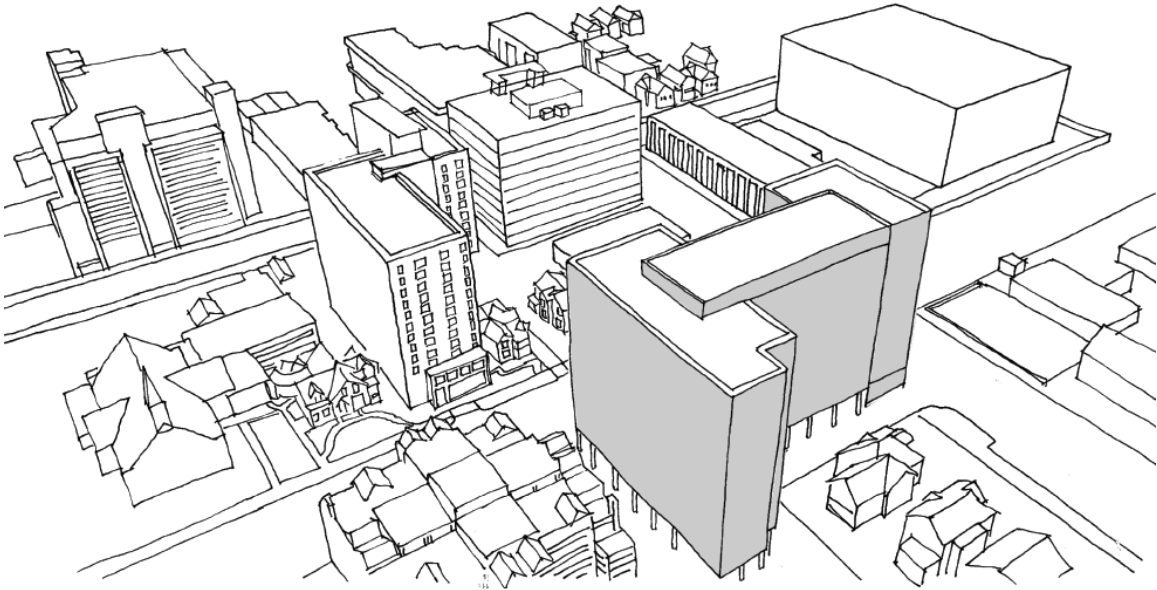


413 East Huron Street



the FACTS.

ADDENDUM

**This addendum to the citizens FACT BOOK
presents issues of special concern.**

Responses to staff response to Fact Book:

The following section gives further responses to selected comments from staff regarding facts from the Fact Book submitted to Council at its last meeting.

Fact 1: The 413 East Huron site plan is not in compliance with applicable Michigan statutes.

Staff response: *"The City of Ann Arbor implements the statutory provisions by adopting a master plan and zoning ordinance based on that master plan."*

Our response: The Ann Arbor Code reads as follows regarding site plans:

"A site plan SHALL be approved by the appropriate body AFTER it determines that: 5:122(6)(a): The contemplated development would comply with all applicable state, local and federal law, ordinances, standards and regulations; . ."

Note the Code does not state a site plan would be approved **if it meets only the zoning ordinance**; it explicitly states that other plans, laws, ordinances, standards and regulations shall also be considered. The Michigan Zoning Enabling Act, which is the basis of **applicable** local laws, states that zoning should be based on a Master Plan:

*"A zoning ordinance shall be **based upon a plan** designed to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy, to meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, to avoid the overcrowding of population, to provide adequate light and air, to lessen congestion on the public roads and streets, to reduce hazards to life and property..."*
(MZE Act 110 of 2006, 125.3203, Sec. 203, (1))

The problem is that Ann Arbor's zoning ordinance is, in some significant instances, not based on the master plan. The master plan says:

*"Preserve and enhance **incremental transitions** in land use, density, building scale and height in the interface areas located between downtown's neighborhood edges and Core Areas."*

Ann Arbor's D1 zoning does not provide for an "incremental transition" between the downtown core on the north side of Huron Street and neighborhood edges, including the 413 E. Huron site.

The Master Plan also states:

"Properties should be redeveloped in a manner that considers impacts to surrounding properties and transportation systems. Attempts should be made to provide appropriate building scale and material to ensure that the project interacts well with surrounding uses."
(Ann Arbor Master Plan, Ch. 5: Land Use, II: Issues, G: Redevelopment)

The problem is that the 413 E. Huron site plan shows no recognition of its adjacency to one of the city's most historic neighborhoods and its presence would overpower the scale of this context.



