



CITY of NOVI CITY COUNCIL

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Agenda Item 2
October 8, 2007

SUBJECT: Consideration of a request from Atwell-Hicks, applicant for Sunoco Gas Station, for a variance from Section 11-276(b) of the Design and Construction Standards requiring safety paths to be placed along the frontage of the arterial and collector street system in accordance with the Bicycle & Pedestrian Master Plan, to relocate a portion of the safety path along the applicant's Flint Road frontage to the opposite side of the street. (The subject parcel is Parcel ID No. 50-22-22-227-001 located at the southeast corner of Grand River Avenue and Flint Street at 43601 Grand River Avenue.)

SUBMITTING DEPARTMENT: Engineering *RA*

CITY MANAGER APPROVAL: *PWA for CSP*

BACKGROUND INFORMATION:

Atwell-Hicks, applicant for Sunoco Gas Station, is requesting a variance associated with the recently constructed gas station located on the southeast corner of Grand River and Flint Street. The variance request, a site location map, an aerial photo and general site plan showing the potential pathway locations and a picture of the area in question are attached to provide additional background information.

In March 2002, City Council granted GL Investments, the developer of the property, a temporary waiver to defer the pathway construction along a portion of the Flint Street frontage until planned Flint Street improvements were completed (see attached March 18, 2002 City Council Minutes). The waiver was subject to GL Investments posting a cash deposit in an amount determined by the City Engineer necessary to guarantee the construction of the pathway improvements, by the City, following the Flint Street improvements. Because the variance was granted, the pathway was never included on the approved site plan, and the design of the pathway was not completed by the developer's engineer.

Sunoco has submitted its current request to close-out this singular remaining site issue. The request is for a variance from Section 11-276(b) of the Design and Construction Standards, which requires safety paths to be placed along the frontage of the arterial and collector street system in accordance with the Bicycle & Pedestrian Master Plan. The variance requested is to relocate the construction of approximately 240 feet of 5-foot wide pedestrian sidewalk/boardwalk along the southern portion of the development's Flint Street frontage to the south side of Flint Street. The variance is being requested due to the unknown timeline for Flint Street improvements, and because of the difficulty of the construction since the Walled Lake Branch of the Middle Rouge River encroaches into the area where the pathway would normally be installed. The encroachment may prevent the construction along the current Flint Street alignment because it is likely that the construction would require an MDEQ permit as the pathway would fall within the 100-year floodplain/floodway and the river's fringe.

The Planning Division recommends approval of this request for the reasons stated in the attached memorandum (Mark Spencer memorandum dated October 1, 2007). The Engineering Department notes that the variance requested does not meet the minimum requirements of the Design and Construction Standards. However, due to the potential environmental impacts to the Middle Rouge River associated with pathway construction, and because there is a potential for Flint Street realignment in the future that would most likely provide for better pathway placement, Engineering

would not object to a variance from the requirement for the location of the pathway. The City Attorney refers to the Planning and Engineering reviews; and the Fire Department, Landscape Architect, Department of Public Works, and Building Division have no objections to the request.

In accordance with Section 11-10 of the Ordinance, the following three conditions must be met for a variance to be granted by Council:

- 1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- 2) The alternative proposed by the applicant shall 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.

