



## CITY of NOVI CITY COUNCIL

**Agenda Item 5**  
**August 11, 2014**

**SUBJECT:** Consideration of a request from Kamil and Debbie Krainski for a variance from Section 11-276(b) of the Design and Construction Standards requiring pathways along the arterial roadway network in accordance with the City's master plan for the single family home under construction at 23140 Meadowbrook Road.

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *BT*

**CITY MANAGER APPROVAL:** *[Signature]*

### **BACKGROUND INFORMATION:**

The applicants, Kamil and Debbie Krainski, are constructing a new single family home at 23140 Meadowbrook Road and requesting a variance from the Section 11-276(b) of the Novi Code of Ordinances, which requires construction of a pedestrian safety path across the frontage of the parcel at the time that the home is constructed (see attached ordinance section). In the attached correspondence, the applicants propose to pay for their cost to construct the pathway in lieu of constructing the pathway at this time with the intent that the funds would be used to offset eventual construction of the pathway along the east side of Meadowbrook Road.

The variance request was reviewed by various City departments using the criteria in Section 11-10 of the ordinance. There were no concerns expressed in the reviews by the Landscape Architect, Fire Department, or DPS Field Operations staff.

Community Development and DPS Engineering are recommending **denial** of the variance for the following reasons, which are discussed in greater detail in the attached Memorandum:

- The applicant has not demonstrated that enforcement of the ordinance would result in exceptional, practical difficulty to the applicant because the ordinance allows a deviation in the alignment to make the construction of the sidewalk feasible.
- The applicant's proposal to make a payment for the estimated construction cost over a period of time in lieu of construction substantially deviates from the performance through strict enforcement of the standards because the cost of collecting 36 installment payments and the future cost to the City for the construction of the pathway that is required now would exceed the amount paid to the City resulting in additional expenditures by the City.

The City Attorney's Office has provided separate correspondence dated July 25, 2014.

The application package, asserted justifications, and relevant ordinance sections, along with a staff memo discussing the request are attached.

**RECOMMENDED ACTION:** Denial of a request from Kamil and Debbie Krainski for a variance from Section 11-276(b) of the Design and Construction Standards requiring pathways along the arterial roadway network in accordance with the City Bicycle and Pedestrian master plan for the single family home under construction at 23140 Meadowbrook Road, for the reasons stated in the City Engineer's Memorandum dated August 1, 2014.

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

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

# 23140 Meadowbrook

## Location Map

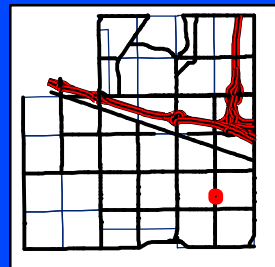


Map Author: Brian Coburn  
Date: 8/4/14  
Project:  
Version #:

Amended By:  
Date:  
Department:

#### 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.



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

0 15 30 60 90  
Feet

1 inch = 71 feet





## MEMORANDUM

**TO:** VICTOR CARDENAS, INTERIM CITY MANAGER  
**FROM:** ROB HAYES, P.E.; PUBLIC SERVICES DIR/CITY ENGINEER *RH*  
BRIAN COBURN, P.E.; ENGINEERING SENIOR MANAGER *BC*  
**SUBJECT:** VARIANCE REQUEST FOR 23140 MEADOWBROOK ROAD  
**DATE:** AUGUST 1, 2014

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Kamil and Debbie Krainski are constructing a new single family home at 23140 Meadowbrook Road. The construction of the new home on a vacant lot along an arterial road triggered the requirement for construction of a sidewalk along the frontage of the property. The property owners have submitted a Design and Construction Standards Variance Request from Section 11-276(b) of the ordinance to remove the requirement for the frontage sidewalk.

This memo is in response to the June 25, 2014 letter that was provided to the City by the property owner. The bolded headings below correspond to a statement in the letter, with a discussion following of Engineering's position in regard to each statement.

### **Background**

The property owner applied for a building permit to construct a single family residential home at 23140 Meadowbrook Road on May 2, 2013. As part of the building permit review process, the City's consulting engineer (Spalding DeDecker) reviewed the plot plan for the site, and the applicant received plot plan approval on June 28, 2013. Neither the plot plan nor the consultant's review report identified the requirement for frontage sidewalk for the site.

Engineering staff subsequently identified the error and contacted the applicant's engineer and the property owner. Staff met with the property owners on October 16, 2013 and as a result of objections by the property owner to the installation, subsequently provided the attached October 18, 2013 opinion from the City Attorney that despite the oversight in plan review, the ordinance requirements were still applicable. Engineering continued to correspond regularly with the applicant regarding resubmittal of a revised plot plan or application for a variance, and since then both a variance request and an alternative revised plan have been submitted. Additionally, staff is working with the property owner to make revisions to the pathway alignment to better meet the ordinance requirements.

The plot plan review checklist used by Spalding DeDecker has been reviewed and updated by Engineering to include the pathway requirement. The right-of-way review process, which previously did not review the plot plan for compliance with the sidewalk requirement, has also been updated to confirm when a sidewalk is required.

### **Location of the Sidewalk**

The discussion and supporting documentation in the applicant's variance request letter, as well as the revised plot plan provided by the property owner on July 23, 2014 focuses on the proposed sidewalk location within one foot of the property line, as required by Section 11-278 (b)(5), but does not contemplate the second sentence of the same section that states: "unless otherwise directed by the city engineer, for the enhancement of natural resources, or when the topography, existing landscaping, or an existing residence warrants an alternate location." (This ordinance section was shared with the property owner as part of the October 18, 2013 Engineering letter). We agree with the property owner that there is existing landscaping, topography and an adjacent home to the south that make a sidewalk alignment one-foot off of the right-of-way line impractical, but construction of a pathway is feasible elsewhere within the right-of-way per the ordinance. The attached July 25, 2014 email provides our review of the sidewalk alignment and offers an alternative location that is more than 12 feet from the edge of the road (per the ordinance for un-curbed roads) and better fits with the adjacent properties. Based on visits to the site, we believe that the front yard can be regraded to accommodate a sidewalk that will meet ordinance requirements.

### **Construction Prior to Future City Sidewalk Project**

The current Capital Improvement Program shows Segment 84—Meadowbrook Road (9 Mile to 10 Mile, East Side) as a FY2019-20 project. The property owner is concerned that if they construct the sidewalk it would be poorly integrated with the rest of the future project along the east side of Meadowbrook. This argument has been made in the past by others that have built homes on arterials without existing sidewalks that would provide a non-motorized connection. In fact, City Council considered and denied two similar requests for new homes on 11 Mile Road that made a similar argument (City Council meeting dates were 2/6/2006 and 2/12/2007). In those cases, the sidewalks were constructed by the property owners and an administrative variance was granted to alter the alignment based on the adjacent properties and landscaping. Many City sidewalk projects connect to existing pathways with minimal amounts of removals or re-work needed to integrate the existing pathway into the network.

