

Legal Challenges to the Proposed 413 E. Huron Project

Strategy: identify instances when specific Michigan and City of Ann Arbor ordinances are being violated and this violation has been ignored. City Council must be responsible to their charge to make decisions in accordance with the law and halt progress toward site plan approval until all questions are satisfactorily resolved.

United States Ordinances

- *"United States Secretary of the Interiors Standards and Guidelines for Rehabilitation recommend preserving and managing historic resources and significant natural features as well as to achieve harmonious relationships of building structures and uses, both within a historic site and with adjacent sites.*

Michigan Ordinances

- A2D2 Zoning ordinances not in conformance with the city's planning documents, as required by state law.
- Michigan Zoning Enabling Act, MCL 125.3203(1) prescribes requirements for a zoning ordinance: *"A zoning ordinance shall be based on a plan . . . to ensure that uses of the land shall be situated in appropriate locations and relationships, . . . to provide adequate light and air."*
- As described in Section 10.7 of the book, Michigan Zoning, Planning, and Land Use,

"landowners do not have a "vested interest" in the current zoning classification of their land or their neighbors' land that will remain unchanged. A Michigan landowner does not acquire a "vested right" to a particular land use until it has made substantial physical improvements to the land pursuant to a validly issued building permit." This does not include demolition of existing structures on the site. It continues, "Monies spent preparing to construct will not suffice to create a vested right in the current zoning classification. . . The substantial improvements also must be made under authority of a building permit in order for the landowner to acquire a vested interest in the current zoning. As this section of the book states, "The fact that the property owner's application motivated the change is not, in itself, dispositive of the question." Generally, courts have held in these types of cases that the wishes of the city are the predominant factor in determining whether rezoning is legally acceptable.

Ann Arbor Ordinances

- The City Code provides standards for approving a site plan in Chapter 57 section 5:122(6): *"Standards for site plan approval. A site plan shall be approved by the appropriate body after it determines that: (a) The contemplated development would comply with all applicable state, local and federal law, ordinances, standards and regulations; and (b) The development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land, applying criteria for reviewing a natural features statement of impact set forth in this Chapter; and (c) The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety or welfare."*
- In Chapter 57 of the City Legal Code, the Subdivision and Land Use Control Ordinance, are Land Development Regulations and Natural Features Guidelines. In the Natural Feature Protection Priorities, the Highest Concern is for Native Forest Fragments, citing the *"grove of Burr Oaks in the vicinity of St. Andrews - the only remaining trees of the savanna called Ann Arbor."* The language specifies *"preserve and protect all remaining native forest fragments to the fullest extent possible."* This suggests that the consequences of the developer's planned actions affecting adjacent landmark trees requires more attention and enforcement than has been presented to date.
- The City Code, Chapter 103: Historic Preservation, 8:406, provides City Council with specific protections that can be used to protect the rights of property owners within the historic district adjacent to the proposed development. This was spelled out in detail in a letter to Council by Christine Brummer on April 1, 2013, in which she concluded *"Council owes it to the citizens of the entire city and in every historic district to honor the protections offered them in the City Code with as much vigor as the property rights of owners subject to the zoning laws."*
- Section 203(1) of the Zoning Enabling Act prescribes **requirements** for a zoning ordinance: *"A zoning ordinance shall be based upon a plan designed to promote the public, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, . . . to ensure that uses of the land shall be situated in appropriate locations and relationships, . . . to provide adequate light and air . . . A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources . . ."*
- Basing a site plan approval decision only on zoning makes irrelevant all other steps in the planning process that are intended to have equal weight.