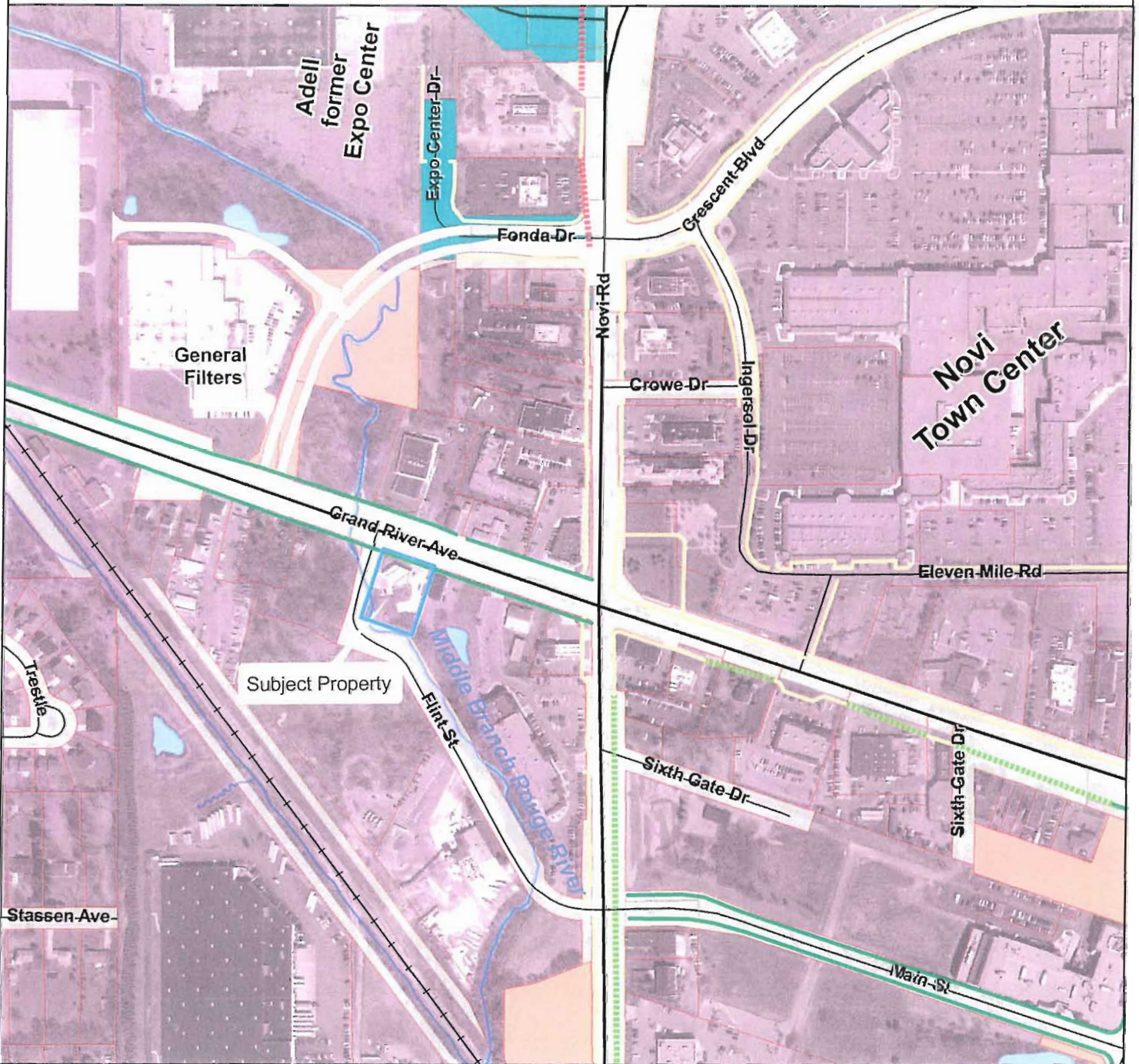
RECOMMENDED ACTION: Consideration of a request from Atwell-Hicks, applicant for Sunoco Gas Station, for a variance from Section 11-276(b) of the Design and Construction Standards requiring safety paths to be placed along the frontage of the arterial and collector street system in accordance with the Bicycle & Pedestrian Master Plan, to relocate a portion of the safety path along the applicant's Flint Road frontage to the opposite side of the street. (The subject parcel is Parcel ID No. 50-22-22-227-001 located at the southeast corner of Grand River Avenue and Flint Street at 43601 Grand River Avenue.)

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

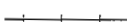








	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

Sunoco Sidewalk Variance

Location Map



Legend

 railroad	 Proposed Sidewalk	 Ring Road Pavement	 City Parcels
 existing arterial sidewalk	 Proposed Pathway	 Right of Ways	 State Parcels
 existing pathway			



CITY OF NOVI PLAN REVIEW CENTER

Created by Mark Spencer
 5/15/07
 NOVI PLANNING DEPARTMENT
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024
 (248) 347-0475
 WWW.CI.NOVI.MI.US



/sunoco variance location.mxd

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 to confirm source and accuracy information related to this map.