### **Sidewalk Construction Cost Estimate**

The property owners provided a construction cost estimate of \$1,665 for their cost to construct the required sidewalk and are requesting to pay this amount in lieu of constructing the sidewalk at this time. Consideration should be made regarding the City's cost to construct the same section of sidewalk after the home is constructed and the lawn and landscaping are fully established. Based on pricing gleaned from recent construction bids, we estimate the City's cost to construct this section of sidewalk to be approximately \$6,200, which includes the necessary grading, aggregate base, restoration, engineering costs, and contingency, in addition to the cost of the concrete sidewalk itself. While our cost estimate does not include inflation as a component, it should be considered as well.

### **Installment Payments**

The property owner requested to make a monthly payment of \$50 to the City over the next three years. This request was forwarded to the Finance Department for consideration. We received a response that the cost of staff resources to prepare an invoice, receive payment, and to verify payment each month would rival the amount of

the monthly payment. For these reasons, Finance was not interested in offering this as an option to the property owner.

### Summary

The property owners provided a summary of their request in terms of the variance criteria in Section 11-10 of the ordinance. Specifically, a variance may be granted when all of the following conditions are satisfied:

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

Not all of these required conditions are met:

1. Practical difficulty: The ordinance allows a deviation of the alignment away from the right-of-way line to allow flexibility in areas with difficult topography, existing landscaping or existing homes. The applicant's argument relates only to impact on the neighbor if the pathway is located at the right-of-way line, but does not address an alternate location as proposed by staff; therefore, the applicant has failed to demonstrate any degree of practical difficulty with the requirement other than the cost.
2. Alternative is adequate and does not substantially deviate: The applicant is correct in the assertion that since the sidewalk does not connect to anything, the functionality and usability does not substantially change. However, if the applicant does not construct the pathway there will be additional cost to the City when the rest of the pathway is constructed. Therefore, staff believes that the lack of a sidewalk at this location, or payment in lieu of construction to be used for construction in the future, would substantially deviate from strict enforcement of the standards due to the additional cost to be paid by the City in FY2019-20. Further, staff has presented feasible alternatives to the applicant that would meet the ordinance requirements.
3. Public Health Safety and Welfare: Neither the construction of the sidewalk now, nor deferred construction of the sidewalk in future presents major concerns in this regard. The applicant argues that deferring the construction of the sidewalk would allow better integration and would be more cost effective. As stated previously, many sidewalk projects connect to existing sidewalks without major re-work of the existing sidewalk. We have also demonstrated that there will be increased costs beyond the funds paid by the applicant for the City to construct the sidewalk in the future as planned.

For all the reasons stated in this memo, Engineering recommends denial of the applicant's variance request.

cc: Charles Boulard, Community Development Director  
Carl Johnson, Chief Financial Officer  
Tom Walsh, Building Official



October 18, 2013

Kamil Krainski  
20221 Northville Place Drive  
Northville, MI 48167

**CITY COUNCIL**

**Mayor**  
Bob Gatt

**Mayor Pro Tem**  
Dave Staudt

Terry K. Margolis

Andrew Mutch

Justin Fischer

Wayne Wrobel

Laura Marie Casey

**City Manager**  
Clay J. Pearson

**Director of Public Services/  
City Engineer**  
Rob Hayes, P.E.

Re: PROW13-028 23140 Meadowbrook Road

Dear Mr. Krainski:

I am writing this letter as a follow-up to our October 16, 2013 meeting at the Department of Public Services regarding the single family home you are constructing at 23140 Meadowbrook Road. I wanted to provide the specific ordinance language regarding the construction of a sidewalk along the Meadowbrook Road frontage. I have attached a revised right-of-way permit that specifically includes the frontage pathway as required by ordinance. I have also attached a letter from the City Attorney regarding enforcement of these ordinance requirements.

Section 11-276 is attached and states that pathways are required along all arterial and collector streets in accordance with the Master Plan. This section applies to any building construction along the stated roads, including Meadowbrook Road. You have the option to request a variance from this requirement under Section 11-10 (also attached), which would require City Council approval. A copy of the variance application has been included with this letter for your use.

Section 11-278 is attached and provides the design parameters for the construction of the pathway. If there is unique topography, natural features, or landscape that affects the pathway alignment as specified in the ordinance, the City Engineer has the ability to approve a variance. You can use the attached application for an administrative variance of these requirements.

We encourage you to provide a revised plot plan that incorporates the pathway as soon as possible for our review. If you wish to seek a variance for the installation of the pathway, we encourage to do that soon to allow time for pathway construction should your variance application be denied.

As noted in the attached letter from the City Attorney, the City may withhold issuance of a certificate of occupancy for the house if the pathway is not constructed as stated in the amended permit, absent a variance from the requirement by City Council. Additionally, the right-of-way permit cannot be finalized and the financial guarantee cannot be released until all conditions of the revised permit have been met.

**Department of Public Services**  
Field Services Complex  
26300 Lee BeGole Dr.  
Novi, Michigan 48375  
248.735.5640  
248.735.5659 fax

If you have any questions, please feel free to contact me or Erica Morgan at 248-347-0454.

Respectfully,

ENGINEERING DIVISION



Brian Coburn, P.E.  
Engineering Manager

cc: Rob Hayes, PE; Director of Public Services/City Engineer  
Charles Boulard, Community Development Director  
Tom Walsh, Building Official  
Erica Morgan, Right-of-Way Coordinator  
Ted Meadows, Spalding DeDecker Associates





# CITY OF NOVI RIGHT OF WAY PERMIT

TO CONSTRUCT, OPERATE, USE AND/OR MAINTAIN  
WITHIN THE RIGHT OF WAY AND EASEMENTS OR  
TO CLOSE A CITY STREET

**08/01/2013**

Date of Issuance

**08/01/2014**

Date of Expiration

**PROW13-028**

ROW Permit Number

Under the provisions of the Section 31-1 of the Novi Code of Ordinances, approval is hereby granted to the application and plans filed with the Engineering Division for the following work to be completed in the public right-of-way or easement:

**Project Name:** Res New SFR **Parcel Number:** 50-22-25-301-027

**Project Description:** SFR 23140 MEADOWBROOK RD

**Project Location:** 23140 MEADOWBROOK RD

**Site Plan Number:** JR13-0206

**Contractor Name:**

**Telephone:**

**Street Address:**

**ZIP:**

**Applicant Name:** KRAINSKI, KAMIL

**Telephone:** (734) 276 3455

**Street Address:** 20221 Northville Place Drive  
Northville MI

**ZIP:** 48167

## CONDITIONS:

This permit is valid for one year from the date of issuance as long as insurance is in effect. After expiration of insurance, there will be a 30 day grace period, after which permit will become void and the bonds forfeited to the City.

