

Jim Trett, Mayor
Greg Sheppard, City Councilor
Eric Page, City Councilor
Tim Luke, City Councilor
Michele Tesdal, City Councilor
Todd Smith, City Councilor
Denny Nielsen, City Councilor

Michelle Connor, City Recorder



City of Detroit, Oregon
City Council Reg Session &
Public Hearing Agenda

November 14, 2023

6:30 p.m.

345 Santiam Ave W.
Detroit, Oregon

Mailing Address:
P.O. Box 589
Detroit, Oregon 97342

(503) 854-3496
(503) 769-2947 fax

Email: detroit@wvi.com

The City of Detroit is an equal opportunity provider and does not discriminate on the basis of race, creed, color, country of origin, religion, sexual orientation or identity, disability, or other immutable characteristics. Those with a disability who wish to request an accommodation or aid in order to participate in this meeting should contact the City Recorder at (503) 854-3496 or by email at detroit@wvi.com.

Meetings of the City Council of Detroit will be broadcast via Zoom, as well as on other form(s) of electronic media as they become available. If you require additional assistance to participate in this public meeting, please contact the City of Detroit at least 48 business hours prior to the meeting (503) 854-3496 or by email at detroit@wvi.com.

- I. Call to Order**
- II. Council Roll Call**
- III. Pledge of Allegiance**
- IV. Approval of the Agenda**
- V. Special Orders of Business**
- VI. Committee Reports**

This time is set aside for committees established by law, ordinance or other authority to report to the City Council on the committee's ongoing work.

VII. Public Comments

This is the time set aside for comments from the public on matters not on the agenda. Commenters are limited to three (3) minutes. Time may not be yielded. Questions from the Council or staff to commenters shall not be counted against the allotted three (3) minutes.

VIII. Resolutions, Orders and Administrative Action

- a. Planning Commission Terms & Vacancies – Mayor Trett
- b. Ziplly Franchise Agreement – Eric Page
- c. City Hall Memorabilia & Wall Coverings – Tim Luke
- d. Vehicle Sale/Disposal – Eric Page
- e. Emergency Contact Personnel (NIMS Compliance) – Eric Page/Jim Trett/Michelle Connor
- f. Public Hearing – Variance VAR2023-01
 - 1. Open Public Hearing
 - 2. Public Comment
 - 3. Close Public Hearing

IX. Consent Calendar

- a. Approval of the Minutes of the City Council Regular Session/Public Hearing of October 24, 2023.
- b. Approval to Pay Bills

X. Staff Reports

- a. HBH Engineering
- b. City Recorder
- c. Planning
- d. Marion County Sheriff
- e. USFS – Michelle King
- f. Idanha-Detroit Rural Fire Protection District
- g. North Santiam Sewer Authority
- h. City Clerk

XI. Unfinished Business

- a. CIS Negotiations
- b. Camping Ordinance
- c. SPIRE Grant – Water & Fuel Tanks

XII. Council Reports

XIII. Mayor's Report

XIV. Other Business

XV. Upcoming Meetings.

- a. Regular Council Meeting – December 12, 2023 – Detroit City Hall 6:30 PM.

XVI. Adjourn

MEMORANDUM

City of Detroit, Oregon
E-mail: detroit@wvi.com

November 9, 2023

RE: Planning Commission Term & Vacancies
TO: Detroit City Council

All of the Planning Commissioner's terms from January 2021 are up. We have 5 open spots.

<u>Original Commissioners</u>	<u>Reapply or not?</u>
Dean O'Donnell	?
Kevin Hills replaced by Kate Woodrum	?
Elaine DeGeorge replaced by Nancy Powell	Yes
Todd Smith replaced by Michelle Warden	No
Gina Audritch	No
Kevin Cameron	Yes
Davis Evenson replaced by Traci Boland	No

See attached

City Charter – Residency requirements
Resolution 613 – 4 Primary, 3 Non-Primary
Municipal Code – Terms are for 2 years

Do we want to stagger the terms 2 year and 4 year?

Thank You,

City of Detroit
Michelle Connor, City Recorder

Chapter 2.20 PLANNING COMMISSION

Sections:	2.20.010	Establishment.
	2.20.020	Membership.
	2.20.030	Appointments
	2.20.040	Vacancies and removal.
	2.20.050	Presiding members.
	2.20.060	Staff services.
	2.20.070	Meetings.
	2.20.080	Powers and duties.
	2.20.090	Recommendations to council.
	2.20.100	Expenses.
	2.20.110	Public Hearings

2.20.010 Establishment. There is hereby re-established and re-created a City Planning Commission, herein referred to as the Commission, for the City of Detroit. *[Ord #178 January 9, 2001]*

2.20.020 Membership. The Commission shall consist of ~~seven~~ ~~five~~ seven members who are not officials or employees of the City. Members must be residents of the City for at least one year. The Mayor shall serve as an ex-officio member of the Commission, with the right to take part in its discussions, but shall not have the right to vote. Commission members will not be compensated. *[Ord #178 January 9, 2001, amended by Res. 432 & 511 & 613]*

2.20.030 Appointments. Members of the commission shall be appointed by the Mayor, with the approval of the majority of the City Council, for terms of two years. *[Ord #178 January 9, 2001]*

2.20.040 Vacancies and removal. Appointments to fill vacancies on the Commission shall be for the remainder of the un-expired term and in the same manner as set forth for appointment of all Commission members, by the Mayor with the approval of the majority of the City Council. Any member of the Commission may be removed by the City Council, after hearing for misconduct or non-performance of duty. A member, who is absent from three consecutive regular meetings in a calendar year, ~~without an excuse approved by the Commission~~, is presumed to be in non-performance of duty and the City Council shall declare the position vacant unless finding otherwise following the hearing. Removal of any member of the Commission shall be only upon a majority vote of the entire council of the city. *[Ord #178 January 9, 2001, amended by Res. 511]*

2.20.050 Presiding members. At its first meeting of each calendar year, the Commission shall elect a Chairman and a Vice Chairman who shall be voting members of the Commission to serve one-year terms. *[Ord #178 January 9, 2001]*

Section 5. **Construction of Charter.** In this Charter, no mention of a particular power shall be construed to be exclusive, or to restrict the scope of the powers, which the city would have if the particular power were not mentioned. The Charter shall be liberally constructed to the end that the city may have all powers necessary, or convenient, for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the State Constitution.

Chapter III

FORM OF GOVERNMENT

Section 6. **Where Powers Vested.** Except as this Charter provides otherwise, all powers of the city shall be vested in the Council.

Section 7. **Council.** The Council shall be comprised of seven Council members elected in the city at large who are not paid city employees. Five (5) of the seven Council members must be primary residents of the city and up to two (2) may be non-primary residents who otherwise meet the requirements of Section 12.

Section 8. **Council Members.** The term of office of each Council member in office when this Charter is adopted shall continue for the term for which each was elected. At the General Biennial Election in November, and at each subsequent biennial election, the three (3) Councilors receiving the highest number of votes shall each hold office for four (4) years and the other members for two (2) years.

Section 9. **Mayor.** To be eligible to occupy the office of Mayor, a person must be a councilor who is a primary resident (Section 12 (3)) and who was elected to the Council by the electorate of the City. Councilors who are appointed by the Council to fill a vacancy shall not be eligible to occupy the office of Mayor. At the first meeting of each year, the Council shall choose, from its eligible membership, a chairperson who shall be Mayor. The Mayors' term of office shall be one year.

Section 10. **Other Officers.** Additional appointed officers of the city may be a recorder, municipal judge and such other officers as the Council deems necessary. Each of these officers shall be appointed, and may be removed by the mayor with the consent of the Council. The Council may combine any two or more appointive city offices. The Council may designate any appointive officer to supervise any other appointive officer except the municipal judge in the exercise of his judicial functions.