Request for Variance Design and Construction Standards

Applicant Information

Name: AL MAKLED
Address: 43601 GRAND RV.
NOVI, MI 48375
Phone No: 248-735-1121
(313)-903-6868

Engineer Information

Name: ATWELL HICKS, INC.
Address: _____
ANN ARBOR, MI
Phone No: (734) 994-4000

Applicant Status (please check one):

- Property Owner Developer Developer / Owner Representative
 Other _____

Project Name SUNOCO GAS STATION

Project Address/Location 43601 GRAND RV.
NOVI, MI 48375

Variance Request to be released from responsibility of boardwalk
ON FLINT STREET.

Justification (attach additional pages if necessary)

THE VARIANCE FOR THE SIDEWALK/BOARDWALK IS BEING REQUESTED BECAUSE THE FUTURE FLINT ST. IMPROVEMENTS HAVE NOT YET BEEN DESIGNED, AND THE BEST LOCATION OF THE PATHWAY IS UNKNOWN. ATTACHED ARE CITY COUNCIL MINUTES FROM WHEN THIS ISSUE WAS PREVIOUSLY DISCUSSED.

INTERNAL USE

Date Submitted: 7/18/07

Code Section from which variance is sought: SEC. 11-276(a) OF THE DCS

- Submittal Checklist: Twelve (12) sets of plans (folded and to scale)
 One (1) copy of plan on 8.5 x 11 size paper
 \$100 Filing Fee

Sunoco Pathway along Flint Street



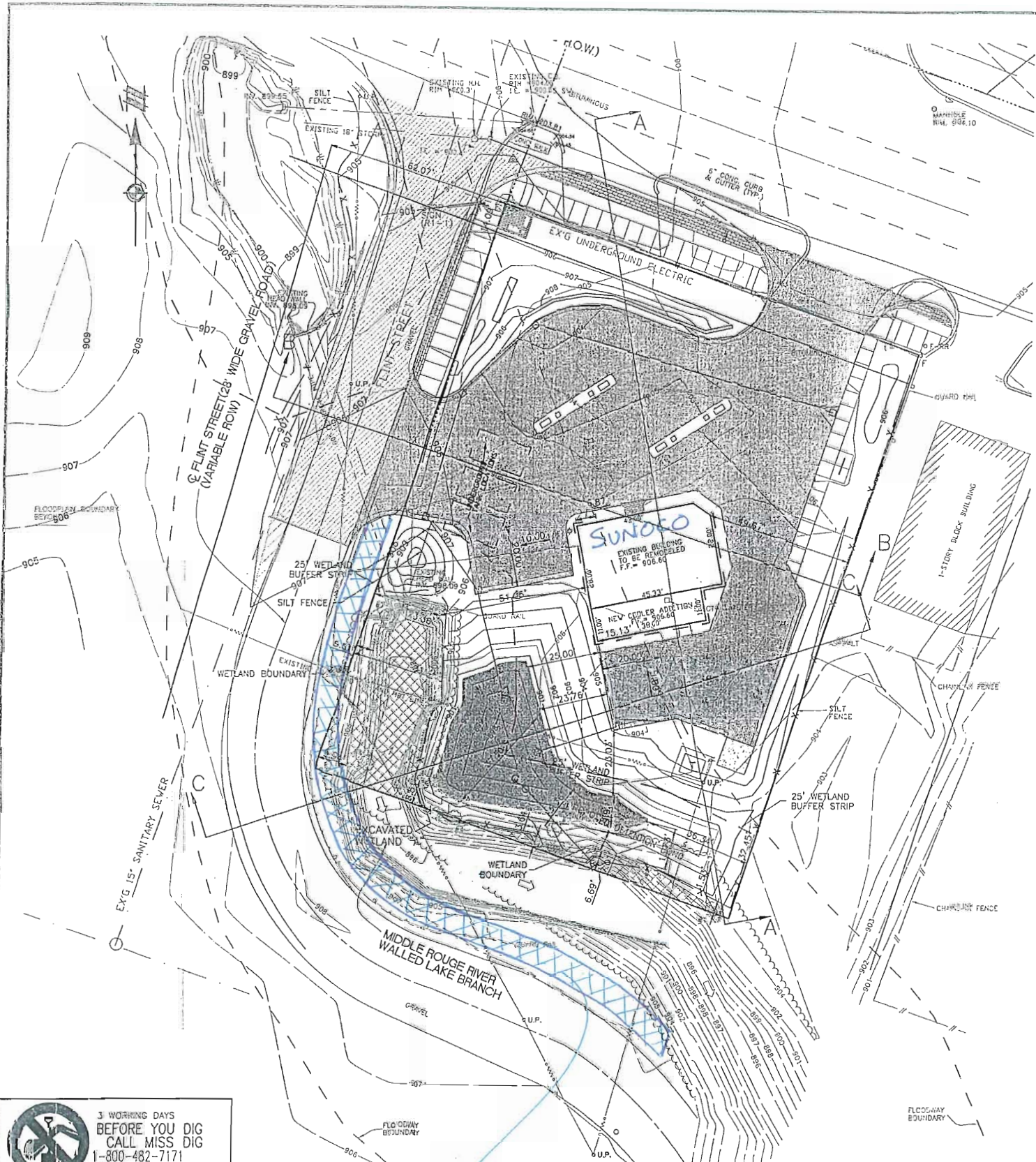
- City Boundary
- Landmarks
- Civic Center
- Rock Financial Showplace
- Court
- DPW
- Fire Station
- Hospital
- Ice Arena
- Library
- Parks & Rec Field Office
- Police Station
- Post Office
- Recycling
- School
- Senior Center
- Railroad
- Roads
- Freeway
- Arterials
- Collectors
- Scenic Drive Road
- Local Roads
- Water - Lakes
- Water - Rivers
- Parcels
- Lots
- 2006 Aerial Photos