Three full working days before digging, the permittee must call the MISS DIG System at 811 or 800-482-7171.

When backfill and lawn restoration is 100% complete (i.e., grass is growing and healthy) contact the Engineering Division at 248-347-0454 for a final inspection prior to release of bonds.

This permit shall be null and void if substantial construction has not occurred within one year of application date. If a contractor is to perform the construction entailed in this permit, and is supplying the insurance and bond, he thereby assumes responsibility, along with the applicant, for any provisions of this application and permit which apply to him. This permit does not relieve applicant and/or contractor from meeting any applicable requirements of law or other public bodies or agencies. Any de-watering shall be conducted in a manner so as not to impact on public or private property and/or create a traffic hazard.

The above stated intentions and those stated in the application will be carried out in the manner applied for and in accordance with plans, specifications, map and statements filed with the City of Novi as part of this application. The above named applicant and/or contractor agrees to comply with the requirements of the City of Novi Code of Ordinances, RULES AND REGULATIONS FOR CONSTRUCTION WITHIN, OVER OR BELOW PUBLIC PLACES as revised, which are conditions of this permit as well as the following additional conditions:

## ADDITIONAL CONDITIONS:

Applicant must provide a sidewalk along the frontage of Meadowbrook Road per Section 11-278(b) unless a variance is obtained from City Council. The sidewalk design and location shall meet City ordinance and Americans with Disability Act Requirements.

## APPLICANT OR AGENT SIGNATURE

\_\_\_\_\_  
\* Signature

**\* With this signature, I become fully responsible for all items and conditions listed and shown on this permit form and within the approved plans. Failure to comply with said items and conditions will result in fines, violations and/or a cease in work a cease in work activity.**

\_\_\_\_\_  
Print Name



JOHNSON ROSATI SCHULTZ JOPPICH PC

34405 W. Twelve Mile Road, Suite 200 ~ Farmington Hills, Michigan 48331-5627

Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela  
esaarela@jrsjlaw.com

www.jrsjlaw.com

October 18, 2013

Brian Coburn, Engineering Manager  
CITY OF NOVI  
Department of Public Services  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, MI 48375

**RE: 23140 Meadowbrook Road – Right of Way Permit**

Dear Mr. Coburn:

We have received and reviewed the amended Right-of-Way Permit requiring the construction of a sidewalk along Meadowbrook Road in conjunction with the construction of a new residential structure at 23140 Meadowbrook Road. You have indicated that the permit was initially issued without the condition to construct the sidewalk in error, contrary to the City of Novi Code Section 11-278(b). You have inquired whether the City can enforce the amended permit requiring the installation of the sidewalk. Construction of the structure has not been completed.

Michigan law provides that when a city employee issues an opinion or a permit contrary to City ordinance, the City is not precluded from enforcing its ordinance. *Fass v. City of Highland Park*, 326 Mich. 19, 39 N.W.2d 336, (1949). The Supreme Court in *Fass*, found:

A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality. In the issuance of permits pursuant to the ordinance at bar, the municipality was not acting in any proprietary capacity nor in the exercise of its contractual powers, but in the discharge of a governmental function through its public officers of limited authority, and the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of its ordinances because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment. Every one dealing with the officers and

Brian Coburn, Engineering Manager  
October 18, 2013  
Page 2

agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'

In sum, an applicant is presumed to be familiar with City ordinances before proceeding with his or her project. Therefore, the ordinances may be enforced, even in the event of an error by a city employee.

In determining whether to enforce an ordinance provision, a court may consider whether the project has already been completed in reliance on the error. *Pittsfield Tp. v. Malcolm*, 375 Mich. 135 (1965). In this case, the structure has not been constructed and occupied, unlike the *Pittsfield Township* case. Therefore, the amended permit would likely be enforceable in an enforcement action.

It has been the City's policy to enforce amended permits issued to correct prior permits issued in error. It is our opinion that an amended ROW Permit requiring installation of the sidewalk, absent a variance, would be enforceable in court. Further, occupancy may be withheld if the structure is constructed in violation of the amended permit.

If you have any questions, please feel free to contact me.

Very truly yours,

JOHNSON ROSATI SCHULTZ JOPPICH P.C.



Elizabeth K. Saarela

EKS

C: Maryanne Cornelius, Clerk  
Rob Hayes, Public Services Director  
Erica Morgan, ROW Coordinator  
Thomas R. Schultz, Esquire

**Sec. 11-10. Variances.**

- (a) Upon application, a specific variance to a substantive requirement of these standards may be granted, subject to the following criteria. Where the proposed activity requires site plan or plat approval, or otherwise involves the design or construction of a facility intended to be public, the variance application shall be to the city council. Where the proposed activity does not otherwise require site plan or plat approval, the variance application shall be to the construction board of appeals.
- (b) A variance may be granted when all of the following conditions are satisfied:
- (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
  - (2) The alternative proposed by the applicant 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.
- (c) The city council may, by resolution, establish an application fee for requests for variances from these standards.

*(Ord. No. 86-124, § 16.01, 4-21-86; Ord. No. 87-124.01, Pt. I (16.01), 4-13-87; Ord. No. 91-124.05, Pt. I, 6-3-91; Ord. No. 93-124.06, Pt. V, 2-1-93; Ord. No. 99-124.11, Pt. III, 7-26-99)*

**Sec. 11-276. Scope.**

- (a) This article establishes requirements for the design and construction of pedestrian safety paths (sidewalks) within the street right-of-way of platted subdivisions, the arterial and collector street system, roads in unplatted residential areas and private roads in other unplatted areas within the city.
- (b) 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).

