

CITY of NOVI CITY COUNCIL

Agenda Item 3
April 18, 2016

SUBJECT: Consideration of variance from requirements of City's Subdivision of Land Ordinance depth-to-width ratio requirements in order to allow lot split/combination submitted by Arkin, L.L.C. for property located at the northeast corner of Nine Mile Road and Novi Road, Parcel No. 22-26-300-009.

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Arkin, L.L.C. owns what are now two separate parcels of land east of Novi Road along Nine Mile Road. Parcel No. 22-26-300-003 (7.23 acres), the corner parcel, is currently vacant. The parcel to the east of that, Parcel No. 22-26-300-009 (4.11 acres), contains the Shiro Restaurant. An aerial photograph depicting the current condition of the property is attached. As can be seen from the aerial photograph, the westernmost half of the Shiro parcel (-009) is undeveloped, with the restaurant and parking lot improvements being located on the easternmost half of the parcel.

Arkin, L.L.C. wants to split the Shiro parcel approximately in half and add the westernmost portion of -009 to Parcel -003 to the west. As a result, the reconfigured westerly parcel would have a gross area of 9.23 acres, and the easterly parcel, containing the Shiro Restaurant, would have a gross area of approximately 2.11 acres.

In Michigan, the splitting and combination of parcels of properties is governed initially by the Land Division Act, Act 288 of 1967. Under the Land Division Act, a municipality can also adopt a local ordinance relating to land divisions. The City has adopted a Subdivision of Land Ordinance, which is found at Chapter 32 of the Code of Ordinances.

The split/combination of parcels proposed here does not pose an issue under the City's Zoning Ordinance. Rather, the issue created by this split is its violation of the City's Subdivision of Land Ordinance by virtue of the resulting "depth-to-width ratio" for the easternmost parcel that will contain the Shiro Restaurant. MCL 560.109, part of the Land Division Act, requires a depth to width ratio of not more than 1 to 4:

(1)(b) Each resulting parcel has a depth of not more than 4 times the width or, if an ordinance referred to in subsection (5) requires a smaller depth to width ratio, a depth to width ratio as required by the ordinance. The municipality or county having authority to review proposed divisions may allow a greater depth to width ratio than that otherwise required by this subdivision or an ordinance referred to in subsection (5). The greater depth to width ratio shall be based on standards set forth in the ordinance referred to in subsection (5). The standards may include, but are not required to include and need not be limited to, exceptional topographic or physical conditions with respect to the parcel and compatibility with surrounding lands.

(5) The governing body of a municipality or the county board of commissioners of a county having authority to approve or disapprove a division may adopt an ordinance setting forth the standards authorized in subsection (1)(b), (c), and (d). (Emphasis added.)

Novi's Subdivision of Land Ordinance does not have a separate provision authorizing either a greater or lesser depth to width ratio. Rather, at Section 32-36 of the City Code, "Procedure for Review of Land Division Applications" Subsection (a)(1) requires conformance with the requirements of the State Land Division Act, as does Subsection (a)(4). In other words, the City's ordinance has essentially adopted the same depth-to-width ratio as the state statute.

However, as contemplated in the state law by above-quoted language, the City has reserved the right to grant **variances** from the requirements of its ordinance—which would include the depth-to-width ratio:

(a) The city council may, upon appeal, authorize a variance from the strict application of the provisions of this chapter where such strict application would result in practical difficulties or undue hardship to the applicant. Relief from the strict application of this chapter may be granted in cases where the result is not a substantial detriment to the public good and does not impair the intent and purpose of the chapter. In granting a variance, the city council may attach conditions deemed reasonable to the purpose of this chapter. The relief shall, in no instance, be greater than necessary to relieve practical difficulty or undue hardship to the applicant. (Emphasis added.)

The reasons for the City Assessor's denial are set forth in his attached letter dated March 18, 2016. Essentially, he concludes that the proposed split exceeds the 1:4 ratio of the ordinance and state law. Regardless of where the property line is measured in this situation—from the centerline of Nine Mile Road, which is the described parcel line, or from the statutory 33-foot right-of-way line (which is the statutory property line)—the depth-to-width ratio of the resulting remainder parcel to the east is either 1:4.7 or 1:4.28. In either event, the depth-to-width ratio of the property exceeds that required by the state statute and the City's ordinance.