*Relative scale of Judge Wilson House
and 413 E. Huron proposal*

Fact 2: Site plan is not in compliance with Ann Arbor city codes and ordinances.

Staff response: "Staff review has determined that all City Code requirements have been satisfied."

Our response: This is a **very narrow interpretation of the City Code**. Council has the responsibility to consider development codes in the larger community context as intended when adopted.

Examples of City Code requirements not being satisfied include:

Example 1:

The Zoning Ordinance states:

*"The East Huron Character Districts: . . . The intent for these districts is to continue the tradition of **freestanding buildings with open space in front**, incorporating design that includes signature building elements that give landmark qualities to properties."*

(Zoning and Planning, Ch. 55: Article II - Use Regulations, 5:10.20 - Downtown Character Overlay Zoning Districts, (1)(d))

The design of the 413 E. Huron project is not a "freestanding building with open space in front." By comparison, Sloan Plaza and Campus Inn are set back from the sidewalk and have significant open space in the rear. Since the purpose of this Character District requirement is to have a building set back from the streets and be seen three-dimensionally, the arcade on the ground floor of 413 E. Huron is not sufficient to satisfy this requirement, as the upper stories come right up to the property line.



Landscaped street edge of Sloan Plaza

Example 2:

The Code says a development shall not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare. The Fact Book and other documents submitted by the community have given many examples of how the 413 E. Huron site plan as submitted will cause a detrimental effect on **public health (noise standards), safety (traffic hazards and increased traffic in the neighborhood), and welfare (loss of sunlight).**

Fact 6: Proposed building imposes a traffic safety hazard.

Questions on potential traffic safety concerns were addressed by staff in a series of responses to questions posed by Councilmember Warpehoski. Our responses to these staff responses are shown below.

The need for a Huron Street drop-off area.

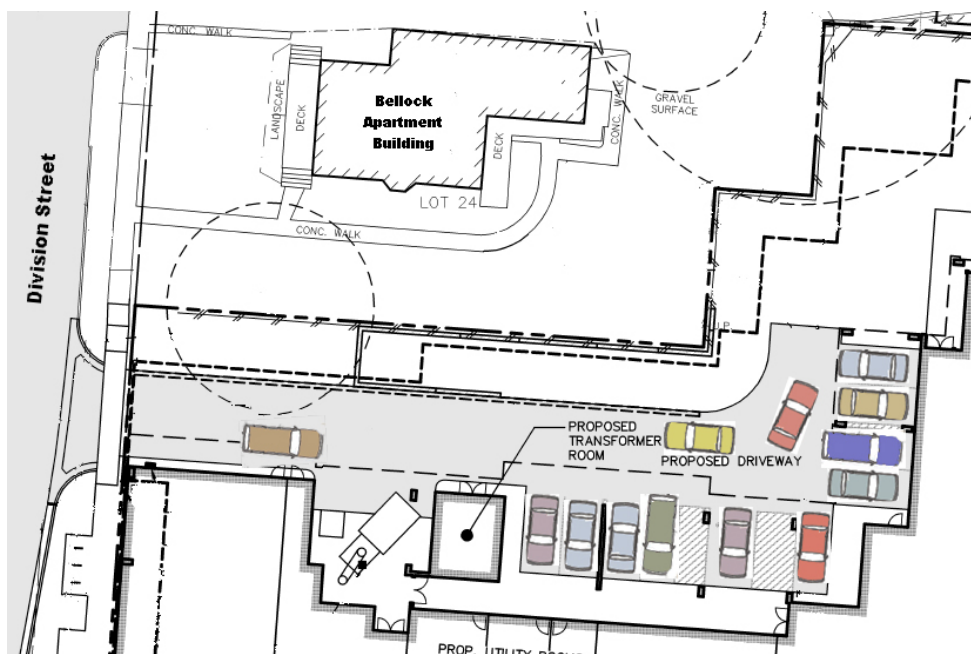
Staff response: *"No drop-off area was required or requested on Huron Street, due to the volume of traffic."*

Our response: The lack of a drop-off area at the **front** of the building will lead to confusion for many arrivals, who may not be aware of the need to proceed around the corner, which takes them to a private drive with a dead end with no turn-around that is likely to be very congested much of the time. The other option would be for arrivals to pull into the ramp entrance area, where they would need to exit by either backing out onto Huron Street or entering the underground parking structure and circumnavigating to reach the exit lane.

