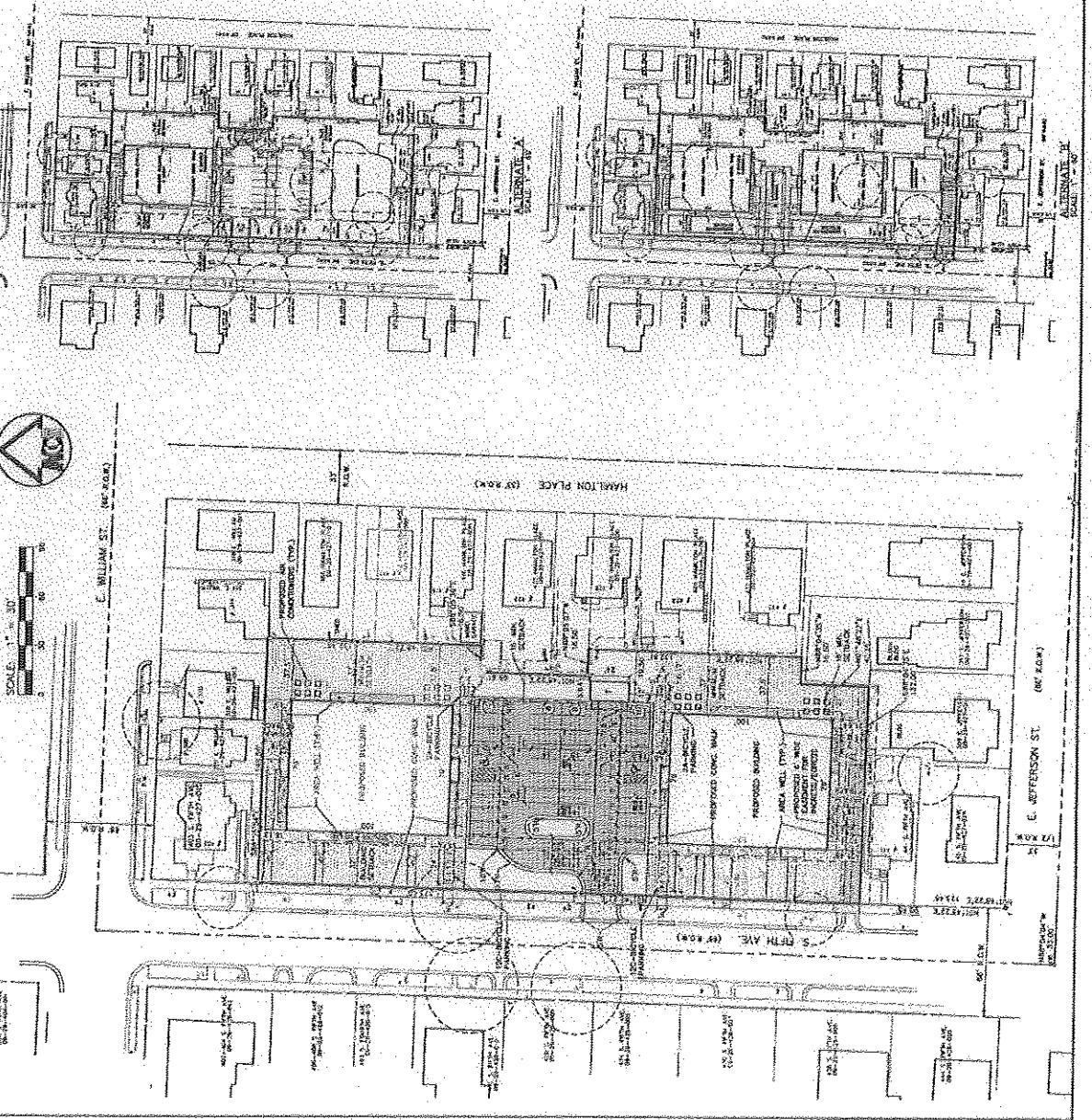
ALTERNATIVES ANALYSIS SUMMARY

Alternative	Area (sq ft)	Impervious Area (sq ft)	Roof Area (sq ft)	Other (sq ft)
Alternative A	1,000,000	800,000	150,000	50,000
Alternative B	1,000,000	800,000	150,000	50,000
Alternative C	1,000,000	800,000	150,000	50,000
Alternative D	1,000,000	800,000	150,000	50,000
Alternative E	1,000,000	800,000	150,000	50,000

Know what's below. Call before you dig.