Section 11. **Compensation.** The mayor and Council members shall not receive a salary. The compensation of each city officer and employee shall be the amount fixed by the Council. The Council may prescribe a plan for reimbursing city personnel for expenses that they incur in serving the city.

Section 12. **Qualifications of Officers.**

- (1) No person shall be eligible for an elective office of the city unless, at the time of his election, he is a qualified elector within the meaning of the state constitution, and has a residence inside the city limits of the City of Detroit, Oregon, during the twelve months immediately preceding the election.
- (2) No city employee who receives compensation from the city shall hold a city elective office. No person who holds the office of municipal judge shall hold another city elective or appointed office.
- (3) **Additional Residency Requirement – Primary Resident:**
 - a. Must reside in the city a minimum of six (6) months plus one (1) day per calendar year
 - b. Must be registered to vote in the City of Detroit, Oregon

- c. Must receive official mail, including Federal and State tax information/returns, at their City of Detroit, Oregon, mailing address
 - d. Driver License or State ID card must be issued to their Detroit, Oregon address
 - e. Must be able to attend nine (9) out of twelve (12) regular City Council meetings in a calendar year
- (4) Additional Residency Requirement – Non-primary Resident:
- a. Must be able to prove part-time residency status (e.g. home ownership, lease or rental agreement, water bill)
 - b. Must be registered to vote in the City of Detroit, Oregon
 - c. Must be able to attend nine (9) out of twelve (12) regular City Council meetings in a calendar year
- (5) The Council shall be the judge of the qualifications and election of the elected city officers.

Chapter IV

COUNCIL

Section 13. **Meetings.** The Council shall hold a regular meeting at least once a month at a time and place in the city which it designates, and may meet at other times in accordance with the rules. It shall, by Ordinance, prescribe rules to govern its meetings and proceedings.

Section 14. **Quorum.** A majority of members of the Council shall constitute a quorum for its business.

Section 15. **Record of Proceedings.** The Council shall cause a record of its proceeding to be preserved.

Section 16. **Proceedings to be Public.** No action by the Council shall have any legal effect unless the motion for the action, and the vote by which it is disposed of, take place at proceedings open to the public.

Section 17. **Mayor's Function at Council Meetings.** The mayor shall be the chairperson for the Council and preside over its deliberations. The mayor is a voting member of the Council and shall have authority to preserve order, enforce the rules of the Council and determine the order of business under the rules.

Section 18. **Council President.** At the first meeting after this Charter takes effect and thereafter at its first meeting of each odd-numbered year, the Council shall elect a president from its membership. In the mayor's absence from a Council meeting, the president shall preside over it. Whenever the mayor is unable to perform the functions of the office, the president shall act as mayor.

Section 19. **Vote Required.** Except as this Charter otherwise provides, the concurrence of a majority of a quorum present and voting at a Council meeting shall be necessary to decide any question before the Council.

Chapter V

POWERS AND DUTIES OF OFFICERS

Section 20. **Mayor.** The mayor shall appoint other persons required by the Council to be so appointed; shall sign all approved records of proceedings of the Council; shall have no veto power; and, shall sign all ordinances passed by the Council within three days after their passage.

RESOLUTION NO. 613

A RESOLUTION AMENDING ORDINANCE NO. 178 SECTION 2 AND MUNICIPAL CODE SECTION 2.20.020 RELATING TO THE CHARTER CHANGE AFFECTING MEMBERSHIP AND ESTABLISHING CRITERIA, AND REPEALING RESOLUTION NO. 511

WHEREAS, The Detroit City Council wishes to amend Ordinance 178 section 2, establishing a City Planning Commission, which states, the Commission shall consist of seven members who are not officials or employees of the City.

WHEREAS, The City of Detroit adopted Resolution 511 on December 11, 2012 to amend Ordinance 178 section 2 relating to membership and residency requirements to comply with Ballot Measure 24-350 on December 4, 2012, adopting a new Charter modifying residency and office holding requirements. The change was reflected in section 2.20.020 of the Detroit Municipal Code.

WHEREAS, The City of Detroit finds it necessary to amend the statement that the Planning Commission shall consist of three (3) primary resident members and two (2) non-primary resident members who are not officials or employees of the City to four (4) primary resident members and three (3) non-primary resident members who are not officials or employees of the City, due to a need for more volunteers to expedite the re-building of the City of Detroit due to the Beachie Creek and Lionshead wildfires that occurred September 8, 2020.

BE IT HEREBY RESOLVED AS FOLLOWS:

Ordinance 178 Section 2 shall be amended to read "The Commission consist of seven members who are not officials or employees of the City. Four (4) members must be primary residents of the City who meet the Charter residency requirement (Section 12.3) and three (3) members may be non-primary residents of the City who meet the Charter residency requirement (Section 12.4) The changes will be reflected in section 2.20.020 of the Detroit Municipal Code.

PASSED BY THE COMMON COUNCIL OF THE CITY OF DETROIT, MARION COUNTY, OREGON on this 12th day of January 2021.

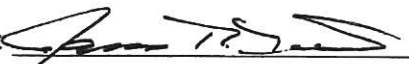
Effective date: January 12, 2021

Ayes: 7

Nays: 0

Absent: 0

ATTEST:

Signed: 

Mayor

By: 

Kelly Galbraith, City Recorder

Ordinance No.

An Ordinance Granting Ziplly Fiber Northwest, LLC a 10-year Non-Exclusive Franchise to Use, Erect and Maintain its Facilities in the City's Public Rights-of-Way (Franchise Agreement - Ziplly)

WHEREAS, Ziplly Fiber Northwest LLC ("Franchisee") is in the business of erecting and maintaining poles and extensions and attachments thereto within the public rights-of-way that are then used as support-by-support telecommunication service providers and other utilities that provide telecommunications services to the community members of the City of Detroit (the "City") and surrounding areas; and

WHEREAS, Franchisee proposes to erect and maintain physical structures (poles, pole extensions, attachments and related facilities) within the City's public rights-of-way; and

WHEREAS, Franchisee seeks permission to use the public rights-of-way in accordance the Detroit Development Code and all applicable standards and requirements, including the City of Detroit Design Standards, and to compensate the City for its use of the public rights-of-way; and

WHEREAS, the City and Franchisee desire to clarify their respective rights and obligations with respect to erection, maintenance and subsequent relocation or removal of Franchisee's facilities within and from the City's public rights-of-way; and

WHEREAS, it is in the public interest that the City and Franchisee enter into this franchise agreement.

NOW, THEREFORE, based on the foregoing recitals, the City Council for the City of Detroit, Oregon ordains as follows:

SECTION 1. Definitions. The following definitions shall apply to the interpretation of this Franchise Agreement:

- A. **Rights-of-Way**: The present and future streets, viaducts, elevated roadways, alleys, public highways, and avenues in the City, including public rights-of way held in fee, or by virtue of an easement or dedication.
- B. **"Facilities"** means poles, pole extensions, attachments, and related facilities of any

kind, placed, erected, maintained, owned or managed by Franchisee within the City's rights-of-way.

SECTION 2. Grant of Franchise.