Service drive:

Staff response: *"The driveway off North Division and 10 parking spaces on the north side of the building are intended for short term parking, deliveries and service vehicles, i.e., recycling and trash removal trucks. All vehicles will be able to safely use the driveway and parking spaces."*

Our response: The site plan **must** provide for circulation of all types of traffic, including retail shops, residents from 513 beds, and heavy daily service functions. The design of the rear drive is a minimal 20 foot width, from a one-way street, next to the back of the building, at the property line. It should be assumed that the 10 parking spaces will be filled at all times, since they must accommodate guests, employees, retail customers, prospective renters, contractors and service vehicles, mailmen, deliveries and pick-ups, emergency vehicles, and the special situation of move-in and move-out days.



Congested traffic on service drive at rear of 413 E. Huron project

MDOT approval:

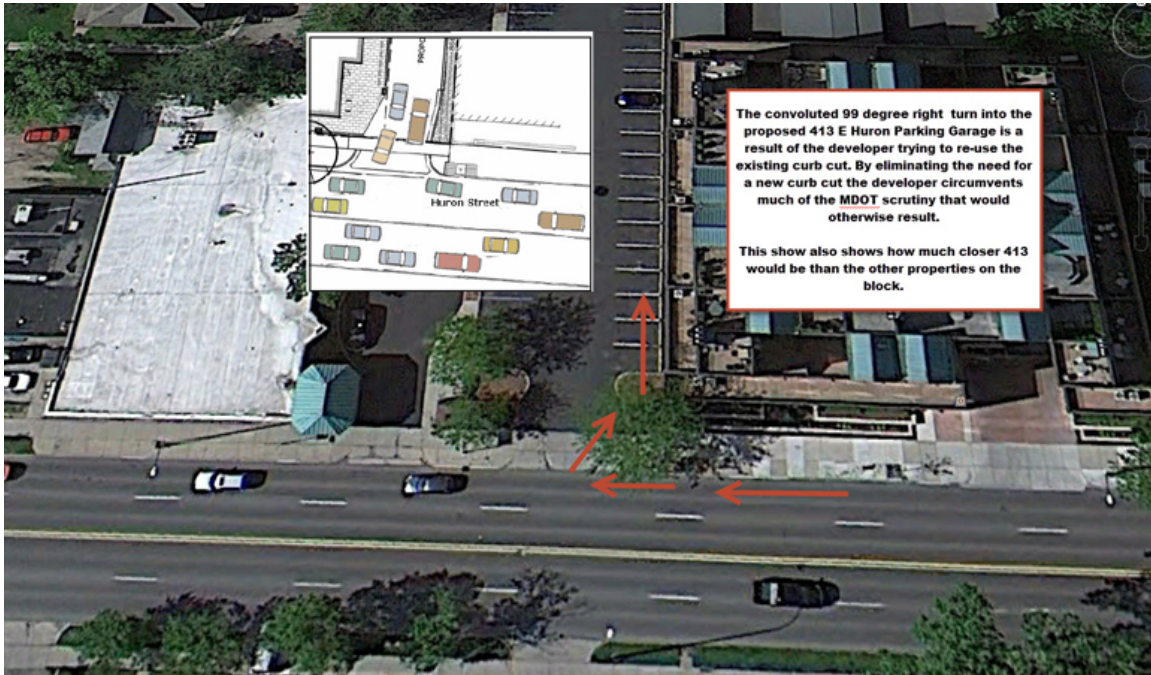
Staff response: "MDOT, which has jurisdiction on Huron, has reviewed and approved the proposed curb cut."

Our response: We question whether MDOT limited their review to issues of traffic and curb cuts on Huron Street; it did not consider other on-site issues that would cause significant congestion problems. Since the project uses an existing curb cut on Huron Street that formerly had a very low-density usage, MDOT did not need to consider any new curb cuts and had no reason to consider on-site issues, even though the existing curb cut resulted in issues of a sharp angled access from Huron Street. Staff should have reviewed conditions beyond the statutorily driven review by MDOT, since many on-site problems will almost certainly spill over onto two of the city's busiest and fastest moving traffic corridors.

Staff response to question on Huron Street and the sharply angled turn-in:

Staff response: "...the proposed angle is within the range allowed by City Code and MDOT regulations. Staff have applied vehicle turning templates to the design and have found that all vehicles that will be using the underground parking garage will be able to safely and properly make the turn from Huron into (and out of) the proposed driveway."