- For four years the city has not fulfilled its announced obligation to review D1 zoning for the 2-block stretch of North Huron.
- The Character District for this area specifies a setback.
- Ann Arbor's Land Use and Access Goals, 2009:
 - *LU26: Preserve and enhance incremental transitions in land use, density, building scale and height in the Interface area located between downtown's neighborhood edges and Core Areas.*
 - *LU27: Protect the livability of residentially zoned neighborhoods adjacent to downtown.*
 - *LU28: Encourage new development to reinforce historic building's contribution to downtown's identity and pedestrian orientation.*
 - *LU29: Encourage articulation in the massing of larger new buildings to fit sensitively into the existing development context. Encourage design approaches that minimize the extent to which high-rise buildings create negative impacts in terms of scale shading, and blocking views.*
- The Ann Arbor Master Plan (November, 2009) lists issues with regard to the interface between the downtown and the central area, including:
 - *"In various locations, houses are overshadowed by larger commercial, residential or institutional buildings that are out of scale with existing surrounding development. In addition to being aesthetically not pleasing, out-of-scale construction alters the quality of living conditions in adjacent structures. Often it is not so much the use that impacts negatively on the neighborhoods, but the massing of the new buildings."*
- From page 29 of the 2009 Downtown Plan:

"Interface Area Goal: 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 [See figure9]. Development within the DDA district, especially in the area which forms the Interface between the intensively developed Core and near-downtown neighborhoods, should reinforce the stability of these residential areas -- but without unduly limiting the potential for downtown's overall growth and continued economic vitality. Ideally, development within this portion of the DDA district should blend smoothly into the neighborhoods at one edge and into the Core at the other. Recommended Action Strategies (1) Replace the existing zoning designations that make up the Interface areas (C2B, C2B/R, C3 and M1) with a new Downtown Interface zoning district. (2) Reduce maximum permitted FAR's of 600% and maintain height limits in the Interface zone, giving special consideration to adjoining residential neighborhoods. (3) Revise existing premiums, and provide premiums where not currently available, to create incentives for achieving Interface objectives: residential development, affordable housing, "green building" and transfer of development rights. (4) Incorporate recommended land use

and urban design objectives as overlay zoning districts for the review and approval of projects in the Interface area...."

- The city's 2009 Downtown Plan includes a section on Development Character and "Sensitivity to Context" (page 33). The Plan establishes the following as a goal: *"Encourage design approaches which minimize the extent to which high-rise buildings create negative impacts in terms of scale, shading, and blocking views."*
- Objective 5 of the plan's Historic Preservation Goal states: *"Where new buildings are desirable, the character of historic buildings, neighborhoods and streetscapes should be respectfully considered so that new buildings will complement the historic, architectural and environmental character of the neighborhood."*
- The Downtown Design Guidelines, Section B.1.1, states: *"Design a building to minimize its impact on adjacent lower-scale areas."* Section B.1.2 continues: *"When a new building will be larger than surrounding structures, visually divide it into smaller building modules that provide a sense of scale: a) Vary the height of individual building modules: b) Vary the height of cornice lines."* The Design Guidelines also recommends (Section A.2.2) *"Site designs should accommodate solar access and minimize shading of adjacent properties and neighborhoods."*
- The Ann Arbor Historic District Commission has the power and obligation to protect the character of historic districts, and historic district ordinances have legal standing equal to zoning ordinances.
- *The proposed development would diminish the historic character and spatial relationships of the existing historic district through incompatible scale and massing, threatening historic trees, altering the historic setting, and significantly blocking historic vistas and sunlight patterns."* (From the Ann Arbor Historic District Commission resolution of March 3, 2013)
- The Downtown Design Guidelines, Section B.1.1, states: *"Design a building to minimize its impact on adjacent lower-scale areas."* Section B.1.2 continues: *"When a new building will be larger than surrounding structures, visually divide it into smaller building modules that provide a sense of scale: a) Vary the height of individual building modules: b) Vary the height of cornice lines."* The Design Guidelines also recommends (Section A.2.2) *"Site designs should accommodate solar access and minimize shading of adjacent properties and neighborhoods."*
- The building design does not conform to the city's Downtown Design Guidelines, as reported by the Design Review Board based on its review of the project on October 17, 2012.