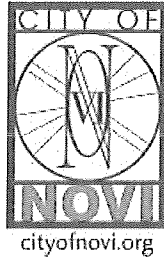
(Ord. No. 87-124.02, Pt. I, 11-9-87; Ord. No. 93-124.06, Pt. LXXXVII, 2-1-93; Ord. No. 97-124.09, Pt. III, 10-20-97; Ord. No. 97-124.10, Pt. I, 12-1-97; Ord. No. 99-124.11, Pt. XXXIX, 7-26-99)

**Sec. 11-278. Design considerations.**

- (a) **Materials.** Pedestrian safety paths shall be constructed in concrete. The materials shall meet the requirements specified in the sections of the state department of transportation's "Standard Specifications for Construction" designated as follows:
  - (1) Portland Cement Concrete;
  - (2) Granular Material Class II;
  - (3) Premolded Joint Fillers;
  - (4) Concrete Curing Materials.
- (b) **General.**
  - (1) Pedestrian safety path grades shall be set to match the general profile on the traveled road, and elevations shall blend in with the general grading plan of the abutting property and shall not impede drainage to presently established storm structures, ditch drainage, or site drainage swales.
  - (2) Pedestrian safety path construction shall include grading of the existing land parallel to the sidewalk. Drainage on the street side shall be provided by slope grading to the existing ditch or to the back of curb. Typical cross sections shall detail the work in these areas.
  - (3) At street intersections where open ditch drainage prevails, a 12-inch minimum size or larger sixteen-gauge corrugated metal culvert pipe shall be installed and backfilled with Granular Material Class II (MDOT specification) prior to the walk construction. The culvert pipe shall have sufficient length to provide a walk five (5) feet wide with a grass area two and one-half (2 ½) feet wide each side at top, and a maximum slope of one (1) foot vertical on three (3) feet horizontal to the ditch flow line. The entire area of the filled ditch section, from the ditch bottom to the edges of the new safety path, shall be protected with sod. The safety path shall terminate at the shoulder point, eight (8) feet from the edge of the traveled roadway, or at the back of curb.
  - (4) At drive or street crossings (residential, commercial or otherwise), the pedestrian safety path shall be sloped to meet the drive or street entrance grade. Detectable warning surfaces are required at all barrier free ramps and hazardous vehicular ways. Detectable warning surfaces must be manufactured of a material approved by the city engineer. The barrier-free ramps shall comply with current MDOT specifications for ADA Sidewalk Ramps and the Americans with Disabilities Act.

- (5) Pedestrian safety paths shall be located within one (1) foot of future rights-of-way lines, unless otherwise directed by the city engineer, for the enhancement of natural resources, or when the topography, existing landscaping, or an existing residence warrants an alternate location. Pedestrian safety paths shall be located a minimum of five (5) feet from back of curb for a curbed roadway, or twelve (12) feet from edge of pavement of an uncurbed roadway. Pedestrian safety paths should be constructed no closer than three (3) feet from fences, trees or other permanent above grade obstruction, except as otherwise approved by the city engineer.
- (6) Pedestrian walk cross-overs. Pedestrian walk cross-overs shall be provided at the intersections to public residential streets in accordance with Figure VIII-J, within article VIII of this chapter.

*(Ord. No. 87-124.02, Pt. I, 11-9-87; Ord. No. 93-124.06, Pt. LXXXIX, 2-1-93; Ord. No. 96-124.07, Pts. XXXXXXII, XXXXXXIII, 12-16-96; Ord. No. 97-124.08, Pt. XVII, 7-21-97; Ord. No. 97-124.09, Pt. IV, 10-20-97; Ord. No. 97-124.10, Pt. I, 12-1-97; Ord. No. 99-124.11, Pt. XXXX, 7-26-99; Ord. No. 06-124.15, Pt. II, 6-19-06)*



## Request for Variance Design and Construction Standards

### Applicant Information

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No: \_\_\_\_\_

### Engineer Information

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone No: \_\_\_\_\_

### Applicant Status (please check one):

- Property Owner       Developer       Developer / Owner Representative  
 Other \_\_\_\_\_

Project Name \_\_\_\_\_

Project Address/Location \_\_\_\_\_

Variance Request \_\_\_\_\_

Justification (attach additional pages if necessary)

### INTERNAL USE

Date Submitted: \_\_\_\_\_

Code Section from which variance is sought: \_\_\_\_\_

- 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

## Coburn, Brian

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**From:** Coburn, Brian  
**Sent:** Friday, July 25, 2014 1:35 PM  
**To:** 'Debbie Kamil'  
**Cc:** Hayes, Rob; Boulard, Charles  
**Subject:** RE: FW: 23140 Sidewalk Variance  
**Attachments:** Alternate Sidewalk Location-23140 Meadowbrook.pdf; Ordinance Section 11-278.pdf

I was able to review your revised plan today and offer the following comments:

- The ordinance (see attached) allows the City Engineer to approve an alternate location of the pathway "for the enhancement of natural resources, or when the topography, existing landscaping, or an existing residence warrants an alternate location." We would support relocating the pathway closer to the road to minimize the impact on the adjacent property owner and to avoid the existing transformer.
- The ordinance states that pathways "should be constructed no closer than three (3) feet from fences, trees or other permanent above grade obstruction, except as otherwise approved by the city engineer." Therefore, the pathway should be located a minimum of 3 feet, but perhaps further away from the transformer (to allow for any planting in front of the transformer).
- The ordinance further states that the pathway must be located a minimum of "twelve (12) feet from edge of pavement of an uncurbed roadway." Staff looks to maximize this distance as much as possible to improve pedestrian comfort and safety when using the pathway.
- Given the above ordinance requirements, your proposed plan would not be approved as presented.
- The attached drawing shows a possible alternative location of the sidewalk that would be recommended for approval by staff to meet the above criteria and fulfill the requirement for the sidewalk, provided your engineer can show that the running slope of the pathway is less than 8.3% and the cross slope of the pathway is less than 2%.
- Any other location meeting the above criteria could be presented for review and possible approval.

Please let me know if you have any questions.

Brian

**From:** Debbie Kamil [mailto:kamil.debbie@gmail.com]  
**Sent:** Friday, July 25, 2014 9:20 AM  
**To:** Coburn, Brian  
**Subject:** Re: FW: 23140 Sidewalk Variance

Hi Mr. Coburn,

On July 23 I dropped off a revised site plan with sidewalk in case our variance is not passed by the City Council. I wanted to check in and make sure you received it. Please let me know if that will be acceptable.

Deb Krainski

On Wed, Jul 16, 2014 at 3:47 PM, Coburn, Brian <[bcoburn@cityofnovi.org](mailto:bcoburn@cityofnovi.org)> wrote:

Mrs. Krainski,



The deadline for the July 21 agenda has passed and we are unable to adequately review and prepare this item for that agenda. We are looking into what happened with the application and why we did not receive it for processing at the end of June when you delivered it to Community Development. I apologize that we were unable to process the paperwork for City Council consideration in timely manner.

I spoke with Tom Walsh, Building Official, and he said that if all remaining items for your building permits are resolved and this variance is the only outstanding issue, he would be able to issue a temporary certificate of occupancy.