- A. The City of Detroit ("City") hereby grants to Ziplly Fiber Northwest LLC, a Delaware company and its successors and assigns (collectively and individually "Franchisee") the non-exclusive right and privilege to place, erect, lay, maintain and operate in, upon, over and under the City's public rights-of-way its facilities as defined herein for the purpose of providing physical support, attachment and housing for telecommunications service providers and other utilities that require such facilities.
- B. The scope of this Franchise allows the installation, maintenance and repair of facilities installed by Franchisee in the City's rights-of-way for the purposes described herein.
- C. Notwithstanding the foregoing, the City Council or council's designee shall have the authority to designate which rights-of-ways Franchisee may use, the location(s) where Franchisee may place its facilities within the public rights-of-way and the maximum dimensions of those facilities as may be reasonably necessary to minimize public inconvenience and comply with the Detroit Development Code unless this Franchise Agreement provides otherwise, and the City's adopted Design Standards.
- D. This Franchise is not transferable ~~and~~ shall not allow or permit the operation of any service provider within the City that might attach equipment, lines, antennas or other facilities to the Franchisee's facilities. Any utility or service provider desires to attach equipment, lines, antennas, or other facilities to the Franchisee's facilities is required to obtain its own franchise from the City for use of the public rights-of-way.

SECTION 3. **Term of Franchise and Renewal.**

- A. Initial Term. The franchise granted pursuant to this Agreement shall be in effect for a term of 10 years, beginning on the effective date of this Agreement.
- B. Renewal. At the conclusion of the initial 10-year term, this Franchise shall automatically renew for two successive 5-year renewal terms, unless either party provides notice to the other party at least 60 days prior to the expiration of a term of the party's decision to not renew. In that case, the Franchise will not renew but will expire at the conclusion of the term in which notice was provided. If the Franchise is not renewed, Franchisee shall have 120 days after the conclusion of the term to remove its facilities from the City's public rights-of-

way.

SECTION 4. Franchise Territory. The geographic area covered by this Franchise shall include all land within the corporate municipal boundary of the City of Detroit as it currently exists or may be expanded to exist in the future through annexation.

SECTION 5. Excavations, Construction, Relocation of Facilities.

- A. Subject to compliance with all requirements of Detroit Development Code and all applicable provisions of the City's adopted Design Standards, Franchisee may make all needful excavations in any street, alley, avenue, thoroughfare, public utility easement and public highway, in the City where excavation has been authorized for the purpose of placing Franchisee's facilities, or repairing, renewing, or replacing the same. A "Public utility easement" means the space in, upon, above, along, across, over, or under an easement for constructing, reconstructing, operating, maintaining, inspecting, and repairing of utility facilities. A "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or where the proposed use by a utility operator is inconsistent with the terms of any easement granted to the City. The authority granted in this section shall apply only to the extent of the City's right, title, interest, or authority to grant a franchise to occupy and use such spaces for Franchisee's facilities. Any such work shall be done in compliance with the Detroit Development Code, the then-current City Design Standards, and all other applicable local, state, and federal laws, rules, regulations, ordinances and orders, as may be amended from time to time by the City or other regulatory authority.
- B. Franchisee shall obtain from the City all applicable permits, including a public works right-of-way permit, which will require [street level drawings](#), plan submittal, approval, and the payment of fees before any work within the City rights-of-way begins. Franchisee shall file with the City maps showing the location of the construction, extension, or relocation or any of Franchisee's facilities and shall obtain the City's approval of the location and plans prior to the commencement of the work. All Facilities installed by Franchisee within the City shall be located so as to cause minimum interference with the proper use of streets, sidewalks, bridges, and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, sidewalks, bridges, or other public ways or places.
- C. Unless approved by the City, Grantee shall not cut into, excavate, or disturb any newly overlaid, paved, or constructed street for a period of 5 years from the time of completion of the street overlay, pavement, or street construction. In the event

that moling, boring, or shoulder work are not feasible to construct necessary system improvements or repair a system failure, Grantee may request, and the City will consider, allowing Grantee to cut the street before expiration of the 5-year moratorium described in this subsection, subject to appropriate additional compensation charged to Grantee for such damage to the City street.

- D. When any excavation is made by Franchisee into a public right-of-way, Franchisee shall promptly restore the affected portion of the street, sidewalk, bridge, easement area, or public place to the reasonably same or better condition in which it was prior to the excavation. The restoration shall be done in compliance with City specifications, requirements, and regulations in effect at the time of such restoration. If Franchisee fails to restore promptly the affected portion of the street, sidewalk, bridge, easement area, or public place to the same condition in which it was prior to the excavation, the City may make the restoration; and the reasonable costs of making the restoration, including the cost of inspection, supervision, and administration shall be paid by Franchisee.
- E. The City reserves the right to require Franchisee to relocate its Facilities within the right- of-way in the interest of public convenience, necessity, health, safety, or welfare at no cost to the City and in accordance with the Detroit Development Code. The City shall provide Franchisee 90- days' written notice of the requirement to relocate its Facilities, after which Franchisee shall promptly commence the relocation of its Facilities at no cost to the City. Before requiring a relocation of Facilities, the City shall, with the assistance of Franchisee make a reasonable effort to identify a reasonable location for the relocated facilities within the Public Ways of the City. If the removal or relocation of Facilities is necessitated as a direct result of a private development, Franchisee may charge the expense of removal or relocation to the developer. Franchisee shall be solely responsible for enforcing collection from the developer.
- F. Franchisee shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, Franchisee may charge the expense of removal or relocation to the developer or customer.
- G. Franchisee shall provide the City with an accurate map or maps certifying the location of all of its Facilities in the City including bore logs with depths. The first of such maps shall be provided within 30 days after completion of facility installation in public rights-of-way. Franchisee shall provide updated maps thereafter annually on the anniversary of the date the first map was provided.
- H. The City shall have the right without cost to use all poles and suitable overhead structures owned by Franchisee within the Public Ways for City wires used in

connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City for public purpose and shall not include the provision of CATV, internet, or similar services to the public. Provided further, that Franchisee shall assume no liability, nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the City's use of these poles and structures shall be in such a manner as to prevent safety hazards or interferences with Franchisee's use of same.

1. Grantee shall place all utility lines and related facilities underground by December 2026. Grantee shall be allowed to place above ground, in locations approved by the City, its fiber distribution hubs, cross connect/digital subscriber line boxes and other cabinet type facilities that are normally placed above ground.

SECTION 4. Construction and Performance Bond. Prior to the commencement of any construction work, Franchisee shall file both a construction and performance bond in an amount approved by the City in favor of the City and any other person who may suffer damages as a result of the breach of any duty by Franchisee assured by such bond. Such bond as contemplated herein shall be in a form approved by the City and shall, among other matters, cover the cost of removal of any property of Franchisee. In no event shall the amount of said bond be construed to limit the liability of the Franchisee for damages. The City, at its sole option, may waive this requirement, or permit the consolidation of the construction bond with the performance bond.

SECTION 5. Improvements - Utility Obstruction Prohibited. The City reserves the right to construct, install, maintain, and operate any public improvement, work or facility, to do any work that the City may find desirable on, over, or under any street, bridge or public place, and to vacate, alter or close any street, bridge or public place. Nothing in this Section shall be construed in any way to prevent the proper authorities of the City from installing sanitary sewer or storm sewer facilities, providing water service, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City in or upon which Franchisee's Facilities shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said Facilities, and the moving of Franchisee's Facilities, where required due to such work by the City, will be done by Franchisee within 120 days of notice by the City without cost to the City. Franchisee shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its conduits or fiber optic cable in the area involved in such proposed work.

SECTION 6. Maintenance of Facilities and Removal when No Longer in Use. Franchisee shall maintain in good and functioning condition all of its Facilities at all times, including

any light poles or similar fixtures that provide service beyond Franchisee's business needs. In the event any of Franchisee's facilities need repair or replacement, the City may give written notice of what is needed, and Franchisee shall have no more than 30 calendar days to affect the repair or replacement, including light bulb replacement. Franchisee shall remove all/any of its Facilities from the public right-of-way within 90 days of its no longer being used. If Franchisee fails to so remove its Facilities, the City may provide written notice to do so, in which case Franchisee shall remove the Facility within 90 calendar days of the City's notice.

