

City Code Conflict:

Chapter 103 establishes the Historic District Commission and declares “Historic Preservation to be a public purpose” giving the city the ability to regulate the construction, addition, alteration, repair, moving, excavation, and demolition of resources in historic districts. It also declares that the Historic District Commission shall have all powers and duties of commissions authorized by Chapter 103 of this Code and by Public Act 169 of 1970, as amended, including but not limited to the following: “develop preservation components in planning efforts undertaken by the city and to recommend such planning components to the planning commission and to the city council,” (1:191, item 10) and “review the current zoning ordinance and recommend to the planning commission and the city council any amendments appropriate for the protection and continued use of historically and architecturally significant property, structures and areas.”(1:191, item 11)

First Point:

The protection of the resources within a historic district as outlined in Chapter 103 is equally as important as the standards for site plan approval as outlined in Chapter 55. The resources, both natural and built, are threatened by the project proposed for 413 E. Huron.

Chapter 57 of the City Code deals with instances when an improvement or action is not in compliance with all provisions of this code:

5:119. - Intent.

This chapter is intended to require City review and approval of the development of certain buildings, structures and land uses and the creation of new lots, all of which can be expected to have a significant impact on adjacent parcels and land uses, traffic patterns, natural features and the character of future development. It is further the intent of this chapter to provide for the preservation and management of significant natural features through City review, as well as to achieve harmonious relationships of buildings, structures and uses, both within a site and with adjacent sites; safe and convenient traffic movement, both within a site and in relationship to access streets; and appropriate public and private infrastructure

5:138. - Conflict with Code.

No approval of any plan, plat or division pursuant to this chapter shall be construed as authorizing any improvement or action not in compliance with all provisions of this Code. If such a conflict appears, permits may be issued only in accordance with the applicable Code provisions. However, plans may be approved which are subject to approval of variances or other action of Appeal Boards.

Definitions that apply in this case

5:120. - Definitions.

In addition to the definitions below, the definitions of Chapter 55 (Zoning) and Chapter 60 (Wetlands Preservation) shall apply to this chapter and the land development regulations adopted pursuant to it.

- (1) Archaeological resources. Any material remains of past human life and activities which are of either historic or prehistoric archaeological interest.
- (2) Critical root zone. The circular area surrounding a tree which is considered to contain tree roots within 18 inches of the ground surface. The radius of the critical root zone is, in feet, the same numerical value as the tree's diameter at breast height (DBH) in inches, and is measured outward from the center of the tree. For example, the critical root zone of a 12-inch DBH tree has a radius of 12 feet.
- (3) Diameter at breast height (DBH). The diameter of a tree measured 4 feet above the existing grade.
- (8) Landmark tree. Any tree of 24-inch DBH or greater, or that is a type and DBH equal to or greater than shown on the landmark tree list in the land development regulations, and that has a health and condition standard factor of over 50% based on the standards established by the International Society of Arboriculture. These standards consider the soundness of the trunk, the growth rate, the structure of the tree, the presence of insects or disease, the crown development, and the life expectancy. The definition of a landmark tree does not include any tree identified as an invasive species on the City's invasive species list.

5:129. - Review criteria for natural features statement of impact.

In determining whether the proposed disturbance or removal of natural features is limited to the minimum necessary to allow a reasonable use of the land, the approving body shall apply the following criteria, using the

Guidelines for the Protection and Mitigation of Natural Features, Attachment A of the land development regulations:

- (1) The importance and overall value of a natural feature, both on the site and on a City-wide basis. In general, the importance of a natural feature increases with its rarity, size, age and condition.
- (2) The existence of overlapping natural features in 1 area. Overlapping natural features increase the importance and overall value for preservation of the area.
- (3) The impact of the proposed disturbance on the integrity of ecological systems or the continuity between natural features. Wherever possible, ecological systems and continuity between features should be preserved.
- (4) The amount of disturbance in relation to the scale of the proposed development and to that permitted by Chapter 55 (Zoning).
- (5) The adequacy of the mitigation plan.

ATTACHMENT A OF LAND DEVELOPMENT REGULATIONS **GUIDELINES FOR THE PROTECTION AND MITIGATION OF NATURAL FEATURES**

(4) Landmark Trees

Large, old, picturesque, rare, well-located, or otherwise special and interesting trees play an important role in the character of individual properties, and in the fabric of the City as a whole. All the trees in the City together have positive effects on the climate of the City, on its ability to attract and sustain wildlife, and on its visual beauty.

(A) Identification.

Trees which qualify as natural features are, generally speaking, any tree larger than 24 inches in diameter at breast height and any tree of a size listed on the Landmark Tree List (in the Land Development Regulations).

Large trees in natural areas (native forest fragments or forested wetlands or floodplain forest fragments) will often qualify as Landmark Trees.

(B) Protection Priorities.

Highest concern: Landmark Trees of most importance to protect are ones which are rare, unusual, old or historically significant. Certain trees may play a special role in the visual resources of a site or an area. If the trees are native to Ann Arbor (known to have grown here in 1824), they are particularly important to protect. Such trees should be retained and be used as a valuable and integral part of the new development's landscape.

Does the Staff Report give adequate protection to the natural features and historic structures within the adjacent Historic District?

From the Staff Report on the proposed development

There are no protected natural features on the site. The one landmark-sized tree on the subject site is in such poor condition that it does not qualify as a protected natural feature. There are three landmark trees on adjacent properties whose critical root zones extend onto the subject site. One of those landmark trees, a 24-inch Black Walnut at 114 North Division Street, will be impacted by the proposed development in more than half of its critical root zone and will be mitigated. Half (six caliper inches) of the required mitigation will be provided on-site and the other half will be made alternatively by providing funds for the management of natural features on public land nearby or for the street tree planting program.

Issues for HDC Commissioners:

I propose to the HDC that we DO have jurisdiction to make the developer come before us to with regard to landmark trees in the historic district, even though they are on adjacent properties, and that it is our obligation to review the trees from a standpoint of preservation rather than mitigation. The HDC must have the right to make a determination whether the development adjacent to the historic district will prevent the preservation of historic resources within the district. Thus the developer must come before the HDC.

Also: HDC has the right to question the conflict between Chapter 103 and Chapter 55.