City of Madison
 Department of Public Works
 150 N. Lincoln Street
 Madison, WI 53703
 (608) 258-3333



LEGEND

- PROPOSED CANOPY TREE
- PROPOSED PLANTING TREE
- PROPOSED EVERGREEN TREE
- PROPOSED DECIDUOUS SHURB
- PROPOSED CANOPY TREE (LANDMARK REPLACEMENT)
- EXISTING TREE TO REMAIN

LANDSCAPE NOTES

1. All trees shall be installed within 15 days of the start of construction.
2. All trees shall be installed within 15 days of the start of construction.
3. All trees shall be installed within 15 days of the start of construction.
4. All trees shall be installed within 15 days of the start of construction.
5. All trees shall be installed within 15 days of the start of construction.
6. All trees shall be installed within 15 days of the start of construction.
7. All trees shall be installed within 15 days of the start of construction.
8. All trees shall be installed within 15 days of the start of construction.
9. All trees shall be installed within 15 days of the start of construction.
10. All trees shall be installed within 15 days of the start of construction.
11. All trees shall be installed within 15 days of the start of construction.
12. All trees shall be installed within 15 days of the start of construction.
13. All trees shall be installed within 15 days of the start of construction.
14. All trees shall be installed within 15 days of the start of construction.
15. All trees shall be installed within 15 days of the start of construction.