We have routed your application to the various departments that have to review it and will prepare your request for City Council consideration on the next meeting which is August 11.

Brian

**From:** Debbie Kamil [<mailto:kamil.debbie@gmail.com>]  
**Sent:** Wednesday, July 16, 2014 3:15 PM  
**To:** Kerby, Philip; Mutch, Andrew  
**Subject:** Re: 23140 Sidewalk Variance

Hello Mr. Kerby & Councilman Mutch,

I feel like I've submitted this with adequate time to make the July 21 meeting. I submitted this several weeks ago and I did not cause this delay. This decision is preventing us from moving ahead with installing our driveway and getting a certificate of occupancy.

I really appreciate you efforts to make the happen earlier if possible.

Debbie Krainski

On Wed, Jul 16, 2014 at 11:44 AM, Kerby, Philip <[pkerby@cityofnovi.org](mailto:pkerby@cityofnovi.org)> wrote:

Mrs. Krainski,

Your variance request application has been submitted. Unfortunately we were not able to add you to this Monday's city council agenda. You will be added to the August 11<sup>th</sup> agenda. If you have any questions or concerns feel free to contact me.



**Philip Kerby** | Engineering Intern

City of Novi | 45175 Ten Mile Road | Novi, MI 48375 USA

t: [248.735.5695](tel:248.735.5695) f: [248.735.6559](tel:248.735.6559)

[cityofnovi.org](http://cityofnovi.org) | [InvestNovi.org](http://InvestNovi.org)

To receive monthly e-news from Novi or follow us on Facebook, [click here](#).

**From:** Debbie Kamil [mailto:[kamil.debbie@gmail.com](mailto:kamil.debbie@gmail.com)]  
**Sent:** Wednesday, July 16, 2014 9:29 AM  
**To:** Kerby, Philip  
**Cc:** Mutch, Andrew  
**Subject:** 23140 Sidewalk Variance

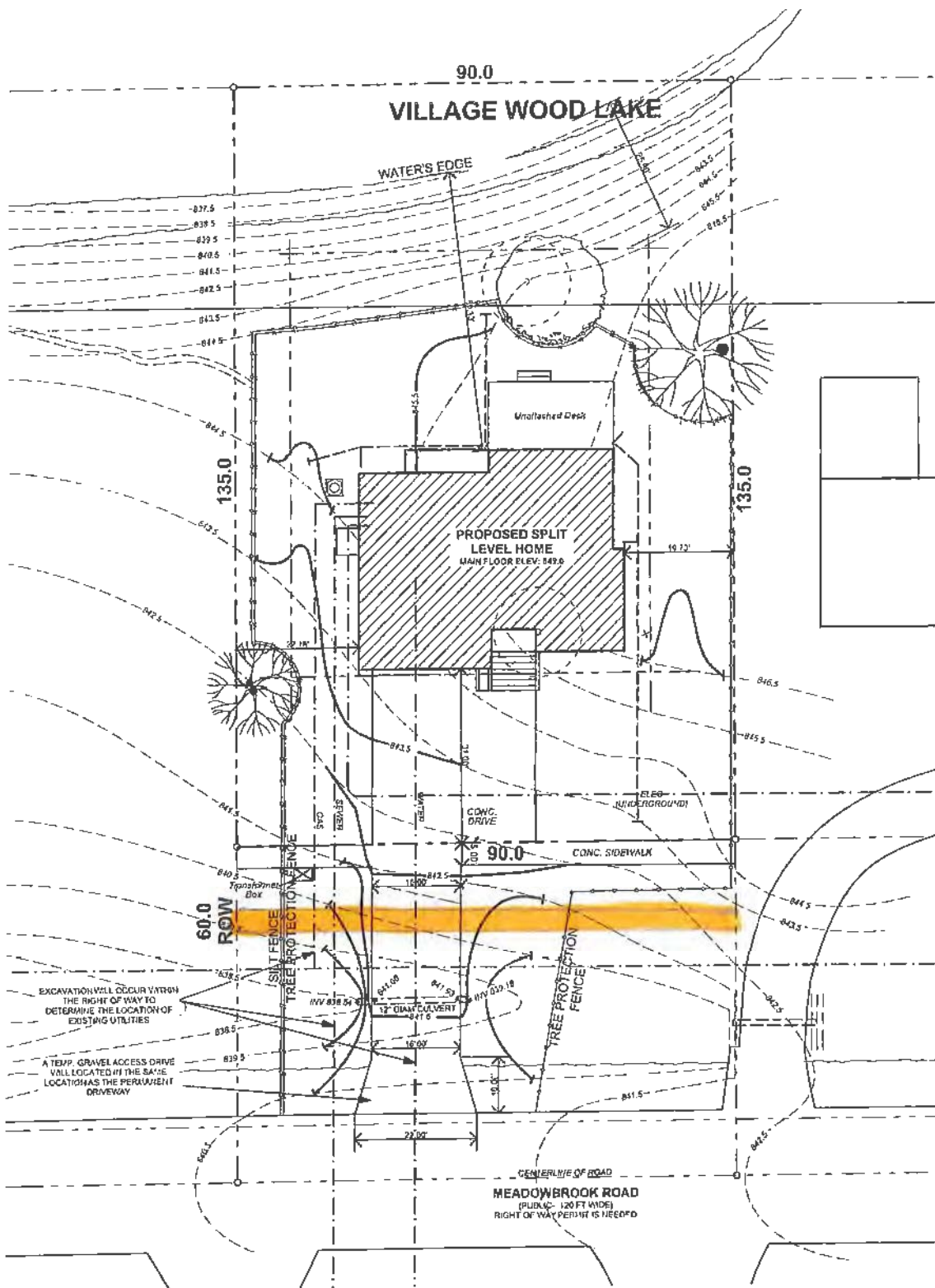
Hello Mr. Kerby,

Thank you for looking into our missing variance. Perhaps I should have just offered to resend rather than having you spend your day on the phone making calls.

I've attached the necessary documents. They were originally dropped of at the City Building department with Angela on either June 24 or 25. I paid at the Treasurer's office window with check #293. We're really hoping to get on Monday's City Council agenda.