The City Assessor was obligated by the statute and the City's ordinance to deny the request. As noted above, the City Council may grant a variance if it finds a practical difficulty or undue hardship. While the Subdivision of Land Ordinance does not specifically define those standards, they are familiar terms in the Code. For example, Section 1-12 of the City Code contains a general description of the requirements for variance relief:

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.

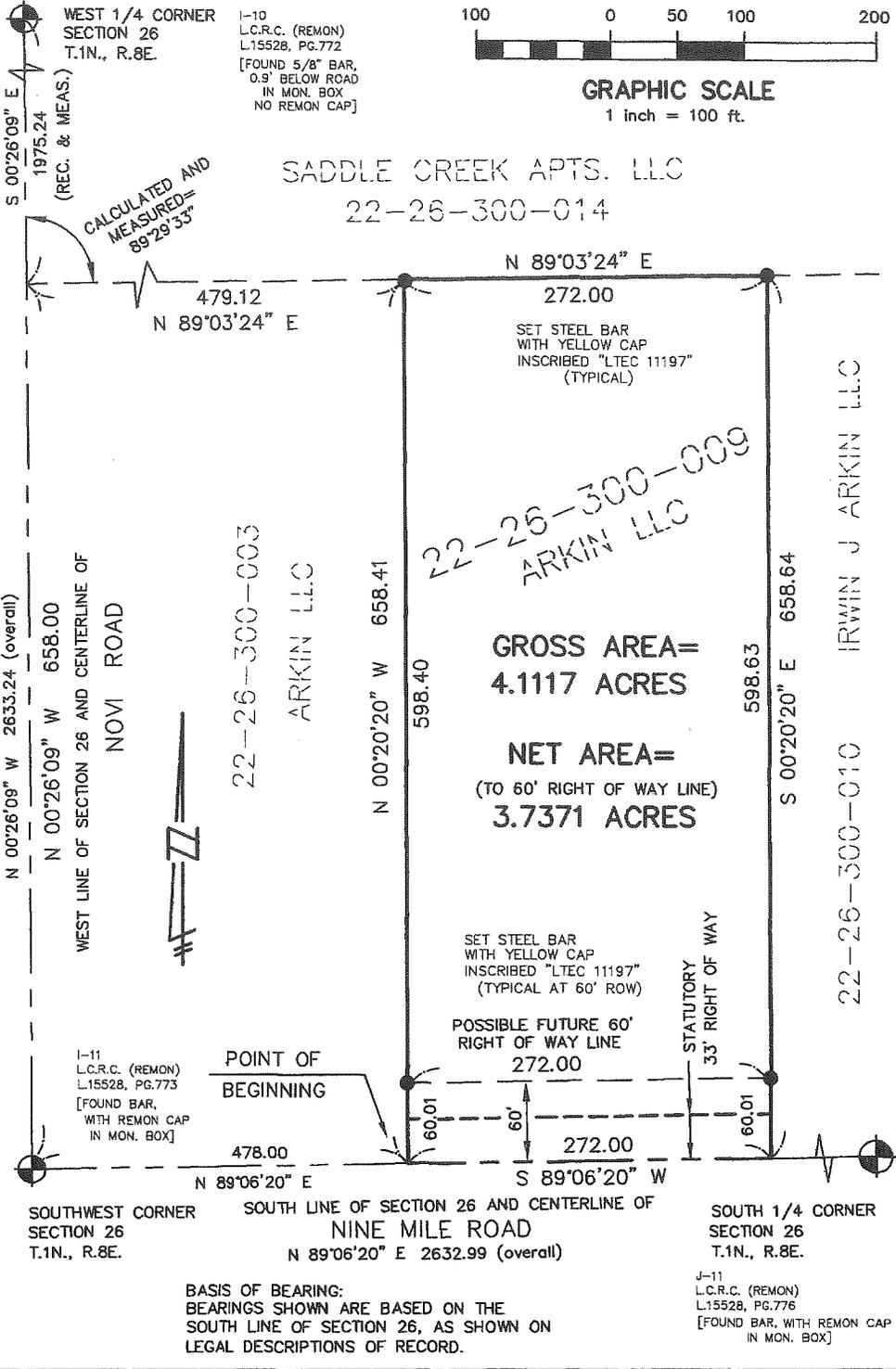
The state law quoted above also describes the sorts of things that might cause the need for a variance: "...exceptional topographic or physical conditions with respect to the parcel and compatibility with surrounding lands."

