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May 13, 2013

Mayor John Hieftje and City Council Members
City of Ann Arbor
Guy C. Larcom, Jr. Municipal Building
100 N. Fifth Avenue
Ann Arbor, MI 48104

Re: Site Plan for 413 E. Huron

Dear Honorable Mayor and Council Members:

This letter is submitted on behalf of Ilene and Norman Tyler who reside in the Division Street Historic District adjacent to the proposed project at 413 E. Huron. I am writing in response to a portion of the communication to Mayor and Council dated 5/10/13 from Mr. Bahl and Ms. Rampson regarding 413 East Huron ("Staff Memo") addressing the fact that "Special Exception use for underground parking was not approved."

In addressing Fact 4 from the Fact Book, the Staff Memo does not include the text of the relevant portion of the ordinance which is at issue. A copy of Section 5:10.19(2) and Table 5:10.19A from the zoning ordinance is attached so that it can be clearly seen that the Staff Memo erroneously describes what the ordinance actually provides. Listed below in italic type are statements quoted from the Staff Memo (at page 2) with our responses in bold type.

Staff comment: *"This table identifies the permitted principal uses in downtown districts. . . . The below-grade parking is an accessory use to these principal uses."* [emphasis added]

Response: The ordinance provisions about "Uses of land" for D1 and D2 districts do not use the terms "principal use" or "accessory use" for what the Table shows. Section 5:10.19(2) of the ordinance states "Uses in the D1 and D2 districts are allowed in accordance with Table 5:10.19A – Schedule of Uses." Section 5:10.19(2) goes on to describe the key for the Table which uses only the terms "Permitted Uses," "Special Exception Uses" and "Prohibited Uses." Parking structure use in the Table has the designation "S" for special exception use. Nowhere in the D1/D2 ordinance provisions does it say that below-grade parking is an "accessory use" as suggested in the Staff Memo.

Staff comment: *"The "parking structure" use listed in the table references principal-use parking structures, which require special exception use approval from the Planning Commission. . . ."*

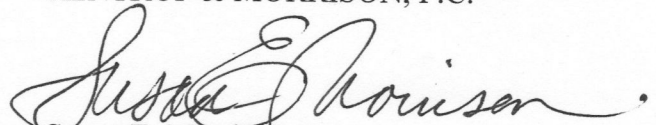
Response: The above statement in the Staff Memo is contrary to what the clear words of the ordinance provide. Nowhere in Section 5:10.19(2) or the Table does it state that the parking structure use designated with an "S" for special exception means only a "principal-use" parking structure use. Under the express terms of the Table any parking structure use must be considered a special exception use.

In addition, the fact that the ordinance Table includes a "principal use" limitation for a different use ("Parking Lot – Principal Use") further refutes the argument in the Staff Memo. Under rules of ordinance construction applied by the courts, the failure to include the words "principal use" after the term "parking structure," when the ordinance did include the words "principal use" after another use on the list, further shows that no such limitation was meant for "parking structure" use.

The City's staff does not have the authority to alter the terms of the zoning ordinance. The fact that mistakes may have been made in applying the zoning ordinance with regard to parking structure use in past projects in the D1 zone does not mean that the mistake should be repeated. Indeed the City is obligated to apply its ordinance as written and, once it is made aware of an error in how the ordinance has been applied, to correct it going forward.

We ask that City Council comply with the law and deny the site plan for 413 E. Huron, for reasons which include the fact that the applicant has not applied for nor obtained a special exception permit for the proposed parking structure portion of its mixed use project, as the zoning ordinance requires.

Respectfully submitted,
RENTROP & MORRISON, P.C.



Susan E. Morrison

cc: Ilene and Norman Tyler

cultural, educational, shopping, and entertainment opportunities. The downtown districts are intended to allow a mixture of land uses, dense urban development, pedestrian orientation, unique residential opportunities, and a compatible and attractive mix of historic and contemporary building design. Development in these districts is designed to be accessible by a variety of modes of transportation.