SECTION 7. Emergency Removal and Alternate Routing of Facilities. If, at any time, in case of fire, disaster, or other threat to public safety in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of Franchisee's Facilities, such cutting or moving may be done. Any repairs rendered necessary thereby shall be made by Franchisee, at its sole expense, provided that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City.

SECTION 8. Compliance with Laws, Rules, and Regulations. At all times during the term of this franchise, Franchisee shall comply with all applicable laws, ordinances, rules, regulations and Engineering Standards of the United States of America, the State of Oregon, and the City of Detroit, including all agencies and subdivisions thereof. Franchisee shall be subject to the lawful exercise of the police power of the City of Detroit and to such reasonable regulations of general applicability as the City may from time-to-time hereafter, by resolution or ordinance, provide insofar as such regulations or ordinances do not materially alter or impair the express provisions of this Franchise. No provision of this Franchise shall be construed as a waiver of local, state, or federal law, or as a limit of liability. Franchisee shall at all times keep and maintain all of its Facilities in a good state of repair and shall at all times conduct its operations under this Franchise, including installation, construction, or maintenance of its Facilities, in a safe and workmanlike manner so as not to present a danger to the public or the City. The location, construction, extension, installation, maintenance, removal, and relocation of Franchisee's Facilities shall conform to the requirements of the State and Federal statutes and regulations adopted pursuant thereto in force at the time of such work, and such reasonable specifications in force at the time of such work, as the City may from time to time adopt. All installations, rearrangements, removals, lowering or raising of the Facilities shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon and the ordinances and Engineering Design Standards of the City. The City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

SECTION 9. Indemnification and Insurance.

- A Franchisee shall pay, save harmless, defend, and indemnify the City from any loss, suit or claim of any kind against the City on account of, or in connection with, any activity or Facility of Franchisee, including the placement, construction, operation, maintenance or existence of its Facilities. Franchisee will not be required to indemnify the City for the negligent or willful misconduct of the City or its officials, boards, commissions, agents, or employees, to the extent that such conduct is the proximate cause of any claim.
- B Franchisee shall, for the purposes of carrying out the provisions of this Section, prior to commencing construction of any kind, have in full force and effect, and file and maintain during the term of the Franchise a Certificate of Insurance evidence thereto with the City Manager, with good and sufficient policies covering:
- i. Worker's Compensation Insurance as required by the State of Oregon, and Franchisee shall ensure that each of its sub-contractors complies with these same requirements and shall contain a Waiver of Subrogation against the City: and
 - ii. Commercial General Liability Insurance with limits of at least \$2,000,000 per occurrence and \$4,000,000 general aggregate, with the aggregate on a Per Project basis; and
 - iii. Business Automobile Liability Insurance, for any owned, hired, or non-owned vehicles used in the performance of this agreement with combined single limits of \$2,000,000 each accident.
- C. The City of Detroit, its officers, agents, and employees, shall be named an Additional Insured in said policy for losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted.
- D. Upon any material alteration or cancellation of any of the coverage, Franchisee shall give the City notice as allowed per insured's insurance policy in advance of the effective date of the alteration or cancellation of the coverage.
- E. Each policy, Commercial General Liability, Auto Liability and Workers' Compensation, shall contain a waiver of subrogation against the City.

SECTION 10. Payment

- A Franchisee shall pay a Franchise Fee to the City in an amount equal to **7%** of Franchisee's gross revenue derived from its operations within the City. Gross revenues shall have the same meaning as ORS 221.515.
- B. Payment of Franchise Fees. Payments due under this provision shall be

computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 30 days after such dates. This Franchise Fee shall be deposited in the U.S. Mail, postage prepaid, addressed to the City Recorder and postmarked by the due date described herein.

- C. If a payment is not mailed or sent electronically within 30 days of the due date set forth above, the payment shall be deemed delinquent and shall accrue a late fee of 9% compound interest per annum until collected.

SECTION 11. No Waiver. Neither City nor Franchisee shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

SECTION 12. Amendment. At any time during the term of this Franchise, the City through its City Council, or Franchisee may propose amendments to this Franchise by giving 30-days' written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this Franchise shall be effective until mutually agreed upon by the City and Franchisee and formally adopted as an ordinance amendment.

SECTION 13. Forfeiture and Remedies. In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, subject to 45-day right to cure, and all of the Franchisee's rights arising thereunder in the event that Franchisee violates any material provision of the Franchise including, but not limited to, failing to pay or any suspension of Franchisee's payments of Franchise Fees to the City under this Franchise, failure by Franchisee to submit timely reports regarding the calculation of its Gross Revenues-based Franchise Fees to the City, failure to maintain the liability insurance and/or bonds required under this Franchise, or failure to comply with all other state, federal or local laws as set forth in this Franchise. All remedies and penalties under this chapter, including termination of the Franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this chapter, including termination of the Franchise, are not exclusive, and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon Franchisee by, or pursuant to, this Ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon Franchisee by, or pursuant to, this chapter or acceptance of any payment

due shall not be waiver of any other or subsequent or future breach of the same or of any other term, condition, or obligation itself.

SECTION 14. Severability. In the event any of the provisions of this Franchise are determined by a court of competent jurisdiction to be void, invalid or unenforceable, that provision shall be severed from the remainder of this Franchise so as not to cause the invalidity or unenforceability of the remainder of this Franchise. All remaining provisions of this Franchise shall continue in full force and effect. If any provision shall be deemed invalid due to its scope and breadth, such provisions shall be deemed valid to the extent of the scope and breadth permitted by law.

SECTION 15. Successors and Assigns. This Franchise is binding upon and will inure to the benefit of all parties hereto, their respective heirs, legal representatives, successors, and assigns. Franchisee, however, shall not make any assignment without the written consent of the City, and any assignment made without the City's consent shall be null and void; provided, however, that nothing in this Franchise requires the City's consent for any sale, lease, mortgage, assignment, merger, or other transfer to entities that control, are controlled by, or under the common control of the Franchisee. Any transfer of Franchisee's assets to another carrier which is approved by the Oregon Public Utilities Commission will receive automatic approval by the City.

SECTION 16. Notices. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the City or the Franchisee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail to the following addresses:

For the City: City of Detroit
Attn: City Recorder
Address

For Franchisee: Ziplly Fiber Northwest, LLC
Attn: Legal Dept
135 Lake Street South, Suite 155
Kirkland, WA 98033
Phone: (503) 431-0458
Email: legal@ziplly.com

The City and Franchisee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this Section.

SECTION 17. Acceptance and Effective Date. Franchisee shall, within 30 days from the date the City Council passes an ordinance approving this Franchise, file with the City its written unconditional acceptance of this Franchise and all of its terms. This Franchise shall be effective as of [REDACTED] if Franchisee provides the City with its written unconditional acceptance as required in this Section. In the event the Franchisee fails to do so, this ordinance shall be void.

SECTION 18. Repeal of Prior Franchise. All prior franchises with Franchisee's predecessors are hereby repealed, including Ordinance [REDACTED].

ACCEPTANCE

Ziply Fiber Northwest, LLC, Franchisee herein, hereby accepts the terms and provisions the foregoing Franchise Agreement adopted and approved by the Detroit City Council on _____ (the "Franchise"). Franchisee agrees to abide by each and every term of the Franchise Agreement, which shall become effective upon Franchisee's acceptance.

