

**ZONING BOARD OF APPEALS
MINUTES – EXCERPT
FEBRUARY 10, 2009**

REGULAR MEETING - ZONING BOARD OF APPEALS
CITY OF NOVI
TUESDAY, FEBRUARY 10, 2009

Proceedings had and testimony taken in the matters of the ZONING BOARD OF APPEALS, at City of Novi, 45175 West Ten Mile Road, Novi, Michigan, Tuesday, February 10, 2009.

BOARD MEMBERS

Mav Sanghvi, Chairperson

Gerald Bauer

Victor Cassis

David Ghannam

Rickie Ibe

Linda Krieger

Wayne Wrobel

ALSO PRESENT:

Elizabeth Kudla, City Attorney

Charles Boulard, Building Official

REPORTED BY:

Mona L. Talton, Certified Shorthand Reporter.

Novi, Michigan

Tuesday, February 10, 2009

7:00 p.m.

CHAIRPERSON SANGHVI: All right. Now that we have dealt with that, let's begin with the issue here. In case number 09-002 filed by Matthew Quinn for 43000 West Nine Mile Road. Mr. Quinn is requesting an exception from Section 1903.0 to allow an automotive service use adjacent to a residential district, to request consideration by the Planning Commission, in accordance with 1903.0 for a special land use. The property is zoned I-1 and is located north of Nine Mile Road and east of Novi Road. Would you like to make your presentation, Mr. Quinn?

MR. QUINN: Yes. Thank you, Mr. Chairman. Matthew Quinn. I'm appearing on behalf of the property owners that own 43000 Nine Mile Road. That's Swad & Company. Ed Swad, Jr., is here with me this evening. They are the landlord. Ed, raise your hand. And the tenant is the operator of the business that's there Ramiah Auto. And Steve Ohan (ph) is the operator. And Ram is the owner of that business. Now, why are we here? Because we find ourselves with an adjacency that is by happenstance. Under the Novi Ordinance if you are allowed in an I-1 District and we are an I-1 Zoning District. We happen to be abutted on both sides and I will use the overhead here. Here is our property right here.

Here is Nine Mile Road. This is to the north. Our property is right here. The building is in white and we have I-1 to the west of us, I-1 to the east of us. We have I-1 across Nine Mile Road and unfortunately we have this buffer with a multiple family zoning. Now, this is the apartment, Saddle Creek throughout here. Now, as you can see and I will stick to this drawing first. The parking for this building is in the rear. It's 53 yards or more than a half a football field from the end of the building to the 10 foot setback that we have there. On the apartment side you also have a 10 foot green belt and this square represents a parking structure that is adjacent to us and then their apartments sit back here. So, I am showing you this to give you the idea of how far away the building is from the property line. That there is an additional buffer by the parking structure before you get to any real residence. Now, here is what your Ordinance says. If this RN-2 was I-1 we could go straight to the Planning Commission and apply for a special land use. But because we are an I-2 adjacent to residential, your Ordinance says we can't do that. So, in order to go to the Planning Commission and obtain the application for special land use, we need to have the variance granted that allows us to be an I-2 use basically adjacent -- I mean, sorry I-1 use adjacent to an I-1 property. That is really the variance and I think that's what Mr. Boulard and I kind of worked out when we were talking about this application. That would be the process. So, I guess unlike typically where you might put in certain conditions yourself on granting a variance, you are really not going to do that because that's going to come with the special use process when we proceed forward through the Planning Commission. Now, within this building what has happened is my client, the tenant has been operating a repair business there for a couple of years. It was not known to he or the owner of the property that this was not a permitted use because of the adjacency to residential. During this two-year period that this business has been there they -- Oh, and by the way. They do only business by referral. Steve happens to be one of the only, if not the only Indian mechanic in the area and all of the business he gets is from the Indian community referring to him. He has no signs. There is not even a sign on the door. He just uses the two units now for his business. Now, the units that he is in, this is a layout and these, of course, were in your packets. Again, this shows Nine Mile Road here. It shows there is offices upfront. This is the Novi Commons property at the address. And then it has bays that are used by individual businesses. Now, here is the rear of the property and the apartment complexes are near. There is a very large double unit here on the end that is rented out by another person and then the tenant uses 307 and 308. These two units right here. Now, this business is operated in an enclosed building. The bays where any vehicles might come and go are adjacent to the I-1. So they do not in any way open up towards the residential area. They are totally to the east and would be adjacent to I-1. The pedestrian access they're on the west of these two units. So, these two units are where the businesses operate within. Now, the type of business that is operated there is minor repairs. It's not a bump shop. There is no heavy duty repair work there. They're a specialist in minor vehicle repairs, minor engine repairs. They do electrical work on cars. They do not do any painting of vehicles. They don't do any heavy bump work. They don't do any windshield replacement or anything like that. In fact, when the owner, Mr. Swad was going around to the other businesses in the complex, he found that, yes, there were a couple of other tenants that used this business because they like to drive to work, drive their cars down a couple of bays and have it taken care of while they were there be it some minor repair or electrical matter. The other tenants didn't even know that it existed