In this situation, from the City Administration's perspective, this appears to be an entirely self-created situation, and the standard for a variance does not appear to be met. There is no odd parcel configuration. There is no existing improvement that requires a particular lot size or shape. The applicant is simply seeking to maximize the size of the new parcel being created, but as a result is leaving a remaining parcel with an odd (long and narrow) shape. Simply taking less property from the eastern parcel (-009) for combination with the parcel to the west would resolve this problem.

RECOMMENDED ACTION: Deny the requested variance from the depth-to-width provisions of the City's Land Division Ordinance, because the applicant has not established a practical difficulty or undue hardship. The applicant has not established a need to deviate from the required depth-to-width, and basis for the deviation is completely self-created, given that the depth to width ratio could be met by revising or reducing the amount of property split from parcel -009.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				



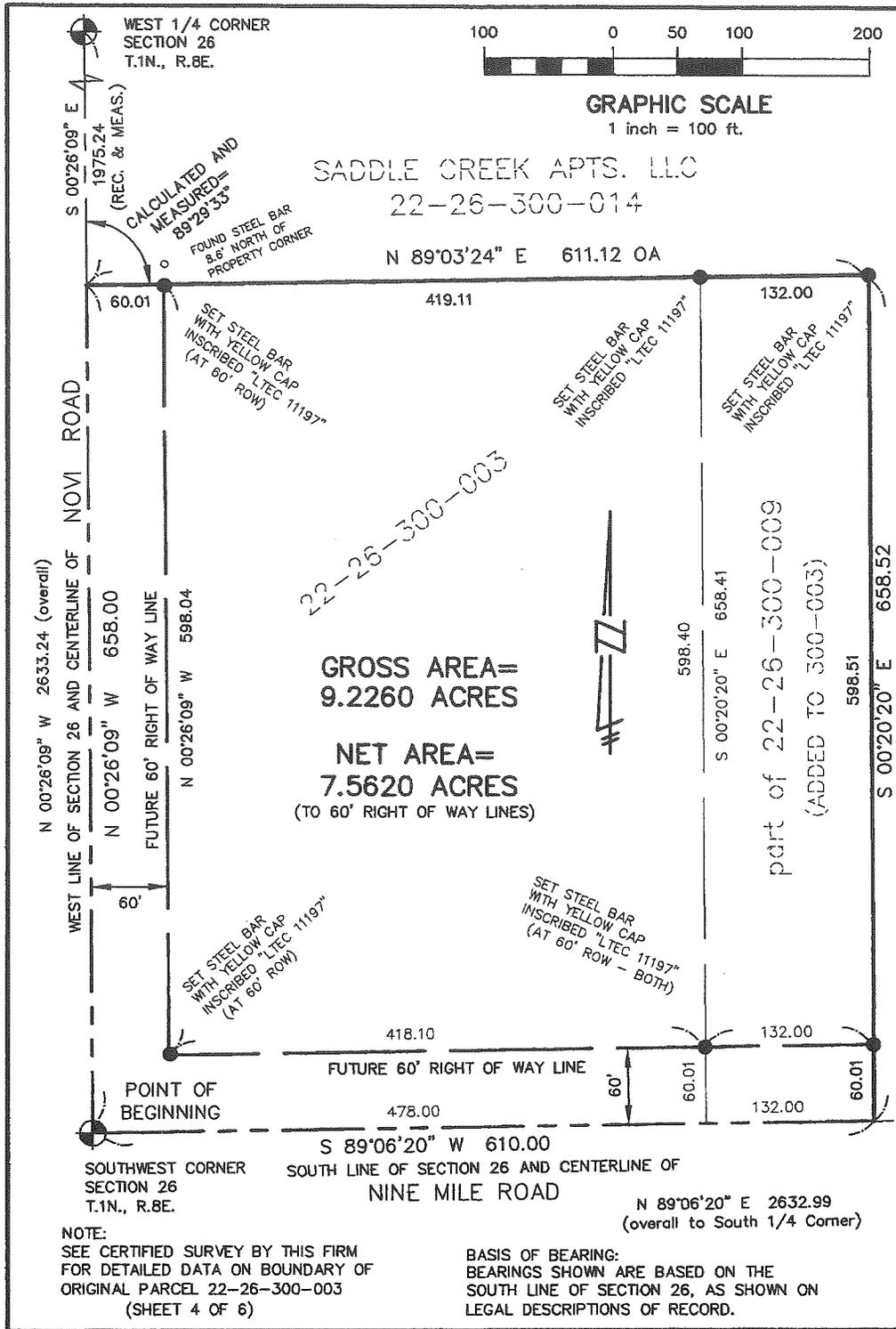
STATE OF MICHIGAN
 ROY J. RUSSELL
 ENGINEER SURVEYOR
 NO. 11197
 PROFESSIONAL ENGINEER & LAND SURVEYOR