LANDSCAPE REQUIREMENTS

1. All trees shall be installed within 15 days of the start of construction.

2. All trees shall be installed within 15 days of the start of construction.

3. All trees shall be installed within 15 days of the start of construction.

4. All trees shall be installed within 15 days of the start of construction.

5. All trees shall be installed within 15 days of the start of construction.

6. All trees shall be installed within 15 days of the start of construction.

7. All trees shall be installed within 15 days of the start of construction.

8. All trees shall be installed within 15 days of the start of construction.

9. All trees shall be installed within 15 days of the start of construction.

10. All trees shall be installed within 15 days of the start of construction.

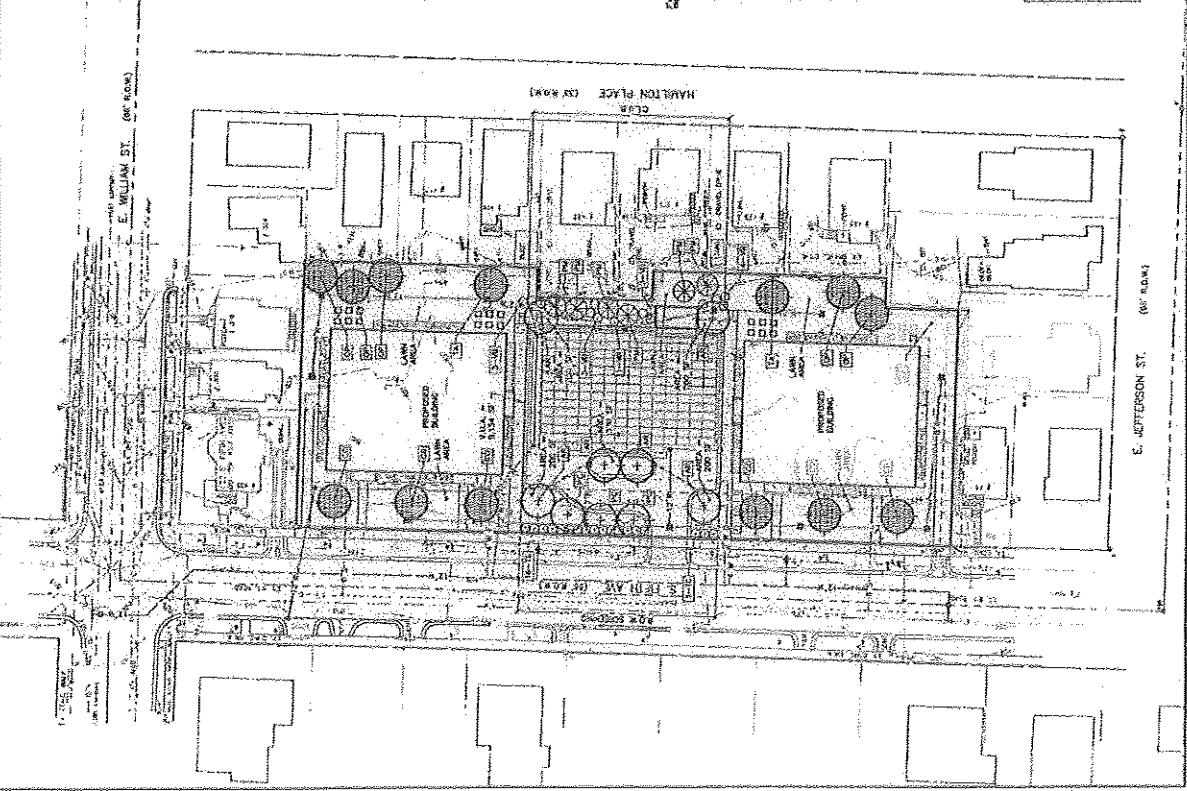
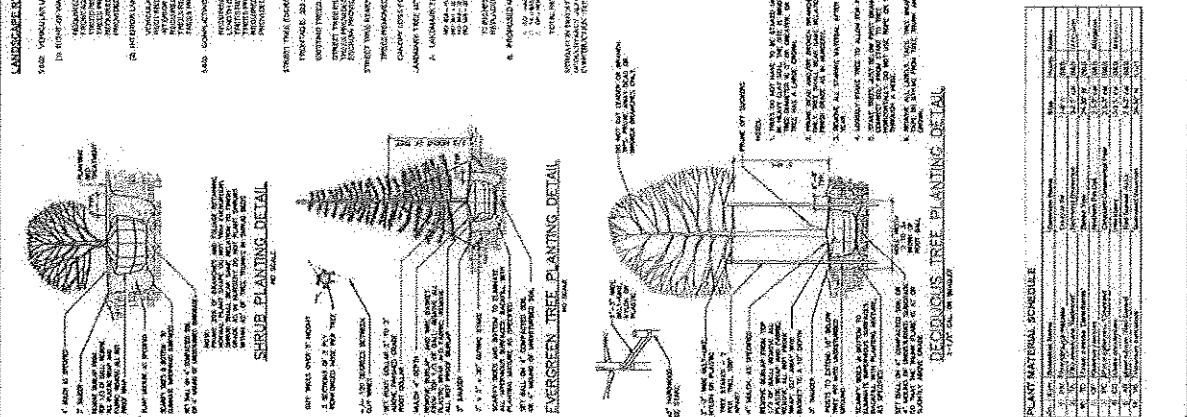
11. All trees shall be installed within 15 days of the start of construction.

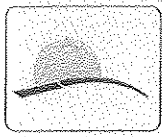
12. All trees shall be installed within 15 days of the start of construction.