there. That's basically how quiet it is within the confines of these two units. The good thing is that it's separated as I said from any residential area by both half a football field and a double unit before you ever get to their two units. Now, this Novi Commons is not doing all that well. Of course, in this economy it's not usual. Only about half of Novi Commons is leased out and Mr. Swad's company really can't afford to lose two units. He honestly told me when we had our meeting, he said if I lose two more units I might as well give it back because it's not worth it for me to keep anymore. Sometimes that is something you want to just listen to, sometimes it's not, but it's, in fact, the reality of what's happening right now. We also have obtained and submitted with our documentation three letters from businesses within the complex that are in favor. What's important is one of them is adjacent 309. We have 307, 308. The 309 unit is in favor of it staying there. Now, within your purview, you have to look at a number of things certainly. Practical difficulties of this situation. The practical difficulty here is we have a building that's an I-1 use and it's just happenstance it happened to be next to a multiple family. I don't really remember which came first or second, but as I think back I think the apartments came second. The businesses on Nine Mile were first at that point in time so they were there before this existed. Is this business in this location going to have any effect on the surrounding property values or property owners? I would propose not. We actually have consent from some of the adjacent property owners. Is there going to be really any effect on the light, air, noise for that residential community? No. They are so far away, both with a half a football field away. Their parking structure before you ever get to any of the apartments, they are not going to be in that particular type of circumstance. So, by granting this variance, it's going to be limited to this piece of property. It's not going to have the effect of being any type of precedent for anyone else that comes here because it's limited to the facts and circumstances of this particular property as it exist today. So, we would ask that you grant the variance that would allow us then to proceed to the special use process through the Planning Commission. And myself and my clients are more than happy to be here to answer any questions that you might have as you go through your deliberations. So, thank you very much.

CHAIRPERSON SANGHVI: Thank you, Mr.Quinn. Does anyone in the audience wish to address the Board regarding this case? I don't see any. So we will close the public remarks section. Madam Secretary, are there any correspondence regarding this case?

MEMBER KRIEGER: In case number: 09-002, 82 notices were mailed. One response. Seven mail returned. And the one response is John Dean of (inaudible). "As a property owner two blocks away I have no problem with allowing an exception to Section 1903.0. The open bays of 4300 West Nine Mile Road face east towards other businesses so noise will not be directed at residential properties. It is my opinion that an automotive service facility will not impact residents to the north in a negative manner." Sincerely yours, John Dean, President.

CHAIRPERSON SANGHVI: Thank you. Building Department?

MS. KUDLA: Mr. Chair, I would just like to say that this would be a standard for a use variance. So, you are looking for a more stringent standard which is unnecessarily

hardship. The Building Department has put those standards in its memorandum, the elements of unnecessary hardship. So, rather than a practical difficulty you are going to want to confine your consideration to these considerations A through D.

CHAIRPERSON SANGHVI: Thank you. Do you have anything to add?

MR. BOULARD: Just a question for Mr. Quinn. Could you give the Board a rough estimate of the distance between the suite that's being proposed or being proposed for the automotive use and the nearest residential unit?

MR. QUINN: That would be -- let me ask the question. Approximately how wide is that last unit sitting on the end of the building? Is that a double unit?

MR. SWAD: It actually faces north and south. It's about 1,400 square feet. It's probably an additional -- let me get some estimates here.

MR. QUINN: Hang on. I might have a bigger drawing that answers that question come to think of it.

MR. SWAD: I would estimate a good 30 to 40 feet because those units on the north side of it run north and south. So, it goes deep, whereas the units from 301 to 308 go east west.