DISCLAIMER: The information provided herewith has been compiled from recorded deeds, plats, tax maps, surveys, and other public records. The information presented is not a legally recorded map or survey and is not intended as a substitute for original or official source information. The City of Novi makes no warranty, express or implied, as to the accuracy, completeness, or usefulness of the information presented.

SOURCES: City of Novi, Oakland County, Plansight LLC: October 2006 for County Data, October 2006 for City Data, Aerial Imagery as specified

Sunoco Pathway Variance
North side of Flint Street, looking northwest towards Grand River





3 WORKING DAYS BEFORE YOU DIG CALL MISS DIG 1-800-482-7171
 FOR THE LOCATION OF UNDERGROUND FACILITIES

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR HIS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

NOTICE:
 CONSTRUCTION SITE SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR, NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

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AREA OF SIDEWALK/BOARDWALK VARIANCE BEING REQUESTED.



MEMORANDUM

TO: Ben Croy, P.E., Engineer

FROM: Mark Spencer, AICP, Planner *Mark Spencer*

DATE: October 1, 2007

SUBJECT: SP 00-52 Sunoco Gas Station DCS Sidewalk Variance

The Planning Staff reviewed the applicant's request to not install a sidewalk along their Flint Street frontage and to place it on the west (opposite) side of the street. The Planning Staff **recommends approval** of this request. I offer the following comments:

1. In the early 1990s the City commissioned a set of studies that proposed a River Walk within the Town Center Zoning District (see attached excerpt from the Novi River Stroll Study). The proposed slightly less than a mile walkway roughly paralleled the Middle Branch of the Rouge River from the former Expo Center to the Main Street sidewalk system.
2. The Sunoco Gas Station sidewalk and boardwalk proposed adjacent to Flint Street could provide about 250 feet of this walkway system.
3. The Sunoco Gas Station did not include any river front amenities as discussed in the River Walk Plan.
4. A possible future redevelopment along the Flint Street corridor could provide opportunities to build a sidewalk or boardwalk to provide a connection between Grand River Avenue and Main Street and at that time the project could include river front amenities.
5. The portion of the walkway that is not built north of Grand River could be built with the Crescent Road extension project.
6. On March 18, 2002 the applicant received a Design and Construction Standards variance to place money in escrow to build the sidewalk at a later date when the City completes the Flint Street improvements.
7. Flint Street improvement plans have not been finalized.
8. Placing escrow funds with the City to build the sidewalk at a later date could burden the taxpayers of the City because of probable cost increases for completing this segment at a later date.
9. City Center Plaza 4 & 5 is in the final stages of approval and they propose to construct about 280 feet of sidewalk along the front of their property on the west side of Flint Street (see attached).
10. Placing the Sunoco sidewalk along the west side of Flint Street will reduce the length of the missing sidewalk to be constructed later that would provide a connection between Grand River Avenue and Novi Road.