BY

RESOLUTION NO. 448

A RESOLUTION TO DESIGNATE THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AS THE BASIS FOR ALL INCIDENT MANAGEMENT IN THE CITY OF DETROIT, OREGON

WHEREAS, the President in Homeland Security Directive (HSPD)-5, directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent nationwide approach for Federal, State, local, and tribal governments to work together more effectively and efficiently to prevent, prepare for, respond to and recover from domestic incidents, regardless of cause, size or complexity;

WHEREAS, to facilitate the most efficient and effective incident management it is critical that Federal, State, local and tribal organizations utilize standardized terminology, standardized organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters;

WHEREAS, it is necessary and desirable that the Council of the City of Detroit and all City of Detroit departments and personnel coordinate their efforts to effectively and efficiently provide the highest levels of incident management;

WHEREAS, the NIMS standardized procedures for managing personnel, communications, facilities and resources will improve the City of Detroit's ability to utilize federal funding to enhance local readiness, maintain first responder safety, and streamline incident management processes;

WHEREAS, the Incident Command System components of NIMS are already an integral part of various incident management activities throughout the City of Detroit.

BE IT HEREBY RESOLVED AS FOLLOWS:

The City Council of the City of Detroit hereby establishes the National Incident Management System (NIMS) as the city standard for incident management.

APPROVED BY THE COMMON COUNCIL OF THE CITY OF DETROIT on this 13th day of January 2009.

EFFECTIVE UPON SIGNATURE OF THE MAYOR

ATTEST:

MAYOR

City Recorder

Ayes _____ Nays _____ Absent _____



FEMA

NIMS Implementation Objectives

for Local, State, Tribal, and Territorial Jurisdictions

2018 Update

The National Incident Management System (NIMS) provides stakeholders across the whole community with the shared vocabulary, systems, and processes to successfully deliver the capabilities described in the [National Preparedness System](#). NIMS helps prepare the nation for catastrophic disasters by uniting all incident personnel, from on-scene responders to individuals in Emergency Operations Centers (EOC) and senior officials, enabling them to meet challenges beyond the capacity of any single jurisdiction or organization.

This nationwide unity of effort hinges on a shared understanding of what NIMS implementation entails. The NIMS Implementation Objectives provide the baseline for that understanding.

The NIMS Implementation Objectives reflect the concepts and principles contained in NIMS and aim to promote consistency in NIMS implementation across the Nation. The NIMS Implementation Objectives clarify the NIMS implementation requirements in FEMA preparedness grant Notices of Funding Opportunity. As recipients and subrecipients of Federal preparedness (non-disaster) grant awards, jurisdictions and organizations must achieve, or be actively working to achieve, all of the NIMS Implementation Objectives.

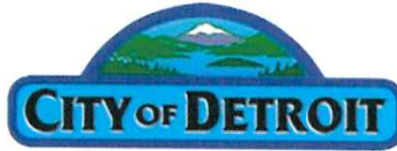
In addition to the Implementation Objectives, the following chart outlines a vision for each NIMS component and example indicators for each objective. The visions outline the intended end state of the activities under that component. The indicators are examples of characteristics that are frequently associated with jurisdictions and organizations that have achieved the objective. They are not requirements criteria, nor are the indicators intended as a checklist for achieving the objectives. The indicators are a tool to assist jurisdictions and organizations in meeting the new Implementation Objectives.

NIMS Implementation Objectives for Local, State, Tribal, and Territorial Jurisdictions

NIMS Implementation Objectives		Example Indicators
<p>General</p> <p><i>Vision: Policies and processes are in place to support NIMS implementation</i></p>	1. Adopt the National Incident Management System (NIMS) throughout the jurisdiction or organization to prevent, protect against, mitigate, respond to, and recover from incidents.	A current and valid legal authority indicating that NIMS is the system of choice for the jurisdiction or organization.
	2. Designate and maintain a point of contact (POC) to serve as the principal coordinator for the implementation of NIMS.	Stakeholder notification including contact information for a current NIMS point of contact responsible for the overall coordination and development of NIMS-related activities and documents for the jurisdiction.
	3. Ensure that incident personnel receive pertinent NIMS training in alignment with the NIMS Training Program.	Official training guidance that specifies: <ul style="list-style-type: none"> • Which training courses incident personnel must take; • How long they have to complete the training after they join the jurisdiction or organization; and • Frequency of refresher training.
<p>Resource Management</p> <p><i>Vision: Consistent, interoperable identification, management, and sharing of incident resources</i></p>	4. Identify and inventory deployable incident resources consistent with national NIMS resource typing definitions and job titles/position qualifications, available through the Resource Typing Library Tool. (NIMS pages 6-7, http://www.fema.gov/resource-management-mutual-aid).	Up-to-date resource inventory (such as the Incident Resource Inventory System) that uses NIMS resource-typing definitions for all shareable or deployable resources.
	5. Adopt NIMS terminology for the qualification, certification, and credentialing of incident personnel. (NIMS page 8) <i>Developing or participating in a qualification, certification, and credentialing program that aligns with the National Qualification System (NQS) is recommended, but not required.</i>	Official guidance document specifying how incident personnel are qualified, certified, and credentialed consistent with NIMS terminology.
	6. Use the NIMS Resource Management Process during incidents (identify requirements, order and acquire, mobilize, track and report, demobilize, reimburse and restock). (NIMS page 12)	Current standard operating procedures align with the NIMS Resource Management Process. Exercise or real-world incident documentation indicating the appropriate use of NIMS Resource Management process and NIMS resource typing definitions.
	7. At the jurisdictional level, develop, maintain, and implement mutual aid agreements (to include agreements with the private sector and nongovernmental organizations).	Mutual aid agreements are up-to-date and in effect, covering neighboring jurisdictions, the private sector, and nongovernmental organizations.

NIMS Implementation Objectives for Local, State, Tribal, and Territorial Jurisdictions

NIMS Implementation Objectives		Example Indicators
<p>Command and Coordination</p> <p><i>Vision: Integrated decision making and unity of effort among all incident personnel</i></p>	8. Apply ICS as the standard approach to the on-scene command, control, and coordination of incidents.	<p>Exercise or real-world incident documentation or after-action reports indicating consistent use of NIMS principles, procedures, and structures including the Incident Command System (ICS), Multiagency Coordination (MAC) Groups, and Joint Information Systems (JIS).</p> <p>Standard operating procedures and emergency operations plans that reflect NIMS guidance such as the NIMS Management Characteristics, ICS, MAC Groups, and JIS.</p>
	9. Implement JIS for the dissemination of incident information to the public, incident personnel, traditional and social media, and other stakeholders.	
	10. Use MAC Groups/Policy Groups during incidents to enable decision making among elected and appointed officials and support resource prioritization and allocation.	
	11. Organize and manage EOCs and EOC teams consistent with pertinent NIMS guidance.	Emergency Operations Plans (EOP), Standard Operating Procedures (SOP), organizational charts, or training program materials reflecting NIMS EOC guidance.
<p>Communications and Information Management</p> <p><i>Vision: Information gets to who it needs to, when it needs to, and in a means they can understand.</i></p>	12. Apply plain language and clear text communications standards.	SOPs, standard operating guidelines, and training program materials direct the use of plain language and clear text for incident communications.
	13. Enable interoperable and secure communications within and across jurisdictions and organizations.	<p>Exercise and/or real-world incident documentation and/or after action reports indicate that:</p> <ul style="list-style-type: none"> • Communications and information systems are reliable and scalable and can function in any type of incident; • Communications systems are resilient and redundant; • Incident data, networks, and systems are appropriately protected and secure; • Appropriate communication guidance is incorporated into EOPs or supporting plans or annexes; and • Incident communications personnel have experience establishing and supporting interoperable communications.
	14. Develop, maintain, and implement procedures for data collection, analysis, and dissemination to meet organizational needs for situational awareness.	<p>Exercise or real-world incident documentation indicate that incident personnel are collecting, analyzing, and disseminating situational awareness effectively and consistently with NIMS guidance.</p> <p>Data collection plans and SOPs align with NIMS guidance on information management and NIMS command and coordination structures.</p>



**CITY COUNCIL HEARING
STAFF REPORT
VAR 2023-01**

HEARING DATE: November 14, 2023
REPORT DATE: November 7, 2023
FILE NUMBER: VAR 2023-01
APPLICANT: Kyle Juran, Builder
OWNER: Greg Wentzel
REQUEST: Variance to Section 2.1.5(B)(2) of the Detroit Development Code (DDC) to reduce the side yard setback from five (5) feet to approximately 1-foot-4 inches for the yard along the northern property line to allow the construction of a staircase serving a secondary building access.