13. All trees shall be installed within 15 days of the start of construction.

14. All trees shall be installed within 15 days of the start of construction.

15. All trees shall be installed within 15 days of the start of construction.





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City Place
M.O.R.
Lap Sided Facade

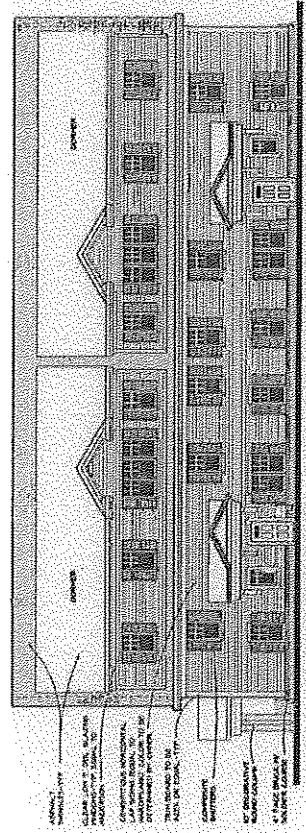
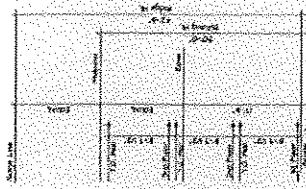
J BRADLEY MOORE
& ASSOCIATES
1044 Jackson Road, P.O. Box 4000, NJ 07033 (201) 399-1500

revisions

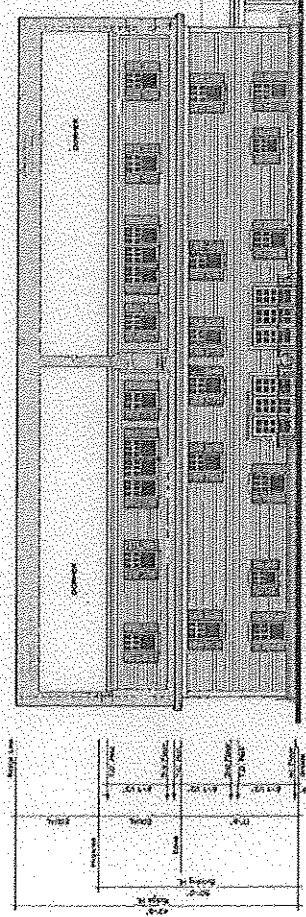
job 27106

drawn: 10/14/07
date: 06/09/08

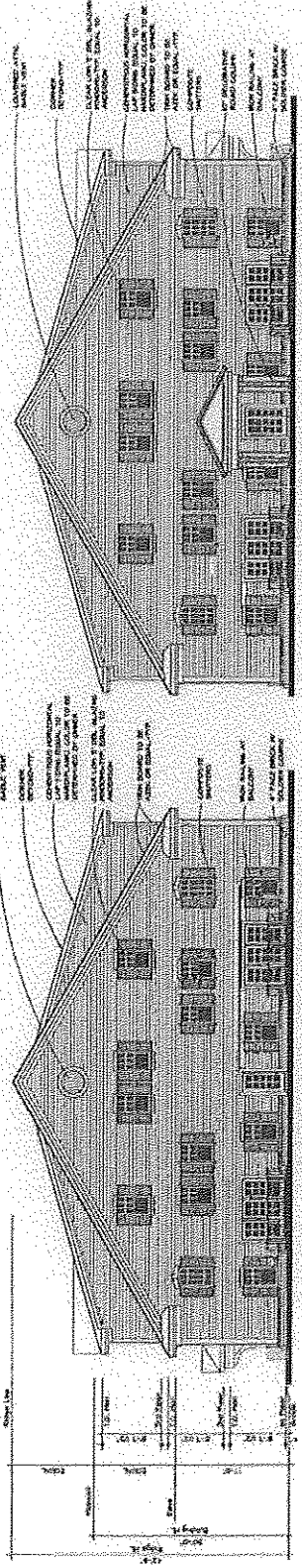
sheet A3.9B



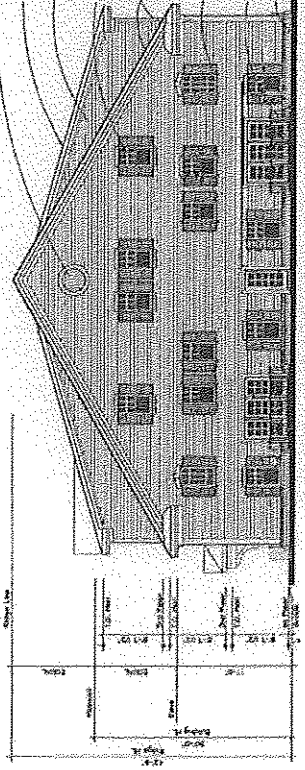
ALT. 'B1' FRONT ELEVATION-WEST (south building) PITCHED ROOF