Thank you,

Deb Krainski  
[734-358-8677](tel:734-358-8677)



**SITE PLAN**  
 NORTH

1" = 20'

**POSSIBLE SIDEWALK-ALTERNATE LOCATION**

**PARKSIDE HOUSE**  
 23140 MEADOWBROOK RD  
 ROW PERMIT  
 6/18/2014

**PRELIMINARY OPINION OF PROBABLE CONSTRUCTION COSTS**  
**Pedestrian Safety Path at 23140 Meadowbrook**

8/1/2014

No.	Description	Unit	Estimated Quantity	Unit Price	Total
1	Pathway Grading	STA	0.9	\$ 1,200.00	\$ 1,080.00
2	Aggregate Base	SYD	60	\$ 12.00	\$ 720.00
3	Sidewalk	SF	540	\$ 4.00	\$ 2,160.00
4	Restoration	LSUM	1	\$ 500.00	\$ 500.00
					\$ -
<b>CONSTRUCTION TOTAL</b>					\$ 4,460.00
Engineering (20%)					\$ 892.00
Contingency (20%)					\$ 892.00
Right-of-way Acquisition					
<b>BUDGET TOTAL</b>					<b>\$ 6,244.00</b>

NOTES:

--

Brian Coburn

8/1/2014



## Request for Variance Design and Construction Standards

### Applicant Information

Name: Kamil & Debbie Krainski

Address: 5124 Pontiac Trail  
Ann Arbor, MI 48105

Phone No: (248) 971-0704

### Engineer Information

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone No: \_\_\_\_\_

### Applicant Status (please check one):

- Property Owner       Developer       Developer / Owner Representative  
 Other \_\_\_\_\_

Project Name \_\_\_\_\_

Project Address/Location 23140 Meadowbrook Roac (between 9 Mile & 10 Mile, east side of road)

Variance Request Deferring sidewalk installation to the city in 2017-2018 when the rest of the sidewalk is put in

### Justification (attach additional pages if necessary)

See attachment

#### INTERNAL USE

Date Submitted: \_\_\_\_\_

Code Section from which variance is sought: 11-276(b)

Submittal Checklist:  One (1) copy of plan on 8.5 x 11 size paper  
 \$100 Filing Fee (No fee for driveway width variance requests)

Request Status:  APPROVED       DENIED

Authorized By: \_\_\_\_\_

Authorization Date: \_\_\_\_\_

23140 Meadowbrook – Sidewalk Variance Request

June 25, 2014

Novi City Councilmembers  
Novi City Hall  
45175 Ten Mile Rd.  
Novi, MI 48375  
Re: 23140 Meadowbrook Sidewalk Variance Request

Dear Members of Novi City Council,

The purpose of this letter is to request a variance to the City of Novi's sidewalk requirement for the new home under construction at 23140 Meadowbrook, located between 9 Mile and 10 Mile roads.

By way of background, The City Engineering department approved our building plans without a sidewalk. Later, we (the homeowners) were notified that we are required to install a sidewalk in compliance with City Ordinance Section II-276. Our budget/finances were based on this approval.

Other than our budgetary concerns, placing a sidewalk within 1' of the Right of Way poses no direct problems for us. However, *placement of our sidewalk will have a significant impact on the surrounding community*. Photos showing these concerns are attached.

- To the north, there is a city-owned woodland/wetland that is part of Village Wood Lake Park and connects to the bridge over Bishop Creek. The city's engineering department does not yet have a design for this sidewalk. If we put in the sidewalk at the ROW, it will necessitate the clearing of city-owned woodlands to connect later. If we push the sidewalk closer to the road, it will be in our stormwater ditches and the City's wetland.
- There are three existing homes to the south with established landscapes and mature trees that will be affected by our placement of the sidewalk. It is not altogether clear how implementation will affect their landscapes because there has been no real discussion.
- Another factor in our implementation of the sidewalk is how well it works for pedestrians and cyclists. In some areas along opposite side of Meadowbrook where the sidewalk is poorly planned and implemented, simply to meet the ordinance requirements, users often prefer the shoulder of the road over the sidewalk, so that they have a conventional path.

We are concerned that implementing the sidewalk now, without consideration for how the sidewalk will affect neighboring properties, will result in a poorly-integrated, expensive, unused sidewalk. We therefore would like to defer installation of the sidewalk to the city so that it can be implemented with the rest of the planned sidewalk in 2017-2018. We would like to make payments directly to the City over the next three years for the sidewalk so that by the time it is installed, the City has been fully paid for it. We are open to suggestions on payment arrangements and open to keeping the ROW free from significant landscaping (trees, paved turnarounds, etc.)

Our lot is 90' wide and there will be a 16' wide concrete driveway. At 5' wide, the total area of the sidewalk will be  $[(90'-16') \times 5'] = 370 \text{ ft}^2$ . At \$4.50 per square foot, that totals \$1665. If we were to get a loan for this amount at 5%, we'd pay \$130 in finance charges, totalling \$1795. We think it is fair to pay \$50 monthly for the next three years for a total of \$1800 directly to the City rather than getting a loan to cover this unforeseen cost.

## 23140 Meadowbrook – Sidewalk Variance Request

In summary, our request is predicated upon the following facts:

1. A literal application of the requirement would result in a practical difficulty because of how it will affect neighboring properties and our relationship with the community. Additionally, it was not accounted for in our original budget.
2. Deferring the installation of the sidewalk to the city at a later date will not substantially change the functionality/usability of the walks since this path will not be done until 2018.
3. In granting this variance, we aim to allow the City to choose the best-integrated and most cost-effective placement for the sidewalk anywhere within the right-of-way of our lot. We believe it is the best method of implementation for both new and existing residents, considering that existing residents have not yet planned for the sidewalk.

Sincerely,

Kamil & Debbie Krainski  
Homeowners of 23140 Meadowbrook




## 23140 Meadowbrook – Sidewalk Variance Request

This Google Streetview from 2011 show the neighboring homes south of 23140 Meadowbrook. It shows the sloped lots, large ditches, established trees and complex driveways. Both of the driveways have been repaved in 2013 and the trees are now larger. The ROW line falls between the edge of the “U” of the driveway and the Blue Spruce.



At the Bishop Creek Bridge, the sidewalk will most likely need to use the existing sidewalk, as on the west side.

City-owned property; part of the Village Wood Lake Park development. This land is wooded and has a wetland running beside the road. There is currently no design for how this sidewalk will be used or how it will connect to the rest of the park.

The location of **23140 Meadowbrook**. The Right of Way line is marked approximately. 

Established homes with existing trees and new u-shaped driveways. The use of these driveways may be affected by the placement of the sidewalk since parking within 3' of sidewalks is prohibited. There are also mature specimen trees that are on the course of the proposed sidewalk location.