- (a) *D1 - Downtown Core District.* This district is intended to contain the downtown's greatest concentration of development and serves as a focus for intensive pedestrian use. This district is appropriate for high-density mixed residential, office and commercial development.
- (b) *D2 - Downtown Interface District.* This district is intended to be an area of transition between the Core and surrounding residential neighborhoods. This district is appropriate for medium density residential and mixed-use development.

(2) *Uses of land.*

- (a) *Uses in the D1 and D2 districts are allowed in accordance with Table 5:10.19A - Schedule of Uses.* The following key is to be used with the Schedule of Uses:

1. *Permitted Uses.* In accordance with Section 5:6, these uses are permitted by right in the district. These uses may be mixed within a building, unless otherwise specified in this chapter. Permitted uses are identified with a "P".
2. *Special Exception Uses.* In accordance with Sections 5:6 and 5:104, these uses may be allowed in a district subject to review and approval by the Planning Commission. Special exception uses are identified with an "S".
3. *Prohibited Uses.* These uses are not permitted in the district. Prohibited uses are identified with an "X."
4. *Related Zoning Regulations.* The Schedule of Uses lists additional related zoning regulations that apply to specific uses. This list is not comprehensive and all uses must comply with all applicable laws and regulations.

Table 5:10.19A - Schedule of Uses: D1 and D2 Downtown Districts

P=Permitted S=Special Exception X=Prohibited A=Active			
Use	D1 Downtown Core	D2 Downtown Interface	Related Zoning Regulations
RESIDENTIAL			
Single- or Two-Family Dwelling	P	P	
Multiple-Family Dwelling	P	P	
Fraternity, Sorority or Student Cooperative	P	P	
Rooming or Boarding House	P	P	
Emergency Shelter	P	P	
Convalescent or nursing home	P	P	
LODGING			
Hotel	P	P	
Bed & Breakfast	P	P	
CIVIC AND INSTITUTIONAL			
Religious Assembly	P	P	
Educational Services	P	P	
Day Care Center	P	P	
Community Center	P	P	
Social or Service Club	P	P	
Library	P	P	
Government Office	P	P	

**Excerpt from Code Chap.
55, Section 5:10.19**

Courthouse	P	P	
Park or Plaza	P	P	
Museum	P	P	
OFFICE			
Office—General or Business	P	P	
Office—Medical or Dental	P	P	
Office—Veterinary	P	P	
Medical Laboratory	P	P	
COMMERCIAL			
Bank, Credit Union or Financial Services	P	P	
Retail Sales	P	P	
Restaurant or Bar	P	P	
Personal or Business Services	P	P	
Outdoor Sales, Permanent	P	P	Section 5:10.15(2)e
Outdoor Sales, Temporary	P	P or S	Sections 5:10.15(2) f, g and h; Section 5:104
Conference Center	S	X	Section 5:104
Theater	P	P	
Entertainment—General	P	S	Section 5:104
Entertainment—Adult	X	X	Section 5: 50
Funeral Services	P	P	
Drive-through Facility	S	S	Section 5:104
Vehicle Fueling Station	S	S	Section 5:104
Vehicle Sales or Rental	S	S	Section 5:104
Vehicle Repair or Storage	S	S	Section 5:104
Vehicle Wash	S	S	Section 5:104
INDUSTRIAL & TRANSPORTATION			
Warehouse	X	P	
Building Materials Wholesale	X	P	
Construction/Trade Contractors	X	P	
Fabrication—Metal & Canvas	X	P	Performance standards of Section 5:10.24(f)
Assembly or Manufacturing	S	S	Performance standards of Section 5:10.24(f); Section 5:104
Printing or Publishing	P	S	Section 5:104
Parking Structure	S	S	Section 5:104
Parking Lot—Principal Use	S	S	Section 5:104
Transit Center or Station	P	P	
Wireless Communications Facility	S	S	Section 5:6; Section 5:82; Section 5:104
Broadcasting Facility	P	S	Section 5:104
Utility Substation	P	P	
Railroad	P	P	

(3) *Area, height and coverage requirements.*

- (a) Except as otherwise provided in this Chapter, regulations governing area, height, coverage and open space in the D1 and D2 Downtown Districts shall comply with the requirements in Table 5:10.19B.