MR. BOULARD: I guess from looking at the drawings that you provided it appears --

MR. QUINN: About 40 feet if I took a guess from this scale drawing here that I have.

MR. BOULARD: So somewhere in the neighborhood of 40 feet from the automotive repair units to the back of the building?

MR. QUINN: Correct.

MR. BOULARD: A 150 feet to the property line and then another how far to the actual occupied residential area?

MR. QUINN: About another half a football field. So, you're whole football field plus another 40 feet away.

MR. BOULARD: So, 340 feet?

MR. QUINN: Right.

MR. BOULARD: Approximately?

MR. QUINN: Yes.

MR. BOULARD: The only other comment I had was just to repeat. The Planning Commission, it will be in their purview to put any restrictions on the types of uses, noises (inaudible). The ZBA at this point is just, the question before us is whether to grant them permission to go before the Planning Commission.

CHAIRPERSON SANGHVI: Thank you. Well, I'll open it up to the Board now. As you are all looking at it, I might add myself that I have personally no objection to giving this variance with an understanding and a recommendation to the Planning Commission that this would be only for the use of this particular tenant and not an open kind of variance for land use for everybody that comes into that complex.

MR. QUINN: That's understood.

CHAIRPERSON SANGHVI: Yes, Mr. Bauer?

MEMBER BAUER: Mr. Quinn?

MR. QUINN: Yes.

MEMBER BAUER: If this is so passed by the Board, please emphasize upon them no outside parking at night.

MR. QUINN: Yes, absolutely.

MEMBER BAUER: We have plenty of them that do the parking outside and that's a real pain in the neck.

MR. QUINN: I can promise you, Mr. Bauer, we have discussed that about moving any vehicles inside. And since they have double bays they should be able to handle that. And they understand and I have impressed upon them having gone through that with other clients that that's a nightmare and they will be back here if there is violations.

MEMBER BAUER: Thank you very much.

MEMBER GHANNAM: I just have a couple of questions. What type of noise does this business make?

MR. QUINN: Muffled. Basically when they take a tire off, they unscrew a door panel -- and you can correct me if I'm wrong -- unscrew a door panel, put a door panel back on. That's about the loudest noise that goes on.

MEMBER GHANNAM: When they operate during the regular business hours is the interior exposed to the outside? In other words, are the bays open or how does that work?

MR. QUINN: No, no. The bays, and this is another thing I've gone over with them. Independent of what's happened here, your Ordinance requires business to operate in a totally enclosed structure and, therefore, those doors are to be closed.

MEMBER GHANNAM: That's all I have. Thank you.

CHAIRPERSON SANGHVI: Thank you. Yes, Mr. Wrobel?

MEMBER WROBEL: What are the hours of operation?

MR. OHAN: 8 a.m. to 7 p.m.

MR. QUINN: 8 a.m. to 7 p.m.

MEMBER WROBEL: How many day a weeks?

MR. QUINN: Six days?

MR. OHAN: Six days.

MR. QUINN: Six days. Monday through Saturday.

MEMBER WROBEL: I am looking right here at the elements of unnecessary hardship. I would just like to go through them briefly and let's see if they apply. Number one is that the property cannot be reasonably used for purposes permitted in the zoning district, i.e., property will not yield a reasonable return. No.

MR. QUINN: Not given what's happening right now.

MEMBER WROBEL: We can't be concerned with economic conditions in the state today because obviously they can change tomorrow God willing. B, that the plight of property owner is not due to unique circumstances peculiar to his or her property and not the general neighborhood conditions. No. Third one, that the use variance will not alter the essential character of the area. No. And that the proponent's problem is not self created. It is self created. I just wanted to read those. We have to take those into consideration in making a motion and making a decision about it. I will wait to hear what other people have to say. Thank you.

CHAIRPERSON SANGHVI: Any more comments? Mr. Ibe?

MEMBER IBE: Mr. Quinn?

MR. QUINN: Yes, sir.

MEMBER IBE: The only thing I'm struggling with is really you are trying to meet the elements that is required of this body to allow this to go forward. I do understand the

prevailing economic conditions not just in the city of Novi but across the United States which we are all optimistic that things will improve. And if that were to be true, then obviously the elements, number B that was mentioned by my colleague, Wayne Wrobel, would certainly not apply in this case. But if we were to look at the prevailing conditions today obviously it would fit in with what your client is looking for. But I have some reservation. As much as I want this to go forward I certainly want it to, but I do have some reservation. Is there any way that you can obviously perhaps through the -- I believe it's the owner?