LOCATION:

Site Address	Tax Lot	Area
190 Tumble Street N	105E01BC03500	±5,000 SF

CRITERIA: Detroit Development Code (DDC)
Section 2.1 Residential Single (RS) Zone
Section 5.1 Variances

EXHIBITS: Exhibit A: Public Notice/Vicinity Map
Exhibit B: Site Plan
Exhibit C: Applicant's Materials
Exhibit D: Comments from Marion County Building Inspection

I. BACKGROUND AND PROCESS

The application seeks approval for a Variance to Section 2.1.5(B)(2) of the Detroit Development Code (DDC), aiming to decrease the 5-foot side yard setback standard in the RS zone to around 1-foot-4 inches. The purpose of this variance is to permit the retention of an already-constructed external staircase within the side yard.

A Class C Variance requires a Type III Procedure, subject to the criteria listed in Chapter 5.1.4 (C)(2). Type III decisions are considered initially by the Planning Commission with final decisions made by the City Council.

The application was received on June 7, 2023. Staff deemed the application incomplete and notified the applicant of the information missing from the application on June 30th, 2023. The applicant submitted some of the requested information on August 23, 2023. On September 12, 2023 the applicant provided written notice to planning staff that no other information would be provided. Request for comments from affected

agencies were sent on September 18th, 2023. Staff sent notice to property owners within 250 feet on September 27th, 2023. The applicant posted notice on their property on October 2nd, 2023 as required by Section 4.1.5(C).

Planning Commission conducted a public hearing on the application on October 17, 2023. The commission adopted the findings and conditions of approval in the Staff Report and voted to advance the application to City Council with a recommendation to approve the request subject to the conditions of approval presented by staff.

Comments Received

Marion County Building Inspection submitted the comments in Exhibit D explaining the applicable provisions in the 2021 Oregon Residential Specialty Code (ORSC) that apply to the project. No other comments were received on the application as of the date of this staff report.

II. CRITERIA AND STAFF FINDINGS

Detroit Development Code (DDC)

4.1.5 Type III Procedure (Quasi-Judicial)

A. Preapplication conference. *A preapplication conference is required for all Type III applications. The requirements and procedures for a pre-application conference are described in Section 4.1.7.C.*

Finding: A pre-application conference was not held for the project. The pre-application conference was identified in the incompleteness determination issued on June 30 as one of the missing submittal requirements necessary for a complete Type III application. On September 12th, the applicant instructed City staff to proceed with the application as submitted. The purpose of the pre-application conference is to ensure that applicants are informed of the submittal requirements and approval criteria that apply to a particular application. This information was provided to the applicant with the aforementioned incompleteness determination. Further, the pre-application conference is not necessary to determine compliance with any applicable criteria, therefore staff support waiving this requirement.

B. Application requirements.

1. *Application forms. Type III applications shall be made on forms provided by the city.*
2. *Content. Type III applications shall:*
 - a. *Include the information requested on the application form;*
 - b. *Be filed with three (3) copies of a narrative statement that explains how the application satisfies each and all of the relevant criteria in sufficient detail for review and action;*
 - c. *Be accompanied by the required fee;*
 - d. *Include an impact study for all Type III applications. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet city standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where this Code requires the dedication of real property to the city, the applicant shall either specifically agree to the dedication requirement, or provide evidence that show that the real property dedication requirement is not roughly proportional to the projected impacts of the development.*

Finding: With the exception of the impact study under subsection (d), the applicant has submitted the required materials. The variance is requested to permit an external staircase. The existence of the staircase or the type of staircase proposed will have no impact on public facilities. Therefore, staff supports waiving the requirement for an impact study.

5.1.4 Class C Variance

A. **Purpose.** *The purpose of this section is to provide standards for variances that exceed the Class A and Class B Variance criteria in Section 5.1.2 and 5.1.3. Class C Variances may be granted if the applicant shows that, owing to special and unusual circumstances related to a specific property, the literal application of the standards of the applicable land use zone would create a hardship to development that is peculiar to the lot size or shape, topography, sensitive lands (Chapter 3.7), or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use zone); except that no variances to "permitted uses" shall be granted.*

B. **Applicability.**

1. *The variance standards are intended to apply to individual platted and recorded lots only.*
2. *An applicant who proposes to vary a specification standard for lots yet to be created through a subdivision process may not utilize the Class C Variance procedure.*
3. *Variances to allow a use not otherwise allowed in the underlying land use district are prohibited*

Findings: The property is platted as Lot 8, Block 14 of Hammond Addition. The variance does not propose to allow a use that is not allowed in the RS zoning district. Staff finds that the variance standards are applicable to the proposal.

Approval Process and Criteria

The city shall approve, approve with conditions, or deny an application for a variance based on finding that all the following criteria are satisfied:

1. *The proposed variance will not be materially detrimental to the purposes of this Code, to any other applicable policies and standards, and to other properties in the same land use zone or vicinity;*

Findings: The applicant submitted the following statement in response to the criterion:

I don't believe this staircase will be materially detrimental to the purposes of the code, or to any other applicable policies and standards. And to other properties in the same land use zone or vicinity. The spacing of the 2 houses at this property line is more than 17' so the real intent of the setback for fire code is not an issue. If this is still an issue there are fire retardant materials we can apply to the wood on the staircase to lower the possibility of flame spread.

Staff concurs that the ±17 foot setback from the neighboring home is consistent with the underlying purpose of the 5-foot side setback standard. The standard allows 5-foot-yards on either side of the property line resulting in a minimum allowable setback of 10-feet between structures. The proposed setback from the neighboring home exceeds the minimum requirement otherwise allowed under DDC 5.1.4 (C)(2). The applicant submitted a letter of support from the neighboring property owner which supports a finding that the staircase in its current location is not materially detrimental to the purpose of the code.

Marion County Building Inspection submitted comments in Exhibit D indicating that the staircase can be placed no closer than 2 feet to the property line, that the upper landing is required to be a minimum of 36 inches in depth, and the landing and stairs will need to be protected to a 1 hour fire rating, or be constructed of a non-combustible material.

Based on the testimony provided by the Building Inspector, Staff finds that Condition 2 is necessary to satisfy this criterion and find the proposal is not detrimental to applicable policies for fire protection under the Oregon Residential Specialty Code:

Condition 2: The applicant shall submit a revised building plan showing the staircase constructed no closer than 2 feet to the northern property line, the upper landing constructed to a minimum of 36 inches, and the landing and stairs either protected to a 1-hour fire rating, or constructed of a non-combustible material. Compliance with this condition shall be verified by the Marion County Building Inspector.

Staff finds this criterion can be met as conditioned.

2. *A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands (Chapter 3.7), or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district).*

Findings: The applicant submitted the following statement making general assertions that the topography of the site presents a hardship peculiar to the lot that can be addressed by the variance:

This lot was a challenge to build the house that the property owner wanted to build and still have space for the septic system. The Lot was originally terraced at the front with a retaining wall approximately 20 ft from the front property line. This effectively cut 1,000 sf of usable space for septic drain field out of the 5,000 lot size. The house needed to be located in one corner of the property to allow enough contiguous space for the septic system and drain area to work. We ended up cutting the house footprint down to leave the space we needed for the septic system. There was even a compromise made by the building official to allow us to do what we did. Saying all of this I believe there was a hardship that existed which is peculiar to the lot size, shape and topography to be able to build what the property owner wanted for the property that they had owned and had a cabin on before the fire.