**Sec. 11-276. Scope.**

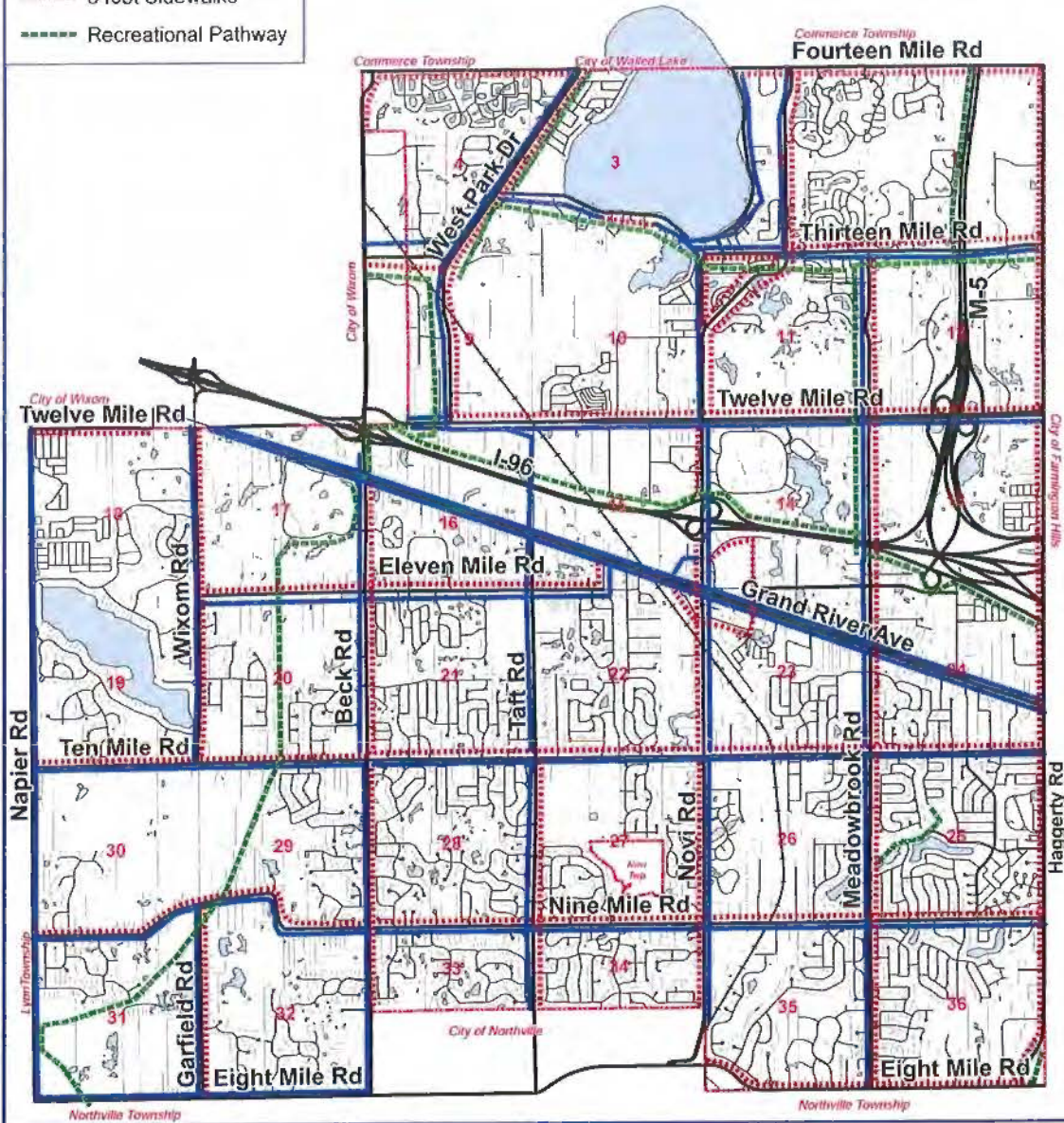
- (a) This article establishes requirements for the design and construction of pedestrian safety paths (sidewalks) within the street right-of-way of platted subdivisions, the arterial and collector street system, roads in unplatted residential areas and private roads in other unplatted areas within the city.
- (b) 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).

*(Ord. No. 87-124.02, Pt. I, 11-9-87; Ord. No. 93-124.06, Pt. LXXXVII, 2-1-93; Ord. No. 97-124.09, Pt. III, 10-20-97; Ord. No. 97-124.10, Pt. I, 12-1-97; Ord. No. 99-124.11, Pt. XXXIX, 7-26-99)*

# Bicycle and Pedestrian Master Plan

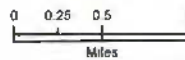
## Legend

-  8 foot Pathways
-  5 foot Sidewalks
-  Recreational Pathway



### 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.



Recreation trails are from the City of Novi Pathway and Sidewalk Prioritization Analysis and Process, 2009 Update.

### CITY OF NOVI PLANNING COMMISSION

45175 W. Ten Mile Road  
Novi, MI 48375-3024  
(248) 347-0475  
Map Cartographer:  
Mark Spencer, AICP, Planner  
CREATED: 3/31/10  
Version 1.0

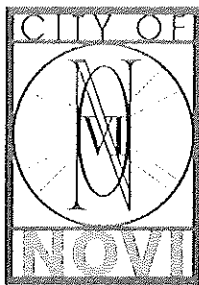


Figure 55

**Sec. 11-10. Variances.**

- (a) Upon application, a specific variance to a substantive requirement of these standards may be granted, subject to the following criteria. Where the proposed activity requires site plan or plat approval, or otherwise involves the design or construction of a facility intended to be public, the variance application shall be to the city council. Where the proposed activity does not otherwise require site plan or plat approval, the variance application shall be to the construction board of appeals.
- (b) A variance may be granted when all of the following conditions are satisfied:
  - (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
  - (2) The alternative proposed by the applicant 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.
- (c) The city council may, by resolution, establish an application fee for requests for variances from these standards.

*(Ord. No. 86-124, § 16.01, 4-21-86; Ord. No. 87-124.01, Pt. I (16.01), 4-13-87; Ord. No. 91-124.05, Pt. I, 6-3-91; Ord. No. 93-124.06, Pt. V, 2-1-93; Ord. No. 99-124.11, Pt. III, 7-26-99)*



cityofnovi.org

**CITY OF NOVI**  
**Engineering Department**  
**MEMORANDUM**

**To:** Charles Boulard, Community Development  
 David Beschke, Landscape Architect  
 Beth Saarela, Attorney  
 Jeff Johnson, Fire Department  
 Matt Wiktorowski, Field Ops

**From:** Adam Wayne, Engineering

**Date:** July 17, 2014

**Re:** Variance from Design & Construction Standards  
 23140 Meadowbrook Road

Attached is a request for a Variance from the **Section 11.276(b)** of the Novi City Code. Please review for a future City Council Agenda. 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 would be adequate for the intended use and would not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and,
- 3) The granting of the variance would not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property.