ALT. 'B1' REAR ELEVATION-EAST (south building) PITCHED ROOF



ALT. 'B1' LEFT SIDE ELEVATION-NORTH (south building) PITCHED ROOF



ALT. 'B1' RIGHT SIDE ELEVATION-SOUTH (south building) PITCHED ROOF



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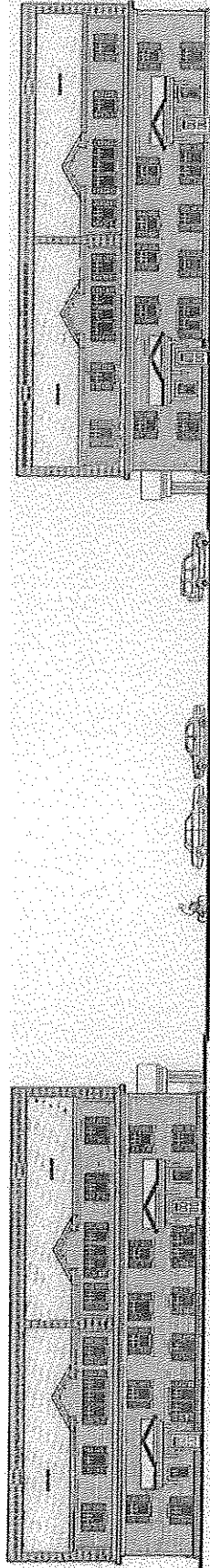
City Place
M.O.R.
Lap Sided Facade
Overall Street Elevation

J BRADLEY MOORE
& ASSOCIATES
1044 Jackson Road, #100 Ann Arbor, MI 48103 (734) 500-1500

revisions:

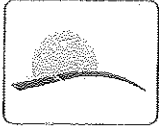
job: 27105

DATE: 04/28/09
DRAWN: [unclear]
DATE: 04/28/09
sheet: A3.10B



ALT. B1 STREET ELEVATION-FITCHED ROOF

SCALE: 3/32" = 1'-0"



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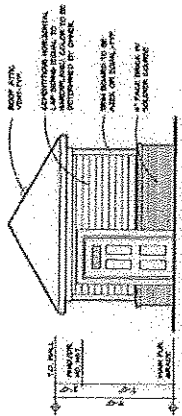
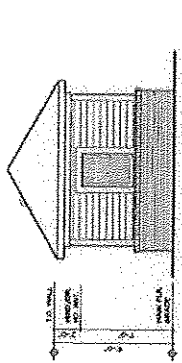
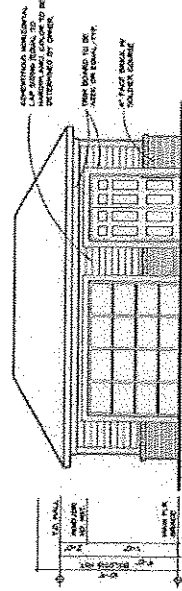
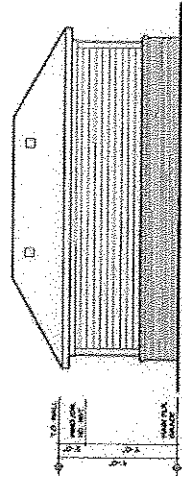
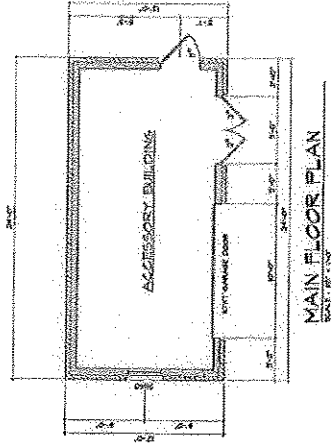
City Place Accessory Building
M.O.R.
Plan and Elevations

