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Memorandum

VIA E-MAIL

To: Mayor Marchese and
City Council

From: John B. Murphey

Date: October 23, 2020

Re: CC Relief Process Issues

I thought it be helpful to the Council if I offered some thoughts on the differences between traditional zoning variations, on the one hand, and relief from the chicken coop (“CC”) ordinance, on the other hand.

To that end, I am attaching a copy of Section 5A-2-2-3 of the City Zoning Ordinance dealing with “Variations.” As you can see from subsection (G), the criteria for granting variations can be somewhat demanding. There are good reasons for having such specificity and detail. For the most part, variations deal with proposed permanent improvements to real estate, whether it is the construction of a new house or the construction of an improvement to an existing house. In such case the owner asks the City Council to vary the established Zoning Ordinance standards. In reality, “vary” really means relaxing the established standards. Because we are dealing with proposed permanent improvements to real estate, it is important that competing interests – particularly, the interests of the neighboring property owners and the integrity of the Zoning Ordinance – be protected.

I believe there are different dynamics when considering relief from the requirements of the CC ordinance. In the case of chicken coops, we are not dealing with anything of a permanent nature. We are dealing with what is essentially a hobby, where the owner could dive into it in 2021, then tire of it in 2022. Therefore, traditional zoning ordinance property value considerations which lie at the essence

of the variation analysis don't come into play in the case of chicken coops, because we are not dealing with proposed permanent changes to real estate.

For example, the construction of a larger permanent deck or home addition facilitated by way of a variation granted by the City Council will almost always increase the market value of the home. On the other hand, a property will lose not market value if a chicken coop cannot be built to the full extent desired by an owner; nor will a property gain market value if relief is granted which would allow a proposed non-compliant chicken coop to be built. This is because the vast majority of potential home buyers have no interest in raising chickens.

If anything, the opposite may be true, and potential buyers would look at the cost of removing the chicken coop to be an expense associated with buying a new house, rather than an amenity enhancing value. In the vast majority of cases, the coop will be coming down when a new buyer comes in. This is much like a family with teenagers buying a house with a kiddie swing set and sandbox in the middle of the back yard.

Accordingly, I suggest that in the case of individuals seeking relief from the CC ordinance's standards, the question boils down to: "How much is the Council willing to relax the new standards in order to accommodate a particular owner's hobby?"

With that in mind, the original draft moves away from the traditional property-value focus of variations and instead focuses on two basic questions:

Question 1: Owners – why can't you build per Code?

Question 2: What impact will the proposed relief have on your neighbors?

To that end, the two proposed criteria for the Council to make set forth what we believe will be the basic criteria to answer those two questions. Here are the criteria:

(i) that there are practical difficulties preventing the applicant from complying with such requirement(s). Additional expense associated with complying with Sections 2(d) and 2(e) shall not be considered a practical difficulty justifying relief; and

(ii) granting the relief will not interfere with nearby owners' use and enjoyment of their properties.

I hope this provides some assistance to the Council. Please feel free to follow-up with questions. Thank you.

JBM/sml
Enclosure