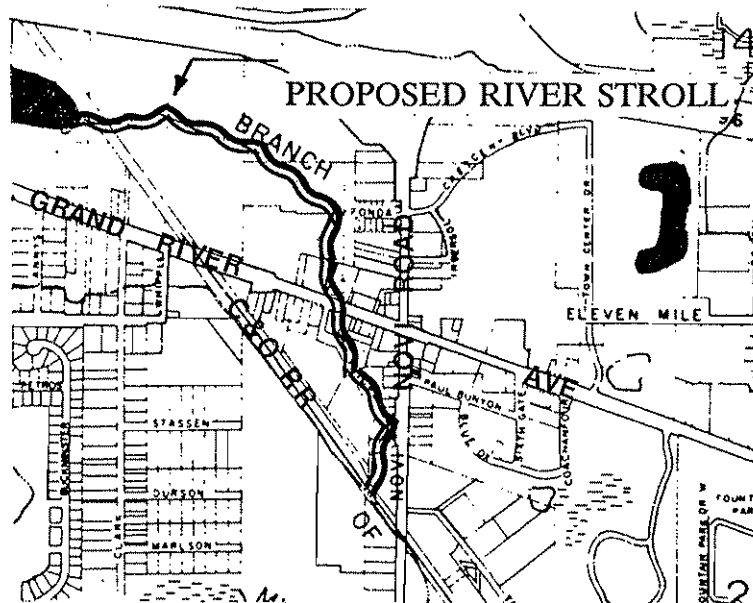
CC: Barbara McBeth, AICP, Deputy Director of Community Development

NOVI RIVER STROLL An Introduction

As identified in the Natural Resources Design Study and Urban Design Study, a Novi River Stroll (river walk) is proposed along the Middle Rouge River in the City's Town Center Area. This promenade feature is part of the City's proposed award winning linear greenway system designed to connect various parts of the City. Central to the linkage system is the Novi River Stroll. The riverwalk will add a pedestrian amenity with the benefit of being isolated from traffic.

Located in the southwest and northwest quadrant in the City's planned downtown, the Town Center District, the Novi River Stroll is proposed to begin near the Delwal facility and run southeast to the Novi Cemetery. It will be slightly less than a mile in length. Depending on further engineering and design studies, the basic concept for the River Stroll can be one of a natural feature with a border containing vegetation and a combination of buildings at the edge of the river. In the alternative the concept can have a more urban feeling and character, with building masses close together and a hard edge treatment, or a combination of natural and urban.