Issue Date (Initial):
 3-7-16

CERTIFIED SURVEY PARENT PARCEL
 IN THE SOUTHWEST 1/4 OF SECTION 26, TOWN 1 NORTH, RANGE 8 EAST,
 CITY OF NOV I, OAKLAND COUNTY, MICHIGAN
 (SEE SHEET 6 FOR ADDITIONAL DATA)
 CLIENT: ARKIN LLC (IRWIN J. ARKIN)

LAND-TEC CONSULTANTS, INC.
 Plymouth Office
 Civil Engineering and Land Surveying Consultants
 Roy J. Russell, P.C.P., P.E., P.S., President
 15030 Finch Avenue, Plymouth, Michigan, 48170
 Phone (734) 788-5146 / Email: dbenent@aol.com

SCALE:	1"=100'
DATE:	3/5/16
DBE JOB:	ARK9NOVI
DWG FILE:	CERTSURV
DRAWN BY:	DLB
SHEET:	1 of 6



STATE OF MICHIGAN
ROY J. RUSSELL
ENGINEER & SURVEYOR
NO. 11197
PRO. ENGINEER & LAND SURVEYOR

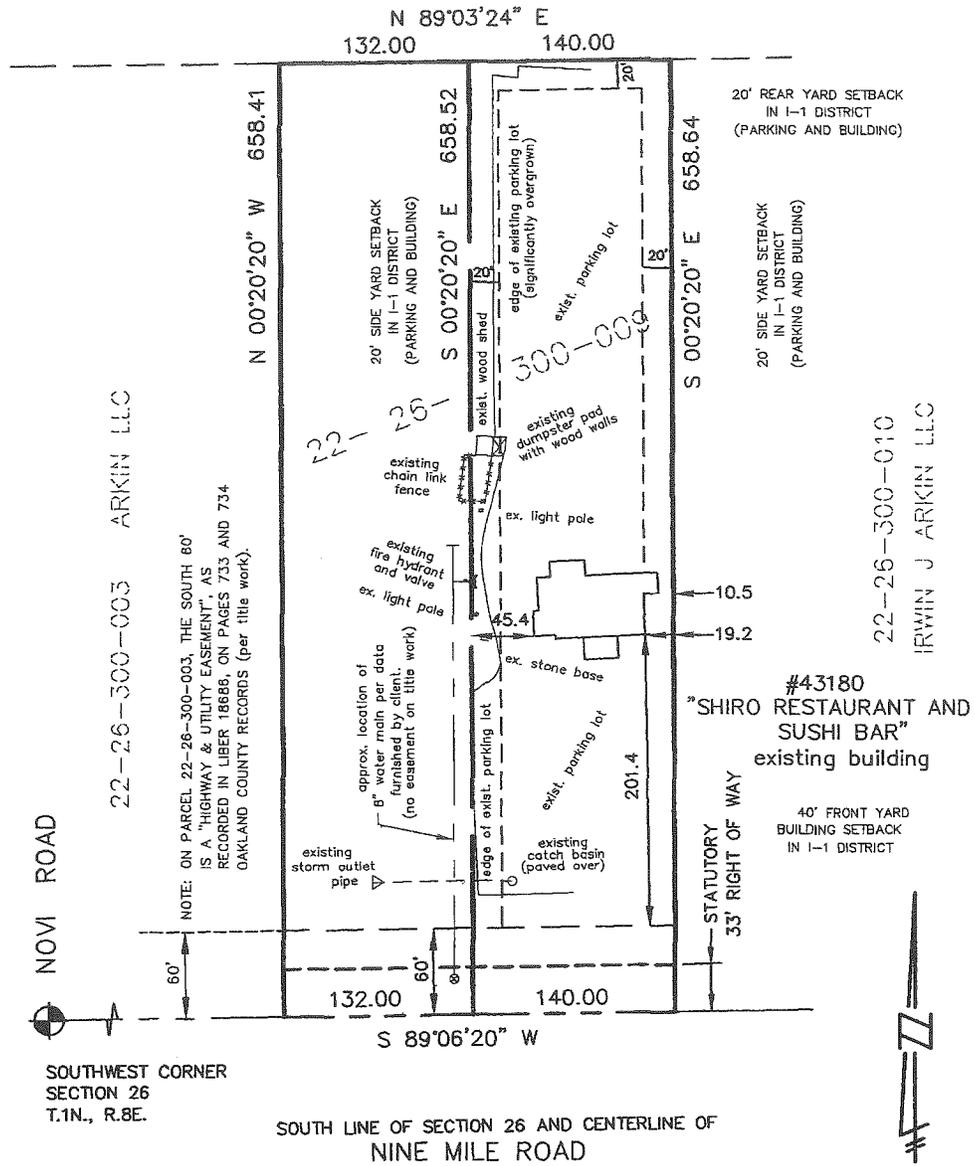
Issue Date (Initial):
3-7-16

RESULTANT PARCEL WITH RECONFIGURATION
IN THE SOUTHWEST 1/4 OF SECTION 26, TOWN 1 NORTH, RANGE 8 EAST,
CITY OF NOVI, OAKLAND COUNTY, MICHIGAN
(SEE SHEET 6 FOR ADDITIONAL DATA)
CLIENT: ARKIN LLC (IRWIN J. ARKIN)

LAND-TEC CONSULTANTS, INC.
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Roy J. Russell, P.C.P., P.E., P.S., President
15030 Finch Avenue, Plymouth, Michigan, 48170
Phone (734) 788-5146 / Email: dbenent@aol.com

SCALE:	1"=100'
DATE:	3/5/16
DBE JOB:	ARK9NOVI
DWG FILE:	CERTSURV
DRAWN BY:	DLB
SHEET:	5 of 6

SADDLE CREEK APTS. LLC 22-26-300-014



THERE ARE NO BODIES OF WATER, FLOODPLAINS, OR EASEMENTS ON, OR WITHIN 50' OF, THE PARCEL TO BE DIVIDED (22-26-300-009).

GRAPHIC SCALE
 100 0 50 100 200
 1 inch = 100 ft.

EXISTING CONDITIONS

STATE OF MICHIGAN
 ROY J. RUSSELL
 ENGINEER & SURVEYOR
 NO. 11197
 PROFESSIONAL ENGINEER & LAND SURVEYOR

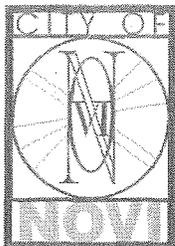