BRADLEY MOORE & ASSOCIATES
1444 Jackson Road, #150 Ann Arbor, MI 48103 (734) 939-1500

REVISIONS

JUL 27 2006

GRW/MS/ML
DATE 04/10/06
SHEET B1.2





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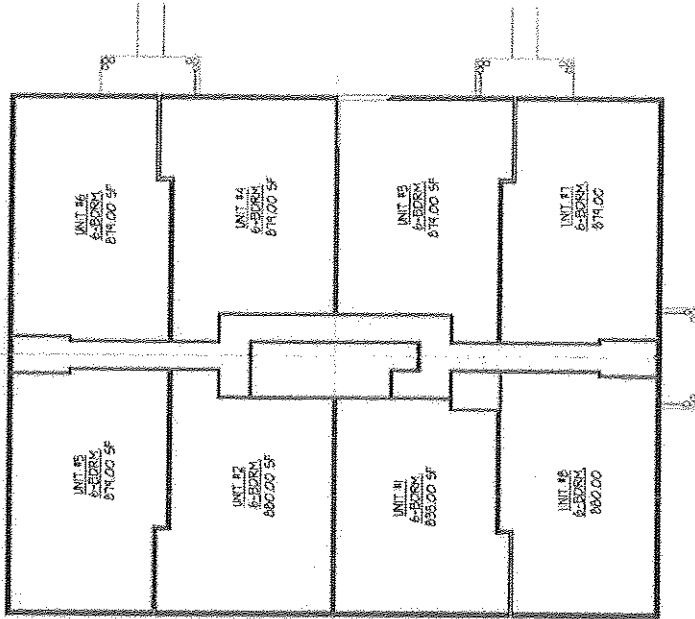
City Place
M.O.R.
Floor Plans

J BRADLEY MOORE
& ASSOCIATES
1014 Jackson Road, #150 Ann Arbor, MI 48103 (734) 829-1500

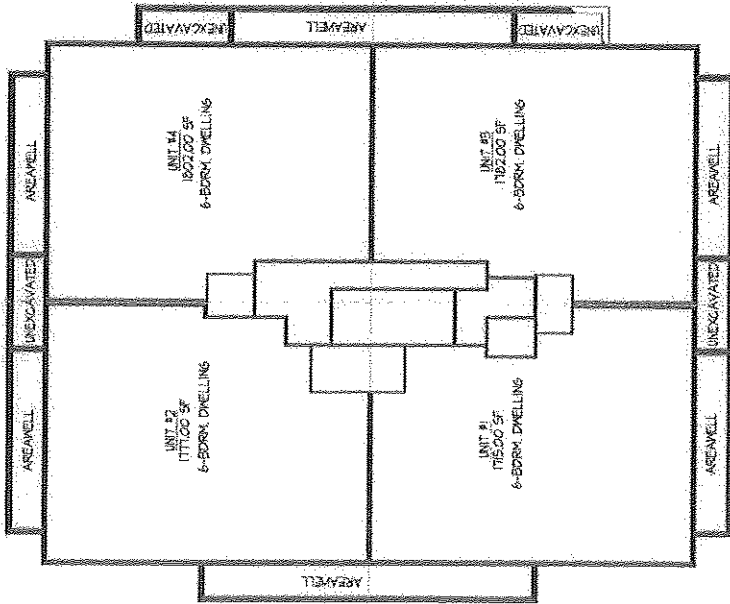
residents

job 27106

drawn h.w./k.w.
date 02/13/08
shd B1.1



MAIN FLOOR PLAN
SCALE: 1/8" = 1'-0"



LOWER LEVEL PLAN
SCALE: 1/8" = 1'-0"