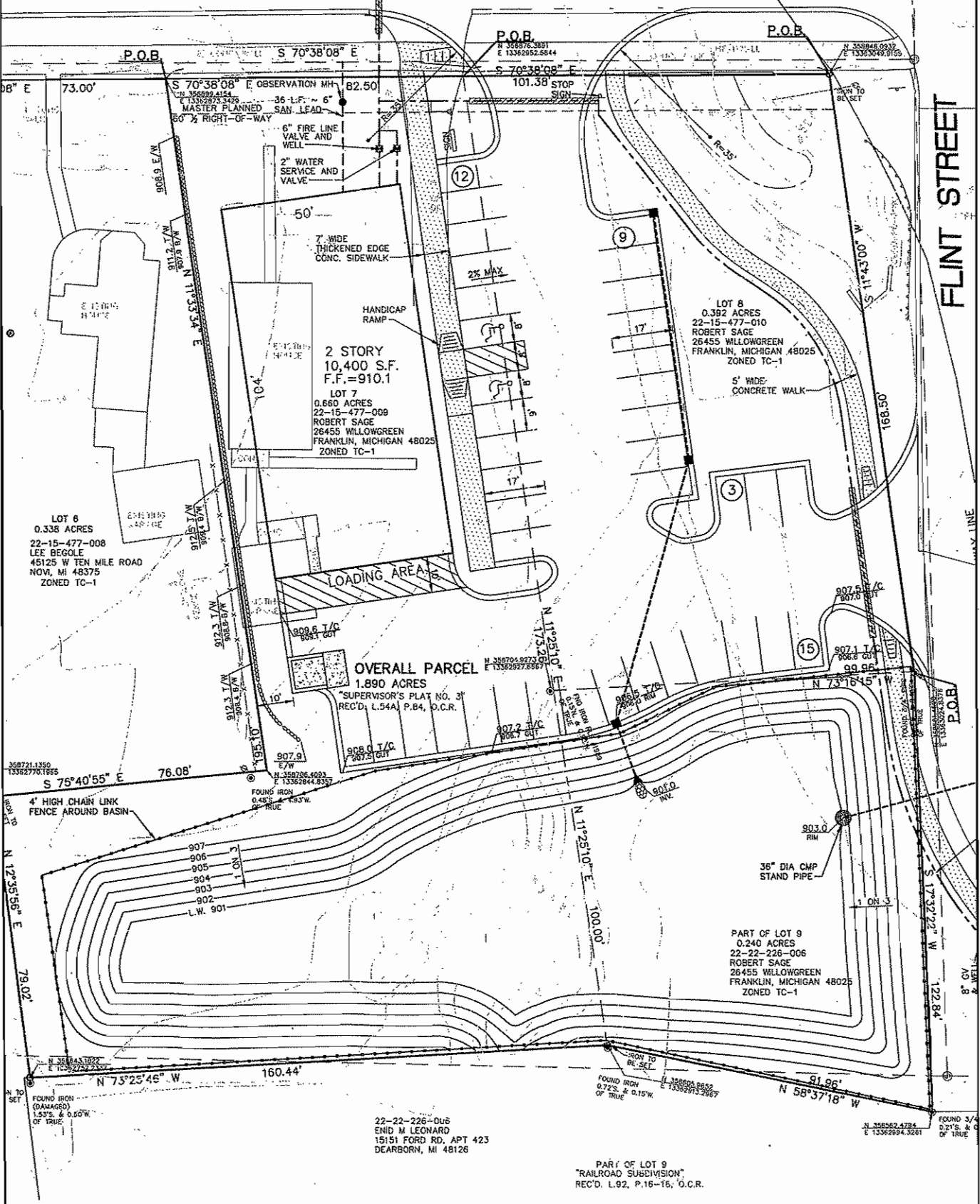
The Novi River Stroll will provide an impetus for downtown development, create amenities for public use and attraction, and solve flooding and drainage problems in the immediate area.



GRAND RIVER AVENUE

PROPOSED 8" WATER MAIN

FLINT STREET



2 STORY
10,400 S.F.
F.F.=910.1

LOT 7
0.660 ACRES
22-15-477-009
ROBERT SAGE
26455 WILLOWGREEN
FRANKLIN, MICHIGAN 48025
ZONED TC-1

LOT 6
0.338 ACRES
22-15-477-008
LEE BEGOLE
45125 W TEN MILE ROAD
NOVA, MI 48375
ZONED TC-1

LOT 8
0.392 ACRES
22-15-477-010
ROBERT SAGE
26455 WILLOWGREEN
FRANKLIN, MICHIGAN 48025
ZONED TC-1

OVERALL PARCEL
1.890 ACRES
SUPERVISOR'S PLAT NO. 3
REC'D L.54A P.B.4, O.C.R.

PART OF LOT 9
0.240 ACRES
22-22-226-006
ROBERT SAGE
26455 WILLOWGREEN
FRANKLIN, MICHIGAN 48025
ZONED TC-1

22-22-226-016
ENID M LEONARD
15151 FORD RD, APT 423
DEARBORN, MI 48126

PART OF LOT 9
"RAILROAD SUBDIVISION"
REC'D. L.92, P.16-16, O.C.R.