Issue Date (Initial):
 3-7-16

PARCEL DIVISION/RECONFIGURATION
 IN THE SOUTHWEST 1/4 OF SECTION 26, TOWN 1 NORTH, RANGE 8 EAST,
 CITY OF NOVI, OAKLAND COUNTY, MICHIGAN

CLIENT: ARKIN LLC (IRWIN J. ARKIN)

LAND-TEC CONSULTANTS, INC.
 Plymouth Office
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 15030 Finch Avenue, Plymouth, Michigan, 48170
 Phone (734) 788-5146 / Email: dbenent@aol.com

SCALE:	1"=100'
FIELD DATE:	2-26-16
DBE JOB:	ARK9NOV1
DWG FILE:	CERTSURV
DRAWN BY:	DLB
SHEET:	EX-DETAIL



cityofnovi.org

March 18, 2016

Mr. Irwin Arkin
43100 Nine Mile Road
Novi, MI 48375

Re: Parcels 22-26-300-003 & 009

Dear Mr. Arkin:

On March 8, 2016, you submitted an application to reconfigure the above referenced properties. Parcel 003 has a gross acreage of approximately 7.23 acres while parcel 009 has a gross acreage of 4.11 acres. Currently, parcel 009 is improved with Shiro restaurant. You have requested a reconfiguration of these parcels that would add a portion of 009 to parcel 003. The resultant westerly parcel would have a gross area of 9.23 acres while the easterly parcel would have a gross area of approximately 2.11 acres.

In Michigan, acreage properties extend to the section line which in most cases is the centerline of a road which in the instant case would be both Novi and Nine Mile Roads. The area used for public travel is known as a prescriptive easement and is typically 33 feet wide. In many cases an actual dedication of right-of-way has taken place where the property owner dedicates 60 feet to the appropriate municipality. That has not happened on either of the two subjects.

