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TO: Mayor and Council

FROM: Sumedh Bahl, Community Services Area Administrator  
Wendy Rampson, Planning Manager

CC: Steven D. Powers, City Administrator

SUBJECT: 413 East Huron

DATE: 5/10/13

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Question: Please provide evidence from site plan approval process that defends or refutes the 9 facts presented at the May 6<sup>th</sup> Council meeting. (Councilmember Petersen)

Answer: Fact Book statements are in *italic text*; staff responses are in plain text.

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

It is correct that the Michigan Zoning Enabling Act guides the development of municipal zoning ordinances. The excerpt in the Fact Book describes the elements of the police power upon which a jurisdiction should base its regulations. This section of the enabling act generally states requirements for the zoning ordinance and the underlying master plan.

The City of Ann Arbor implements the statutory provisions by adopting a master plan and a zoning ordinance based on that master plan. The zoning ordinance incorporates area, height and placement regulations that are intended to protect the health, safety and welfare of the public. In this particular case, the D1 base zoning and East Huron 1 character overlay zoning requirements were created in response to the recommendations of the Downtown Plan, which in turn was based on extensive public discussion about appropriate building height, massing, and placement.

This section of state law does not provide any explicit requirements for site plans.

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

No specific assertion is made in this section. However, staff review has determined that all City Code requirements have been satisfied.

*FACT 3: The developer's Citizen Participation Report failed to include required detail.*

When the 413 E. Huron site plan petition was submitted to Planning & Development in November 2012, the petitioner provided a written report of the citizen participation meeting held on November 1, 2012. This report contained a description of the mailing, a summary of the comments provided at the meeting, and the sign-in sheet.

In reviewing the petition, the Planning Commission pointed out that the report did not contain responses to the citizen comments. The petitioner submitted a report supplement on February 14, 2013 that provided responses to the citizen comments and other details that satisfied the citizen participation ordinance requirements. This report is attached.

*FACT 4: Special exception use for underground parking was not approved.*

This comment apparently references Table 5:10.19A – Schedule of Uses: D1 and D2 Downtown Districts. This table identifies the permitted principal uses allowed in the downtown districts. The 413 E. Huron site plan proposes multiple-family residential and retail uses, which are permitted principal uses in the D1 district. The below-grade parking is an accessory use to these principal uses. The “parking structure” use listed in the table references principal-use parking structures, which require special exception use approval from the Planning Commission, rather than the parking associated with other uses proposed for the 413 E. Huron site.

Allowance of parking as an accessory use is consistent with other approved development projects in the D1 and D2 zoning districts, including the Varsity, Zaragon West, 618 south main projects.

*FACT 5: Construction will kill a 250 year old legacy Burr Oak tree.*

The site plan was reviewed by Kerry Gray, the city's Urban Forestry and Natural Resource Planning Coordinator who is an International Society of Arboriculture Certified Arborist (MI-3868A).

- The petitioner provided a Natural Features Statement of Impact (Sheet 14), per Chapter 57, Section 5:122(6)(b).
- Currently the portion of the critical root zone of the Burr Oak (#6892) that falls onto 413 E. Huron Street is covered by an asphalt parking lot that has been there for over 50 years. Prior to the parking lot, at least two different commercial buildings existed along the north property as far back as 1925, and likely earlier. This parking lot and

buildings have caused compaction and impacted the critical root zone of the Burr Oak tree for many decades. It unlikely there is an extensive root system under the parking lot as tree roots need water, oxygen, nutrients and space and the compacted soil under the parking lot limits the availability of all of these.

- Tree protection fencing is shown on Sheet 7 (54t) within the critical root zone, at its closest point it will be 25 feet from the tree trunk.
- The plan shows excavation in the area of the critical root zone that is the farthest from the tree. The compaction from the existing asphalt parking lot, makes it unlikely that there is an extensive root system in this area of the critical root zone. Following construction, the entire area of the critical root zone of the Burr Oak tree that falls onto the 413 E. Huron site (currently covered by an asphalt parking lot) will be landscaped with trees, shrubs and grass.
- Based on the existing conditions and the current impacts to the critical root zone of the Burr Oak tree on the 413 E. Huron site, staff determined that the petitioner met the code in limiting disturbance to this existing natural feature. This determination by staff is consistent with past site plan approvals where developments have encroached into the critical root zone of landmark trees.
- Native Forest Fragment. A native forest fragment per the Land Development Regulation-Guidelines for Protection and Mitigation of Natural Features of Chapter 57, are a type of Woodland. Per Chapter 57, a Woodland is defined as: A forested area of ½ acre or more with a gross basal area of 30 square feet per ½ acre, containing 20 trees per ½ acre greater than 6 inches in diameter at breast height (DBH), or a plantation of ½ acre or more with a minimum average DBH of 10 inches. The critical root zone of all trees in the perimeter of the forested area or plantation defines the area of a woodland.