The DDC does not include a definition of “hardship”. Therefore, the City Council can exercise the discretion granted it under the Type III process to consider the site constraints discussed in the response a hardship that is peculiar to the topography of the site. The correspondence from the Marion County septic inspector included in the application describing challenges siting the septic system can also be cited to support of this finding. Staff supports a finding that a hardship exists that is peculiar to the topography of the site.

3. *The use proposed will be the same as permitted under this title and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land.*

Findings: The applicant submitted the following statement addressing the proposed use on Page 1 of the written materials:

The use proposed will be the same as city standards based on the spirit of the setback standard that there will be 17' between the house at 190 tumble and the house at 200 tumble and the owners at 200 Tumble would much rather look at the staircase that is currently there than have a 6'3" retaining wall and 2-3 of concrete steps up to the door on the house at 190 tumble. I have provided a letter from the owners at 200 tumble that states their opinion on the look of the options that we have.

Staff agrees that the variance does not modify the use allowed in the RS zone. Staff observes that compliance with the criterion hinges on the City Council's determination of what constitutes a 'reasonable economic use of the land,' a term not defined in the DDC. Staff observe that the landing and staircase are designed to serve a secondary entrance to a laundry room on the second floor of the home. Based on the plans submitted by the applicant, it appears that the staircase and landing would not be needed if the secondary entrance were removed from the design. In that case, the project would meet the side yard setback requirement without the proposed staircase and landing, similar to the site plan the applicant presented in their building permit submittal.

Type III decisions afford the decision-making body some discretion in determining compliance with applicable criteria. The term “reasonable economic use of land” is not defined in the DDC. Therefore, if the City Council finds that the second entrance and the related staircase are necessary to enable the reasonable economic use of the land, they can find that the criterion is met.

4. *Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject Code standard;*

Findings: In response to the criterion, the applicant submitted the following statement on Page 1 of the written statement:

I don't believe there will be anything that is adversely affected by this variance. I do believe the property owners at 200 Tumble would be adversely affected by an unpleasant view of concrete if we were to have to put in a retaining wall to be able to get to the door on the side of the house at 190 Tumble instead of being able to keep the pleasant looking staircase that is currently built.

Staff concurs that the existence of the staircase is unlikely to have any negative impact on drainage or natural resources. The staircase will not generate vehicular trips that will negatively impact traffic. Staff find this criterion is met.

5. *The hardship is not self-imposed; and*

Findings: In response to the criterion, the applicant submitted the following statement on Page 2 of the written statement:

I don't believe this hardship is self-imposed. The shape of this particular lot with the terraced front yard made it difficult to give the property owners what they envisioned for the rebuild of their cabin. We spent a great deal of me designing this project around how they expected to use their house in the future. We did expect to be able to have concrete steps to access the north side of the house in the original design but as the project went on after the excavation on it became clear that putting in steps that matched the steps at the front of the house would be the least intrusive design to match the neighbor's property to the north (200 tumble).

While the applicant's response does not discuss design choices, such as omitting the laundry room door, that would not require an external staircase or a variance. Nevertheless, City Council has considerable discretion in determining what is a hardship and what is self-imposed. Therefore, the City Council can find that the hardship is not self-imposed to approve the variance.

6. *The variance requested is the minimum variance that would alleviate the hardship.*

Findings: In response to the criterion, the applicant submitted the following statement on Page 2 of the written statement:

The approval of the request to allow the staircase to stay as-is on the North side of the house to access the laundry room and give additional egress to the north side and rear of the house would alleviate any hardship that has been realized by the small size of the lot that are inherent to this area of Detroit. The homeowners love the look and feel of the house that has been built and feel that having to make a change to the way their house is accessible at the North side would actually result in a hardship and a less safe situation for them and their guests. The small footprint that this staircase takes up at the side of their house compared to a concrete retaining wall and concrete staircase that is the only other option is definitely their preference and is agreed by the homeowners adjacent to them at the North as described in the letter that is attached.

The comments from the Marion County Building inspector outline the minimum variance that would alleviate the hardship and have been incorporated in Condition 2. The criterion can be met as conditioned.

III. CONCLUSIONS AND RECOMMENDATION

Based on the information provided in the submitted application and the findings in the Staff Report, staff recommends the City Council **approve** VAR 2023-01 subject to the following conditions:

Condition 1: The variance shall only apply to the specific proposal included in the application. The variance shall not run with the land or apply to future development on the subject property.

Condition 2: The applicant shall submit a revised building plan showing the staircase constructed no closer than 2 feet to the northern property line, the upper landing constructed to a minimum of 36 inches, and the landing and stairs either protected to a 1-hour fire rating, or constructed of a non-combustible material. Compliance with this condition shall be verified by the Marion County Building Inspector.

IV. CITY COUNCIL OPTIONS/SAMPLE MOTIONS

Based on the information provided in the submitted application and the findings in the Staff Report, staff recommends the City Council consider the following actions on VAR 2023-01:

- A. Move to adopt the findings in the Staff Report and approve VAR 2023-01 as conditioned. (recommended)
- B. Move to **deny** VAR 2023-01, with findings stating the basis for the denial.
- C. Move to continue the public hearing to a date and time certain and state the additional information needed to make a future decision on the application.

EXHIBIT A



PUBLIC NOTICE

NOTICE IS HEREBY GIVEN that on October 17, 2023, at 5:30 pm, the Detroit Planning Commission will conduct a public hearing to consider the following request and make a recommendation to the Detroit City Council. The City Council will hold a hearing on November 14 at 6:30 pm to make a decision on the proposal.

FILE NUMBER: VAR 2023-01
APPLICANT: Kyle Juran
OWNER: Greg Wentzel
LOCATION: Marion County Assessor's Map/Tax Lot: 105E01BC03500
ADDRESS: 190 Tumble Street N
SIZE: Approximately 5,000 square feet
CURRENT USE: Residential
ZONING: Single Family (RS)
REQUEST: a Class C Variance to Section 2.1.5(B)2 of the Detroit Development Code, to allow for a 1-foot-4 inch side yard setback where a 5-foot setback is required.

CRITERIA: **Detroit Development Code:**
Chapter 2.1: Residential Single Family Zone (RS)
Chapter 5.1: Variances

Persons wishing to speak for or against this proposal may appear in person or by representative at the date and time listed above. Written testimony will be received up to one week prior to the hearing at the Detroit City Hall, PO Box 589, Detroit OR 97342. All testimony should be directed to the applicable criteria.

Failure to raise an issue at the hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision-makers an opportunity to respond to the issue precludes appeal of the City Council decision. It is the applicant's responsibility to raise constitutional or other issues relating to any proposed conditions of approval. The failure of the applicant to raise such issues with sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes an action for damages in circuit court.

A copy of the application documents and evidence submitted by or on behalf of the applicant and applicable standards are available for inspection at no cost and will be provided at a reasonable cost. A staff report related to this application will be available for inspection seven (7) days prior to the hearing at the Detroit City Hall.

For additional information, please contact Curt Fisher at 503-540-1616 or cfisher@mwvcog.org

VICINITY MAP



SEE MAP 105E01

EXHIBIT C

Land use application Narrative for Section 5.1.4.C
190 Tumble St Detroit OR 97342

A. We are requesting this variance to allow the exterior staircase that was built at the North side of the House to remain. The foundation of the house is 5'6" from the property line and the staircase posts are 1'4" from the property line. The house to the north (200 Tumble) is 16 ft from this property line, this means the space between the structure at 200 tumble and staircase at 190 tumble is 17' 4".