As requested, the proposed Shiro restaurant parcel would be 140 feet wide by 658.64 feet deep. This equates to a width to depth ratio of 1:4.70. I've been told by Novi Community Development that there is no ordinance siting a maximum width to depth ratio for commercial and industrial properties. In absence of such an ordinance, I have fallen back to Section 109 of the State of Michigan Land Division Act that sites a maximum width to depth ratio of 1:4. Section 109 does not except out prescriptive right-of-way and therefore I am considering depth to originate from the centerline of Nine Mile Road. Additionally, full dedication of the right-of-way only drops the ratio to 1:4.28.

Section 32-36(1) of the Novi Code of Ordinances states:

The city assessor shall review the application for completeness and shall, when deemed necessary, refer the application to the various departments of the city for review and approval. If the application package does not conform to this chapter's requirements and the State Land Division Act, and other applicable ordinances and statutes, the city

assessor shall return the application package to the applicant for completion and refileing in accordance with this chapter.

Since there does not appear to be any existing local ordinance that addresses a larger width to depth ratio than allowed by the State of Michigan, your application is being denied because the requested width to depth ratio exceeds acceptable standards.

Section 32-37(b) provides for an appeal of the assessor's decision within 20 days of this denial. An appeal to the Novi City Council can be made by contacting the city clerk and securing an appointment on the next available agenda.

It is my opinion that, if no local ordinance exists that provides for a greater width to depth ratio that provided by state law, the local governing body does not have jurisdiction to grant you relief from the state law. An appeal may provide a different opinion.

One set of your surveys is being returned to you along with your application. If you wish to revise the application, please be aware that the entire review process would begin again.

If you have any questions in this matter, feel free to call me at (248) 347-0492.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Glenn Lemmon".

D. Glenn Lemmon, City Assessor
City of Novi

ARKIN, L.L.C.

MARCH 28, 2016

City of Novi
45175 10 Mile Road
Novi, Michigan 48375

ATTENTION: Cortney Hanson, CMC, CMMC, Deputy City Clerk

RE: Appeal of the Denial of a Lot Split / Reconfiguration on
Parcels 22-26-300-009 and 22-26-300-003

Ms. Hanson:

In response to the request in your email of March 23, 2016, please find the following:

On March 8, 2016 we submitted paperwork in accordance with the City of Novi Land Division Application in order to divide and reconfigure our Parcel 22-26-300-009 thereby creating a "Remainder Parcel", and expanding (or adding to) our Parcel 22-26-300-003.

On March 18, 2016, our Application was denied by the City Assessor because our Resultant Parcel (300-009) will not comply with the State of Michigan Land Division Act requirement for a 1:4 width-to-depth ratio.

Please accept this letter as our formal request for a variance from the City Council under *Article II. – Land Division Application and Review, Sec. 32-38. – Variances* for the following reasons:

- 1) As noted in the Assessors Denial Letter, our resulting width-to-depth ratio on the "Remainder Parcel" is at worst 1:4.70 and could go as low as 1:4.28, depending on the Nine Mile Road right-of-way determination. We believe that neither of these resultant ratios will result in *"a substantial detriment to the public good"*.
- 2) Parcel 300-009 is currently split by two different zoning districts, RM-1 on the west and I-1 on the east. The resultant width of the proposed Remainder Parcel (at 140.00 feet) is based on our interpretation of where the zoning limit changes, as well as a natural fit relative to existing improvements serving the existing "Shiro Restaurant". We believe that defining the actual limit of the zoning change not only benefits us, but also the City. Currently, this split zoning situation does *"result in a practical difficulty or undue hardship to the applicant"*.

43100 NINE MILE ROAD | NOVI, MICHIGAN 48375
(248) 349-8675 | (248) 349-5970 FAX

CITY OF NOVI
MARCH 28, 2016
PAGE 2

In conclusion, we believe that our proposed Division does not present any detriment, and will relieve a practical difficulty. Therefore, we respectfully request that City Council grant us a variance on the width-to-depth ratio and accept our proposed Land Division Application.

We look forward to presenting our case to City Council at the earliest opportunity. Please let me know if there is anything else the City requires from us.

Thank you.

Sincerely,



Irwin J. Arkin

CP:LT032816CITYOFNOVI

43100 NINE MILE ROAD | NOVI, MICHIGAN 48375
(248) 349-8675 | (248) 349-5970 FAX

City of Novi



MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager for information source and accuracy information related to this map.



1 inch = 376 feet



Map Print Date:
4/14/2016



City of Novi
Department of Public Services
26300 Lee BeGole Drive
Novi, MI 48375
cityofnovi.org