This site does not meet the definition of Woodland per Chapter 57, and is therefore not a native forest fragment. There several trees on and adjacent to the site that meet the Landmark Tree definition of Chapter 57 but no area on the site or adjacent properties meet the definition of woodland.

*FACT 6: Proposed building imposes a traffic safety hazard.*

*1. No off-street drop-off area on Huron Street*

No drop-off area was required or requested on Huron Street, due to the volume of traffic. Delivery and retail parking is accommodated off-street in the drive/parking area at the rear of the building, accessed off North Division. This is an improved situation to North Quad, which handles deliveries and drop-off/pick-up with on-street parking on South State and a loading/trash collection driveway on East Washington Street.

1. *Lack of provision for move-in/move-out student drop off days.*

There are no code requirements that speak to student move-in/move-out. However, the petitioner has indicated the building management will schedule time slots for tenants to move in and out of their units. Vehicles will be able to load and unload in the rear driveway or in the two lower level garages. In the event that on-site problems arise and on-street space is needed, the building management would need to apply for a permit, which would be evaluated like similar requests.

2. *Acute 81 degree turn-in angle for auto entry is a traffic hazard*

The layout of the driveway approach fits the City dimensional requirements and satisfies MDOT requirement that the curb radius does spill past the property line extension to the street within the right-of-way. A passenger car type vehicle can complete this turn but may track over the centerline at the building face extension. The stop bar for exiting vehicles may be placed in such a way avoid turning conflicts.

3. *Traffic delays for cars entering underground parking*

4. *Cars leaving the underground parking will impede Huron Street's 23,000 cars per day*

The petitioner provided a traffic impact study as part of the site plan submittal. The study projects that the new building would generate, in the am peak, 32 vehicle trips entering the site and 67 vehicle trips leaving the site, primarily from the Huron Street driveway. In the pm peak, the study projects that 67 vehicle trips will enter the site and 45 vehicles trips will exit the site, primarily from the Huron Street driveway. No significant delay at the driveway or on Huron is anticipated from these numbers.

1. *Cars going east will cut through Ann Street residential area.*

Based on the traffic study's projected trip distribution, 12% of the am peak traffic, or 12 vehicle trips, are projected to travel north on North Division. 11% of the pm peak traffic, or 12 vehicle trips, are projected to travel north on North Division.

In summary, the traffic impact study was reviewed by the City's traffic engineer, as well as MDOT, and was determined to meet all City and MDOT requirements.

*FACT 7: Allowable construction noise level is a health hazard.*

The city's Noise Ordinance allows construction noise levels up to 105 db during established work hours. This ordinance applies to construction projects across the City. Informal monitoring of current downtown construction projects indicates noise levels over 95 db are periodic, rather than constant. Daytime traffic noise on Huron is in the 85-90 db range. Most complaints received about downtown construction noise are for construction occurring before or after work hours, or on Sundays. Construction Services staff handles these issues by working with the construction manager to develop delivery staging plans and construction regimens.

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

Engineered construction details are reviewed at the building permit stage; these details are not required by the Land Development Regulations to be shown on the site plan. Once construction drawings have been reviewed by the Building Official and a building permit is issued, building inspectors regularly monitor excavation activity and can stop construction if it appears an adjacent building may be negatively impacted. In that event, engineering solutions would need to be submitted to the Building Official and reviewed prior to work continuation.

*FACT 9: Lack of solar access on adjacent properties is violation of City Code.*

Solar access is not a City Code requirement. The proposed development meets the zoning ordinance area, height and placement requirements, which were developed consistent with the Michigan Zoning Enabling Act. The design guideline noted is not a code requirement, but a voluntary guideline to be used in designing a site.

Attachment: February 14, 2013 Citizen Participation Report Supplement