Our response: What the staff analysis did not include was consideration of the actual situation at this turn-in. With the project's number of underground parking spaces, it is likely a vehicle will be waiting on the drive to exit onto Huron. This means a vehicle entering the drive would need to make a sharper turn than normal. If the entering vehicle was dropping someone off at this point (a likely scenario for anyone assuming this was the main entrance to the building), it would hold up traffic in the right lane of Huron Street. This is a spot leading to significant congestion, and staff's response does not address the unique nature of this potential hazard.



Aerial photo indicating location of existing curb cut on Huron Street

Move-in / move-out concerns:

Staff response: *"It is the responsibility of the building's managers to prepare for and manage their move in/move out operations . . . The managers are also eligible to apply for temporary lane closures to create on-street loading zones and/or reserve (and pay for) on-street parking meters for their exclusive use."*

Our response: Although move in/move out activities are the responsibility of management, the result affects the city. The developer has made no provision for this period of intense activity, and it is very likely drivers needing to pull over will end up stopping on either the Huron or Division Street rights-of-way. It is easy to see the potential for significant problems, since this site plan has no spillover areas. For staff to suggest that management could reserve on-street parking meters is absurd, since **there are no parking meters on either Huron or Division.**

Burger King precedent:

There is an important precedent for concerns about traffic hazards being the basis for rejecting a site plan. In 1996 Burger King wanted to build a drive-through restaurant at the corner of Huron and Ashley. There was "a steady outpouring of opposition," *The Ann Arbor News* reported. Citizens were concerned "about the large amount of traffic that would be coming and going from the drive-through, and how that would mix with an already busy Huron Street and with pedestrians on sidewalks." On that basis, the Council voted unanimously to deny site plan approval.

The lawyer for the developer hinted at the possibility of a lawsuit and told the Council, "We have done everything we're legally required to do. . . This is a permitted use." Like the members of Council, Mayor Ingrid Sheldon was not intimidated: "Sometimes you just have to take a stand," she said. "If the courts overturn it, they overturn it."

In the end, no lawsuit was filed.

Weather: Tonight, flurries. Low 31.
Saturday, cloudy with snow showers.
High 38. Details on back page.

THE ANN ARBOR NEWS

Council puts stopper on the Whopper

■ City rejects plan to build drive-through Burger King downtown.

By JUDSON BRANAM
NEWS STAFF REPORTER

Have it your way? No way.
The Ann Arbor City Council listened to a steady outpouring of opposition to a Burger King restaurant proposed for the northwest corner of Huron and Ashley streets, then voted unanimously to reject the plan.
There was the hint of a possible lawsuit from the developer.

**'Hold the pickle, hold the lettuce, hold everything.
Burger King is bad for downtown Ann Arbor.'**

— First Street homeowner Brian Delaney

"I have never sensed that there was any real support for it," said Mayor Ingrid Sheldon. "We are appreciative of the Burger King business and the jobs they provide, but we were definitely swayed by the comments of citizens."

Those comments included concerns about the large amount of traffic that would be coming and going from the drive-through, and how that would mix with an already busy Huron Street and with pedestrians on sidewalks. Many nearby residents also worried that the

restaurant would create problems with blowing trash, smell and noise in their neighborhood.

"Hold the pickle, hold the lettuce, hold everything," urged First Street homeowner Brian Delaney. "Burger King is bad for downtown Ann Arbor."

In addition, the 17 speakers opposing the Burger King pointed out the plan's poor fit with the goals for downtown set out in the city's Downtown Plan and Central Area Plan. Those planning documents call for pedestrian-friendly uses and more residential development.

See WHOPPER, Back Page

Continued from A1

WHOPPER: City fries plan

opment downtown, rather than automotive-centered businesses like the Burger King.

"It could clearly establish an unhealthy pattern of development," warned Ray Detter, a member of the citizen advisory committee of the Downtown Development Authority.

The lineup of community organizations opposed to the restaurant includes the city Planning Commission, its Downtown Development Authority, the Old West Side Association, the Historic Fourth Ward, State Street and Main Street business associations and now, the City Council.

During a meeting moved from Monday to Thursday because of this week's elections, the council voted down the plan without any debate or detailed discussion of its merits. The council voted 10-0, with 4th Ward Republican Stephen Hartwell absent.

"Obviously, we're disappointed with the result," said attorney David Shand, representing the Carrolls Corp., a Syracuse, N.Y.-based firm that owns two Ann Arbor-area Burger Kings and hoped to tear down the old First of America Bank building to make room for a third downtown.

"We've bent over backwards to comply with everything that's been asked of us."

Shand said he was unsure whether the company would file suit to try to force approval of its plans. He said developers will meet to decide whether and how to keep pursuing the project. During the public hearing, he told the council: "We have done everything we're legally required to do to come before you for approval. This is a permitted use; this is not a special exception."