CITY CENTER PLAZA PHASE 5

SECTION 22
CITY OF NOVA, OAKLAND COUNTY, MICHIGAN

1. Request from GL Investments, LLC for temporary waiver from Design & Construction Standards, Article XII, Pedestrian Safety Paths, to permit the deferral of sidewalk construction along Flint Street subject to placing in escrow an amount, to be determined by the City engineer, necessary to guarantee construction of the sidewalk improvements upon completion of the Flint Street improvements.

CM-02-03-050 Moved by Lorenzo, seconded by DeRoche; CARRIED

UNANIMOUSLY: To approve request from GL Investments, LLC for temporary waiver from Design & Construction Standards, Article XII, Pedestrian Safety Paths, to permit the deferral of Sidewalk construction along Flint Street subject to a cash deposit, an amount to be determined by the City engineer, necessary to guarantee construction of the sidewalk improvements, by the City, upon completion of the Flint Street improvements.

DISCUSSION

Member Capello asked how they were grandfathered in to put in another gas station when they are not allowed in a TC-1 District and it had been closed down for along time? Mr. Fisher said this is a situation that was explored in excruciating detail by the Planning Commission including the requirement of the property owner to provide a book reflecting the history of this matter. They also reflected that under Michigan law there was no intent to abandon the use and under case law in Michigan that was decided in the early 1970's, the cases say that mere non use of what is known as a non-conforming use, it had been a conforming gas station at one point in time, once the ordinance changes and the use becomes non-conforming does not result in the abandonment. We have a time limit in the ordinance that sets up a presumption for abandonment. So, while there was a long period of non-use there was no intent to abandon and as a result of that under Michigan law there is a right to continue the gas station as it had been before. Member Capello asked if the existing tanks would have to be replaced. Mr. Fisher thought the tanks were taken out before this time. Member Capello asked if they would take down the existing building. Chuck Lauer, Planning Consultant for G.L. Investments, said the existing building would stay. Member Csordas asked at what point would the escrow amount be determined? Mr. Fisher stated it could be determined at any time because it is for a fixed project and a fixed location and any approval given should be subject to review and approval of the escrow and engineering estimate. Member Csordas wanted to see solid numbers, cash in the bank and the City protected before the project went forward.

Member Lorenzo agreed to add this to the motion and seconder agreed. Member Capello asked if the escrow would be a cash escrow. Mr. Fisher said it was either cash or a letter of

credit. Member Capello preferred a cash escrow since they had no idea when Flint St. would be completed or when this money would be taken out of escrow. He asked if it had to be an escrow and couldn't we just ask for the cash money and then we are obligated to put the sidewalk in? Mr. Fisher didn't think it was the procedure normally utilized and we would be asking them to do something that there is no assurance would ever be done and he thought we need to use the escrow arrangement. Member Capello said if Flint St. is completed it would be a nice boulevard and unless he thought the sidewalk would not be put in when Flint St. was completed, Member Capello would rather receive the cash, hold it in our own account so that the agreement between Mr. Lauer and the City is done when the development gets its C of O. Mr. Lauer said money would be between \$2,000 and \$8,000 and Member Capello noted the amount of money would be the same. It is just the issue of whether we have an escrow agreement or we have the money to do it when Flint St. is done; that is the only issue. Mr. Lauer asked about a letter of credit? Member Capello responded he would not want a letter of credit because the City would have the problem of cashing it, the developer would have to be contacted by the City every year to renew it and he would rather have the cash and be done with it. Mr. Lauer said that would be acceptable.

Member DeRoche stated sometimes letters of credit were more advantageous to the City because judges have a habit when people file for bankruptcy of finding cash in escrows and awarding that to their creditors. A letter of credit is a two party instrument between the City and the bank. Member Capello said if they give us the cash there would be no issues because there would be no escrow. He asked that the motion be amended so there is no escrow and we just take the cash and we would be obligated to build a sidewalk. Mayor Clark said they would get a release from any obligation on their part to build a sidewalk and that would be a consideration for the release. Member DeRoche agreed.