- *A.1.3: Corner sites are an opportunity to express an architectural gateway or focal point and a dominant architectural feature.*
- *A.2.2: Site designs should accommodate solar access and minimize shading of adjacent properties and neighborhoods.*
- *A.3.4: Place an urban open space in a location that serves as a focal point on a site.*
- *B.1.1: Design a building to minimize its impact on adjacent lower-scale areas.*
- *B.1.2: When a new building will be larger than surrounding structures, visually divide it into smaller building modules that provide a sense of scale.*
 - *a) Vary the height of individual building modules.*
- "The plan is too tight to the streets of Huron and Division"
- "The streetscape is too narrow on Huron and Division"
- "The underground parking goes right to the northern property line; how will trees be planted?"
- "There should be more privacy on the north side."
- "Is pool necessary for students coming for the winter?"
- "Every other building on Huron Street has setbacks; setbacks give respect."
- "The building's massing does not respond to the prominence of the corner."
- "Massing does not respond to the historic district to the north."
- "The north elevation has an imposing width; need to change massiveness of it."
- *"In conclusion, the design as presented does not meet the intent of the design guidelines in responding to the context of the site, responding to a unique corner opportunity, respecting adjacent properties or enhancing the pedestrian experience."*

Procedures Problems with Application/Site Design

- The underground parking structure is a Special Use and requires a separate approval process.
- The application lacks a description of the underground retaining wall at Sloan Plaza property line. What kind of construction? Potential damage from pile driver or vibratory hammer? Will temporary retaining wall be removed when the permanent one is in place, or will it be removed?
- Area for trash removal is inadequate.
- No provision for student move-in/move-out days.
- Bicycle transportation in elevators and storage in hallways presents hazard.
- Inappropriate design for wall on north side.

- Developer did not follow required procedures, formats, and documentation when reporting on public meeting.
- Traffic impact for vehicles entering and leaving 413 underground garage inadequate.
- The offsite impact of storm water runoff and footing drains has not been adequately explored.

Potential Problems during Construction of Building

- Construction crane(s) could trespass on adjacent properties (if owners do not give permission), or would obstruct Huron, an unacceptable situation.
- In the opinion of reputable arborists, construction will cause the death of legacy trees (part of the original Ann's Arbor) on the north side of the structure through root damage and shading.
- There is significant potential for damage to the Tyler's carriage house from construction/excavation.
- Problems with noise during construction: impact on neighbors at Sloan Plaza. Allowable level for construction activities at allowable times is 105 dB, but safe level is 90 dB.

Problems with 413 E. Huron Site Plan Resolution, as published for April 1, 2013 City Council Meeting.

- *Whereas, The development would comply with the D1 Downtown Core base zoning district, East Huron 1 character overlay district, and Secondary Street building frontage established pursuant to the requirements of Chapter 55, and with all applicable local, state, or federal laws, ordinances, standards and regulations;*
 - The development complies with none of the downtown plans or design guidelines, so this is not accurate.
- *Whereas, The development would not cause a public or private nuisance and would not have a detrimental effect on the public health, safety and welfare;*
 - This statement has been challenged in numerous letters by citizens, neighbors, and attorneys for the neighbors, stating that the development will be a significance nuisance (noise, construction activities, etc.) and

will have a predictable detrimental effect on their health, safety and welfare.

- *RESOLVED, That City Council approve the 413 East Huron Street Site Plan dated March 5, 2013, upon the condition that 1) the Development Agreement is signed by all parties, and 2) all terms of the Development Agreement are satisfied.*
- The terms of the Development Agreement can not be satisfied with the plan as presented; since the plan requires substantial change to satisfy this clause, the site plan should not be approved.

- DELETED PASSAGES FOLLOW
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- The development in its massing and out-of-scale size is incompatible with adjoining historic districts and would be detrimental to the public welfare.
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- These documents reference significant problems that can result from an inappropriate interface between large-scale downtown projects and low-scale adjacent residential areas.
- Insufficient access for fire vehicles into and out of the property, and a total lack of maneuverability within the property
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- The "vested rights" issue has been distorted, and Council members are not adequately considering case law.
- Missing sun/shade study of the impact of the 413 building on Sloan Plaza's access to sun and light.
- Pedestrian safety at risk because of need for targeted residents (students) to cross heavily-trafficked Huron/State or Huron/Division intersection.
- Introduction of revised site plans at March 18, 2013 without adequate public availability