The Original design was to have the dirt level cover the foundation at the north side of the house and to have concrete steps to the door at this level but during excavation when the dirt was removed to build the foundation it worked out that not putting the dirt back at the taller level on that side of the house worked out better for the lot to the north (200 Tumble). Without building the staircase that we have built we would have had to still build an approximately 6 ft tall retaining wall with concrete steps up to the door. In talking with the owner at 200 tumble this would have felt closed in on their property. The owners of 200 tumble would prefer the staircase that we ended up building than to have put more dirt back and a retaining wall at the property line.

I don't believe this staircase will be materially detrimental to the purposes of the code, or to any other applicable policies and standards. And to other properties in the same land use zone or vicinity. The spacing of the 2 houses at this property line is more than 17' so the real intent of the setback for fire code is not an issue. If this is still an issue there are fire retardant materials we can apply to the wood on the staircase to lower the possibility of flame spread.

B. This lot was a challenge to build the house that the property owner wanted to build and still have space for the septic system. The Lot was originally terraced at the front with a retaining wall approximately 20 ft from the front property line. This effectively cut 1,000 sf of usable space for septic drain field out of the 5,000 lot size. The house needed to be located in one corner of the property to allow enough contiguous space for the septic system and drain area to work. We ended up cutting the house footprint down to leave the space we needed for the septic system There was even a compromise made by the building official to allow us to do what we did. Saying all of this I believe there was a hardship that existed which is peculiar to the lot size, shape and topography to be able to build what the property owner wanted for the property that they had owned and had a cabin on before the fire.

C. The use proposed will be the same as city standards based on the spirit of the setback standard that there will be 17' between the house at 190 tumble and the house at 200 tumble and the owners at 200 Tumble would much rather look at the staircase that is currently there than have a 6 ft retaining wall and 2 ft of concrete steps up to the door on the house at 190 tumble. I have provided a letter from the owners at 200 tumble that states their opinion on the look of the options that we have.

D. I don't believe there will be anything that is adversely affected by this variance. I do believe the property owners at 200 Tumble would be adversely affected by an unpleasant view of concrete if we were to have to put in a retaining wall to be able to get to the door on the side of the house at 190 Tumble instead of being able to keep the pleasant looking staircase that is currently built.

Land use application Narrative for Section 5.1.4.C
190 Tumble St Detroit OR 97342

E. I don't believe this hardship is self-imposed. The shape of this particular lot with the terraced front yard made it difficult to give the property owners what they envisioned for the rebuild of their cabin. We spent a great deal of time designing this project around how they expected to use their house in the future. We did expect to be able to have concrete steps to access the north side of the house in the original design but as the project went on after the excavation it became clear that putting in steps that matched the steps at the front of the house would be the least intrusive design to match the neighbor's property to the north (200 tumble).

F. The approval of the request to allow the staircase to stay as-is on the North side of the house to access the laundry room and give additional egress to the north side and rear of the house would alleviate any hardship that has been realized by the small size of the lot that are inherent to this area of Detroit. The homeowners love the look and feel of the house that has been built and feel that having to make a change to the way their house is accessible at the North side would actually result in a hardship and a less safe situation for them and their guests. The small footprint that this staircase takes up at the side of their house compared to a concrete retaining wall and concrete staircase that is the only other option is definitely their preference and is agreed by the homeowners adjacent to them at the North as described in the letter that is attached.

Kyle Juran

From: ROBERT UNCK <unck5318@comcast.net>
Sent: Sunday, July 16, 2023 2:48 PM
To: Kyle Juran
Subject: Re: 190 tumble stairs

Hey Kyle,
please see my attached statement regarding the stairs at the Wentzel's house

To Whom it May Concern,

I want to state that I have no issues or concerns regarding the staircase on the north side of my neighbor's house at 190 Tumble.

The lots in this portion of Detroit are challenging to build on while still allowing for a suitable septic system. The newly constructed house at 190 Tumble compliments our smaller house and the owners and contractors have done their best to be good neighbors.

Our house, 200 Tumble is 16 ft from the property line and 190 Tumble is 5 ft or so feet from the line with a staircase going up about 8 ft to the side door.

It is my understanding that other options at 190 Tumble would have included a concrete retaining wall which would likely not be very attractive at the side of our property.

I believe the way the stairs are currently installed is the best look and feel we could have between our two houses.

Thank you, Bob & Nancy Unck

Kyle Juran

From: Kimberlee Aldrich <KAldrich@co.marion.or.us>
Sent: Wednesday, July 26, 2023 9:43 AM
To: Kyle Juran
Subject: RE: 190 tumble

To Whom it May Concern,

The septic system located at 190 Tumble was approved in the area that was able to meet most setbacks and onsite septic rule. In order to fit this system within the limited available area, a compromise was made by the building official and I allowing for a decrease in the setback from a pier pad.

Kim Aldrich EH-W10147892
Marion County Septic Inspector

EXHIBIT D

Curt Fisher

From: Paul Wolterman <PWolterman@co.marion.or.us>
Sent: Wednesday, September 20, 2023 2:00 PM
To: Curt Fisher; 'Matt Del Moro'; Kimberlee Aldrich; Chris Trussell; idanhadetroit
Cc: detroit@wvi.com
Subject: RE: VAR 23-01 Request For Comments

External: Please report suspicious email to security@wesd.org

Hey Curt,

The following would be Marion County Building Inspection's response to VAR 23-01:

The 2021 Oregon Residential Specialty Code (ORSC) views regulated decks as projections of a home. According to ORSC R302.1 Exception #6, "...All other *attached decks* shall be considered projections for compliance with Table R302.1." so this table will apply to the deck and stairs in question in this variance. According to this table, projections less than 2 feet from the property line are not allowed. Projections greater than or equal to 2 feet, but less than 3 feet, from the property line are required to have 1 hour rated fire protection on the underside of the projection.

For the deck and stairs to remain, it would have to be 2 feet or more from the property line with 1 hour rated fire protection on the underside. Because the deck serves an exterior door, the deck is required to be at least 36 inches in depth from the door as the deck is considered the exterior landing for the door.

If the exterior landing and stairs were of non-combustible construction, such as steel or concrete, then this would meet the provisions of ORSC R302.1.

Thank you,



Paul Wolterman | Building Plans Examiner II

Pronouns: He, Him, His

Building & Planning Division, Marion County Public Works

pwolterman@co.marion.or.us

(503) 588-7924 (office)

OREGON

From: Curt Fisher <cfisher@MWVCOG.ORG>

Sent: Monday, September 18, 2023 2:27 PM

To: 'Matt Del Moro' <mdelmoro@hbh-consulting.com>; Paul Wolterman <PWolterman@co.marion.or.us>; Kimberlee Aldrich <KAldrich@co.marion.or.us>; Chris Trussell <CTrussell@co.marion.or.us>; idanhadetroit <idanhadetroit@gmail.com>

Cc: detroit@wvi.com

Subject: VAR 23-01 Request For Comments

Some people who received this message don't often get email from cfisher@mwvcog.org. [Learn why this is important](#)

⚠ WARNING: This email originated outside of Marion County.
DO NOT CLICK links or attachments unless you trust the sender and know the content is safe.

Good afternoon,

The City of Detroit is seeking comments from your respective agencies on the attached land use application. To submit comments, please use the attached form or respond to this email by October 2, 2023.

Thank you,

Curt Fisher, AICP
Associate Planner

MWVCOG
100 High Street, Suite 200
Salem OR 97302
503-540-1616 | Cfisher@MWVCOG.org
Pronouns: he/him