Member Lorenzo was concerned that the construction is some time in the future and if the cost would take into consideration inflation. Mayor Clark said the money would be earning interest from investing. Member Capello stated even if it's invested, there would still be a shortfall but if it's in escrow it wouldn't offset it either and with a letter of credit, he would be paying the interest to the bank. Member Lorenzo asked how to guesstimate what the future cost would be? Mr. Fisher advised if we know the schedule, we can estimate the increase as part of the engineers estimate but in this situation we don't know when it would be constructed so we don't have any good tool for doing that. Member Lorenzo asked what the best guesstimate is and Mr. Fisher said merely speculating would not be fair to either side. Member Landry stated we can force them to put the sidewalk in now and if they pay the money and put it in now and the City decides to put the road in and the sidewalk is torn up and a new sidewalk has to go in, we have to pay for it. He didn't think the cost to this person should ever be greater than it would be right now to put the sidewalk in because we are asking, for everyone's convenience, to stop something that is futile, put it in now that we would end up tearing up. He agreed with Member Capello. Mr. Lauer, GL spokesman said they are required to look at the remainder of Flint St. and the southerly portion of Flint St. as being frontage roads although the intent is that Flint St. becomes a connector to Main Street West whenever the concrete company moved. Whenever this happens, that won't be a frontage road anymore, so they would be paying for two sidewalks and only since one is needed they would have twice the money in they would ultimately need to pay. Member Lorenzo amended her motion to include cash and no escrow. Member Capello assumed that wherever Flint St. is now that is where the sidewalk is going to

go and that is the money that would be given to the City. Mr. Lauer agreed and said they are improving Flint St. with curb and gutter and full 28 foot of pavement on both sides all the way

to a specific point. So everything from the curb cut and all the way around is the ultimate Town Center road section, landscape section. It is only from this point south that they were asking the deferral on. Member Capello asked if it would be everywhere along where existing Flint St. is now, all the way around? Mr. Lauder said yes, it would be around the back on the other side of the Rouge River. The motion maker and seconder agreed,

Roll call vote on CM-02-03-050 Yeas: Bononi, Capello, Csordas, DeRoche, Landry,

Lorenzo, Clark

Nays: None



August 9, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Benjamin Croy, Civil Engineer
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Sunoco Gas Station
Variance from Design and Construction Standards
Our File No. 55142 NOV**

Dear Mr. Croy:

We have reviewed the materials you forwarded with respect to the variance from the City's Design and Construction Standards requested by the Developer with respect to the Sunoco Gas Station development. The variance requested is from Section 11-276(b) of the Design and Construction Standards, which requires that pedestrian safety paths shall be placed across the arterial and collector street system frontage for all projects in accordance with the "Master Plan for Bicycle and Pedestrian Safety Paths," as well as at those locations specified in the City of Novi Subdivision Ordinance (Appendix C) and the City of Novi Zoning Ordinance (Appendix A).

The Applicant requests a variance to be released from the responsibility of providing the boardwalk required for Flint Street due to uncertainty as to where the pathway would be located since the City has not yet prepared plans for the project.

Section 11-10 of the Ordinance Code provides the standard for granting variances from the City's Design and Construction Standards. For projects requiring site plan approval, the application for a variance must be made to City Council. Per Section 11-10, City Council may only grant a variance if 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 shall 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.

The City's Planning Department, Civil Engineer, and Traffic Engineer should review and comment on the proposed variance from an access, pedestrian and traffic safety standpoint. Should the City Council find, based upon all information provided with regard to this matter, that the Applicant has satisfied all of the above standards, and is able to meet any condition imposed in relation to the variance, we see no additional impediment to granting a variance.

If you have any questions regarding the above, please call me.

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosure

cc: Maryanne Cornelius, Clerk (w/Enclosure)
Barb McBeth, Planning Director (w/Enclosure)
Benny McCusker, DPW Director (w/Enclosure)
John Hines, Building Department (w/Enclosure)
Rob Hayes, City Engineer (w/Enclosure)
Frank Smith, Fire Department (w/Enclosure)
David Beschke, Landscape Architect (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)