Citing the community's interest in maintaining a vital downtown, Susan Pollay, who heads the DDA, countered that "there's a difference between legal and right."

Even if the company goes to court, Mayor Sheldon said, "Sometimes you just have to take a stand. If the courts overturn it, they overturn it."

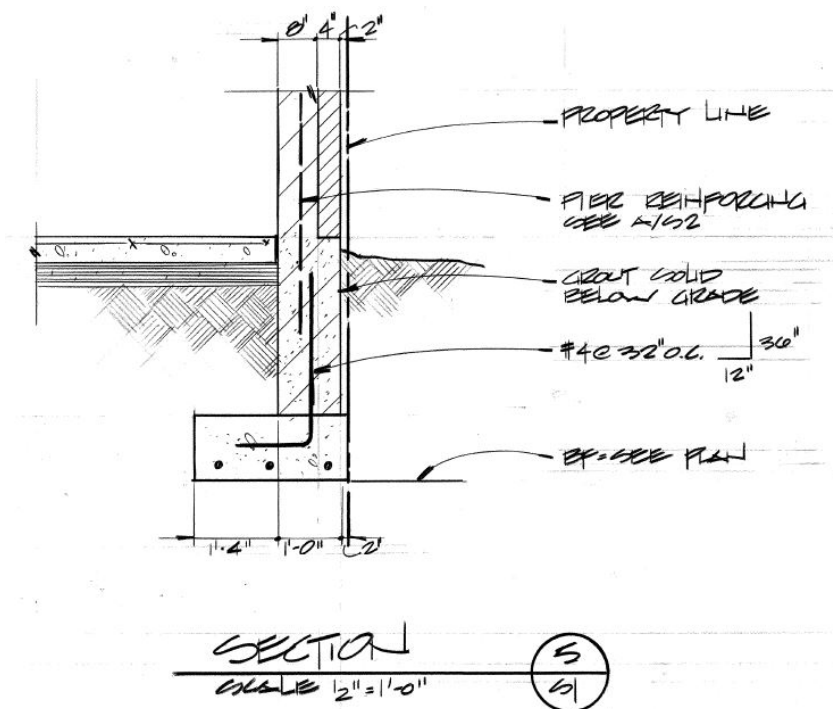
Council Member David Kwan, R-2nd Ward, said the fact that Burger King and McDonald's both left downtown Ann Arbor was another strike against the project. He said council voted quickly because the issue was so one-sided.

"Did you see any advocates in there?" Kwan asked after the public hearing. "I know I didn't."

Fact 8: Site plan does not explain how Sloan Plaza foundation will be protected from damage.

Staff response: *"Engineered construction details are reviewed at the building permit stage."*

Our response: Because of the unique situation with this project and its close proximity to the Sloan Plaza foundation wall, tenants at Sloan Plaza are concerned about the real threat of damage to their structure and want to see construction details prior to site plan approval. Such drawings should be provided prior to final approval by Council to ensure an understanding of both footing and soil conditions along the abutting property line. Soil information has not been provided, except to suggest that it is sandy and gravelly.



*Construction detail of Sloan Plaza foundation wall and footing,
copied from the original drawings.*

Note that the footing depth is not drawn to scale, but is noted elsewhere in the drawings as 93'-0" relative to a base 100'-0" first floor elevation. Sloan Plaza has no basement. Note also that Sloan Plaza was constructed on the property line, a pre-existing condition in place since 1984 that affects any future construction abutting this side of the property.

Summary:

Described on the previous pages are reasons the 413 E. Huron site plan **does not meet provisions of the city's zoning ordinance**. The approval of any site plan should be based on all elements of the city's planning process, and **not be based exclusively on zoning**.

This project went through a series of defined steps in the planning process. The outcome of each of these steps should be considered as Council members deliberate their decision on this particular site plan.

- Step 1: **Design Review Board** commented that the proposed design does not meet the intent of the Design Guidelines.
- Step 2: **Public review** scheduled by development team heard a great majority of speakers indicate concerns and opposition to the project.
- Step 3: **City Planning Commission** voted for denial of the proposed site plan.
- Step 4: Two **City Council public hearings** included 83 speakers, almost all speaking in opposition to the project, except for members of the development team. In total for all public hearings, an estimated 145-150 speakers have spoken in opposition.
- Step 5: The project "**Fact Book**" and its Addendum, prepared by residents from eight neighborhood organizations, lists multiple legal reasons the project should be denied.