Following review of the variance, check the appropriate box below and provide your signature. If you have no basis for recommending either approval or denial, please check the "No Exceptions Taken" box. If you are recommending approval or denial of the request, **please also complete the matrix on the reverse of this form.** Please return to my attention by **Friday July 25<sup>th</sup>, 2014.**

**ROUTING**

Delivered To	Returned On	RECOMMENDED ACTION			Signature
		Approval*	Denial*	No Exceptions Taken	
Brian Coburn (Engineering)					
Charles Boulard (Comm Dev.)	8/4/14		x		<i>Charles Boulard</i>
David Beschke (Landscape Arch)					
Beth Saarela (City Attorney)					
Jeff Johnson (Fire Department)					
Matt Wiktorowski (Field Ops)					

**\* SEE REVERSE**

**If recommending approval or denial, please complete the following:**

1. Would a literal application of the substantive requirement of the ordinance result in an exceptional, practical difficulty to the application?  Yes  No

Explain:

*• suggest pursuit of alternative locations within the Right of Way.*

2. Would the alternative proposed by the applicant be adequate for the intended use and not deviate from the performance that would be obtained by strict enforcement of the standards?  Yes\*  No

Explain:

*\* yes, provided the walk would be installed with balance of length and sufficient funds would be posted.*

3. Would granting the variance not be detrimental to public health, safety, or welfare, and not injurious to adjoining or neighboring property?  Yes  No

Explain:

*no adjacent walks at this time*



JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331  
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela  
esaarela@jrsjlaw.com

www.johnsonrosati.com

July 25, 2014

Adam Wayne, Construction Engineer  
City of Novi  
45175 Ten Mile Road  
Novi, Michigan 48375

Re: **23140 Meadowbrook Road**  
Variance from Design and Construction Standards

Dear Mr. Wayne:

Our office has reviewed the proposed request for a variance from Section 11-276 (b) of the City's Design and Construction Standards, which states:

- (b) 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).

Section 11-10 of the Ordinance Code permits the City Council to grant a variance from the Design and Construction Standards when a property owner shows all of the following:

- (b) A variance may be granted when all of the following conditions are satisfied:
  - (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
  - (2) The alternative proposed by the applicant 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.

With respect to practical difficulty, the applicants have requested to defer construction of the required safety path along the frontage of their property for multiple reasons, including financing and placement related issues.

The applicants were not aware of the requirement to install the safety path when they initially started their home construction project and did not factor it into their home project financing. Additionally, the applicants indicate that delaying the installation would allow the safety path to be more successfully integrated into the surrounding landscape and natural features when the City completes its planned pathway project for the same area in the 2017-2018 project year therefore the installation would be adequate for the intended use.

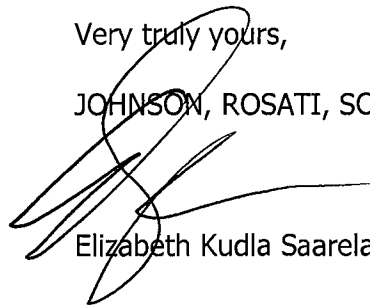
Based on the above, we would recommend that the applicants provide a pathway easement to allow construction across the frontage of the property during the 2017-2018 project. Though we understand that the exact specifications and location of the 2017 -2018 project has not yet been determined, a broader easement could be granted at this time and could include a statement that the description may be modified in accordance with approved plans at the time of construction.

In the event that City Council finds that the standards for a variance or waiver have been met, our office sees no legal impediment to granting the variance, subject to the condition that the Engineering Division and the Public Safety Department have also reviewed and approved the proposed plans from a public health, safety and welfare perspective.

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

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.

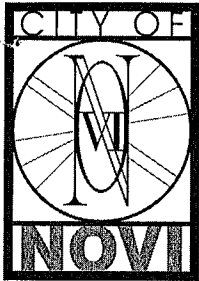
A handwritten signature in black ink, appearing to read 'Elizabeth Kudla Saarela', is written over the typed name below. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Elizabeth Kudla Saarela

EKS

Enclosures

- C: Maryanne Cornelius, Clerk (w/Enclosures)  
Charles Boulard, Community Development Director (w/Enclosures)  
Matt Wiktorowski, Field Operations (w/Enclosures)  
Brian Coburn, Engineering Manager (w/Enclosures)  
David Beschke, Landscape Architect (w/Enclosures)  
Jeff Johnson, Fire Department (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)



cityofnovi.org

**CITY OF NOVI**  
**Engineering Department**  
**MEMORANDUM**

**To:** Charles Boulard, Community Development  
 David Beschke, Landscape Architect  
 Beth Saarela, Attorney  
 Jeff Johnson, Fire Department  
 Matt Wiktorowski, Field Ops

**From:** Adam Wayne, Engineering

**Date:** July 17, 2014

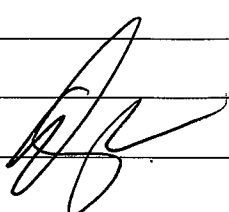
**Re:** Variance from Design & Construction Standards  
 23140 Meadowbrook Road

Attached is a request for a Variance from the **Section 11.276(b)** of the Novi City Code. Please review for a future City Council Agenda. 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 would be adequate for the intended use and would not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and,
- 3) The granting of the variance would not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property.

Following review of the variance, check the appropriate box below and provide your signature. If you have no basis for recommending either approval or denial, please check the "No Exceptions Taken" box. If you are recommending approval or denial of the request, **please also complete the matrix on the reverse of this form.** Please return to my attention by **Friday July 25<sup>th</sup>, 2014.**

**ROUTING**

Delivered To	Returned On	RECOMMENDED ACTION			Signature
		Approval*	Denial*	No Exceptions Taken	
Brian Coburn (Engineering)					
Charles Boulard (Comm Dev.)					
David Beschke (Landscape Arch)					
Beth Saarela (City Attorney)				✓	
Jeff Johnson (Fire Department)					
Matt Wiktorowski (Field Ops)					

\* SEE REVERSE



**If recommending approval or denial, please complete the following:**

1. Would a literal application of the substantive requirement of the ordinance result in an exceptional, practical difficulty to the application?  Yes  No

Explain:

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2. Would the alternative proposed by the applicant be adequate for the intended use and not deviate from the performance that would be obtained by strict enforcement of the standards?  Yes  No

Explain:

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3. Would granting the variance not be detrimental to public health, safety, or welfare, and not injurious to adjoining or neighboring property?  Yes  No

Explain:

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