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December 7, 2023

**CONFIDENTIAL CORRESPONDENCE
ATTORNEY-CLIENT PRIVILEGE**

Mayor Fischer and City Council
City of Novi
45175 Ten Mile Road
Novi, MI 48375

RE: Chicken Coop Variance

Dear Mayor Fischer and Council Members:

At the last City Council meeting (November 27, 2023), City Council heard a request for a variance by the owner at 47707 Nine Mile Road. He has been cited for a code violation, specifically Section 5-12 of the City Code, relating to the keeping of animals as an accessory use. He was asking for Council to grant him relief from the requirement that the chicken coop on his property be 100 feet from any neighboring residence.

It turns out, based upon additional communication that the City received earlier this week from a neighbor, that he probably also has another violation currently existing on his property, because he is keeping chickens in an area immediately adjacent to the property line with that neighbor, and Section 5-12 requires that any chicken "runs" be at least 25 feet from a property line.

In any event, City Council had some discussion about whether the request met the standard for granting a variance from the City Code provision, which is found at Section 1-12 of the City Code and provides:

Sec. 1-12. General appeal.

- (a) Where any chapter or article of this Code does not provide procedures for appeals from determinations made in the administration of such chapter or article, the appeal procedures provided herein shall apply.
- (b) An appeal may be taken to the city council by any person adversely affected by, and claiming error in, any order, requirement, permit, decision or refusal of an administrative official carrying out or enforcing the provisions of this Code. Such an appeal shall be filed with the city clerk within ten (10) days of the determination from which the appeal is made.

- (c) A **variance** may be granted by the city council from regulatory provisions of this Code when all of the following conditions are satisfied:

(1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;

(2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and

(3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

- (d) This section is not intended to replace appeal procedures otherwise provided in this Code, and shall have no application to those Code chapters and articles which contain specific appeal procedures. (Emphasis added.)

There was a motion to grant the variance failed 3-3. As part of the subsequent discussion toward postponement, Council members indicated that they wanted additional information about some of the things that the applicant had said about his inability to move the coop (and outdoor run) further to rear of the property, which is open land (see attached aerial).

Specifically, the applicant indicated that City staff had told him that the large open area behind his house that is well away from the neighboring home is actually a separate legal parcel, and that he cannot establish an accessory use on that separate parcel; in order to be a valid accessory use, like a chicken coop/run, there needs to first be a principal use of a property (like a house). The applicant also noted that the staff told him that under the City's subdivision ordinance and regulations, the City Assessor is not allowed to combine those two parcels, because doing so would create one long narrow parcel that violates the depth-to-width ratios of the City's Subdivision Ordinance and the Land Division Act. (Generally speaking, the state Land Division Act prohibits the creation of lots with a greater than 4:1 depth-to-width ratio, MCL 560.190, and the City's ordinance is similar).

I said at the meeting that I had not reviewed those issues, and Council members indicated that they would like to have more information about those questions, since the area towards the back of the property is quite deep and open, and well more than 100 feet away from the residences on either side of his parcels and therefore would seem like an appropriate place to place a coop/run that conformed with the setback requirements.

First, let me indicate that staff was correct on both issues—the coop/run cannot be placed on the separate back lot, and the two lots can't be administratively combined by the Assessor. **However, that is not necessarily the end of the issue.** What follows is not an argument

in favor of doing any particular thing in this case, but rather is just additional information that City Council might be able to consider as it determines whether the applicant has met the standards for getting a variance—in other words, whether or not there are other things that he can do to avoid needing variance relief from the 100-foot setback, like moving the chicken coop/run to a conforming location.

We see two separate options that would make the back parcel available for placing a chicken coop/run. ***The first option*** is to have the City Council agree to let the applicant combine the two parcels, even though they technically do not meet the depth-to-width ratios of the City's Code and/or state statute. This is something City Council (as opposed to the City Assessor) is permitted to do under the Subdivision Ordinance by granting a variance under that ordinance (see Section 32-38). If the City Council did that, then the back area would no longer be a separate parcel and the coop/run could be moved there.

One thing that might strike Council members immediately when looking at the attached aerial photographs is that there is no other access to the back parcel other than through the front parcel. We researched the history of how the parcels in the area came to be developed, but it seems pretty clear that these two parcels essentially have to function as one parcel anyway. The back parcel does not have frontage on a public street—that's provided by the front parcel—so it probably does make sense for them to be combined.

The ***second option*** we have identified is a little bit more obscure. It has to do with the definition of a zoning lot in the City's Zoning Ordinance:

Lot, zoning: A single tract of land, located within a single block, which, at the time of filing for a building permit or for a site plan approval, is designated by its owner or developer as a tract to be used, developed, or built upon as a unit, under single ownership or control. (Emphasis added.)

This little-used section of the zoning ordinance allows a property owner to essentially declare that he is going to treat two separate parcels as one single zoning lot for purposes of using or developing it. I say it's "obscure" because it's not something that the City has regularly used, and not something that the City would want a developer or property owner to do very often. Combining parcels is a better solution in most cases, but here, where legally combining these parcels presents a procedural hurdle (the depth-to-width problem), City Council might want to explore this alternative with the applicant.

Which leads to the final point that moving the coop/run is not something that the applicant necessarily wants to do, primarily because of the cost involved. However, all the City really can do is interpret and apply its ordinances in deciding if there is a basis for granting relief to a particular applicant. While the expenditure of money is obviously a burden on an applicant, the fact that something costs money is not in and of itself sufficient to reach the conclusion that a practical difficulty relating to the parcel itself exists. Here, the applicant wants to do something not permitted by ordinance—i.e., keep chickens in a coop/run that doesn't meet setback requirements. But it now appears that he has some other options available to him (ask Council to combine his lots, or declare them to be one zoning lot) that would allow him to do that on a part of his property that would comply with the ordinance. The question Council will need to

December 7, 2023

Page 4

resolve is whether that ability to comply with the setback requirements with some different relief from the City and the expenditure of some money makes it harder for him to prove a need for the setback variance.

I am happy to discuss these issues with City Council at the closed session on Monday, December 11.

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC

A handwritten signature in black ink, appearing to read "Th. Schultz", written over the printed name.

Thomas R. Schultz

TRS/jah

cc: Victor Cardenas, City Manager
Cortney Hanson, City Clerk