MR. QUINN: Mr. Swad?

MEMBER IBE: Mr. Swad can explain exactly. The units that are currently available there are empty, I think you said it's about 50 units?

MR. QUINN: About 50 percent.

MEMBER IBE: What are the prospects of anyone getting those units in the last two years? Have they had any inquiries made by anyone?

MR. QUINN: Sure. Ed, you want to come up?

MR. SWAD: Sure.

MR. QUINN: You got to get sworn in.

CHAIRPERSON SANGHVI: Is he a attorney, Mr. Quinn?

MR. QUINN: No.

MR. SWAD: I'm only a CPA.

CHAIRPERSON SANGHVI: Can you kindly identify yourself and be sworn in by our Secretary, please.

MEMBER KRIEGER: In case number: 09-002 do you swear or affirm to tell the truth in this case?

MR. SWAD: Yes, I do.

MR. QUINN: The question was what's been the activity in your building within the last couple of years.

MR. SWAD: Okay. If you would take a look at the building it's laid out in a couple -- this is the industrial unit going here. This part is office. So, in the office part there has been significant decreases of office use. There are 52 separate offices upfront here. There is about 14,000 square feet and the entire first floor on the east side has been vacated in the

last year and then on the upper level, second floor on the east side there has been significant vacancies there within the last year as well. There has been two tenants that have come in in the last twelve months, each of them renting one 12 by 12 office space up there. Now, separately in the back here, unit 306 directly adjacent to the tenant has come in and signed a one-year lease. They are in the process of winding their business down. They were previously located in Troy. They are down-sized to this location which is about 2,700 square feet and they only signed a one-year lease because they will have their process of liquidation completed in the 12 months. The unit next to it is vacant. No activity in the five years that I have owned the building. 304 is a tenant in there and has been there since I bought the building five years ago. 303 is vacant and has been vacant. And 302 and 301 are occupied. Now, back here there are five units. This shows as one but really there are doors that separate this part into five separate units. There has been two vacancies that happened within the last 12 months that tenants have left. Basically just went out of business and couldn't afford the rent anymore so they have vacated.

MEMBER IBE: Thank you, Mr. Chair.

CHAIRPERSON SANGHVI: Thank you, Mr. Ibe. Yes, Ms. Krieger?

MEMBER KRIEGER: In light of the economics that we can't really look at, the problem not being self created. If we can look at it in a light where it created itself or it's self created -- never mind. That the proponent's problem is not self created is what I'm trying to think through. That the proponent has this thing that's working. We've got a building that's got other vacancies, so to assist use of building in Novi to have businesses and have a unique circumstance that can be alleviated with the variance request that would have guidelines not to cause any distress to neighboring residents, that I would support looking at a variance.

CHAIRPERSON SANGHVI: Thank you. Yes, Mr. Ghannam?

MEMBER GHANNAM: I also would concur. I generally support a variance in this matter. However, it would have to be subject to all of the restrictions that they would submit which is on page two of their attachment. The third or fourth section down such as no vehicle paintings, no parking outside. With those restrictions along with obviously subject to Planning Commission requirements and so forth, so I would be in favor for something like that and good for only this particular time.

CHAIRPERSON SANGHVI: Thank you. Well, do I hear a motion then?

MEMBER GHANNAM: I will go ahead and make a motion at this time that in ZBA case number: 09-002 filed by Matthew Quinn for 43000 West Nine Mile Road on behalf of the owner and the tenant that we grant relief from Section 1902 of the Zoning Ordinance restricting the ability to put this particular type of business within this district and allowing the petitioners to go before the Planning Commission and get whatever relief they need there. Due to the unnecessary hardships explained and demonstrated by the petitioner, illustrating that the property cannot be reasonably used for the purpose

permitted in the zoning district. The plight of the property owner is due to the unique circumstances peculiar to the property and not to the general neighborhood. I believe the variance will not alter the essential character of the area and the problem is not self created. This would be again subject to the self imposed restrictions that they agreed to on page two of their submission and good for this tenant and also subject to any requirements of the Planning Commission.

MEMBER KRIEGER: Second.

CHAIRPERSON SANGHVI: The motion has been made and seconded.

MS. KUDLA: Could I make a suggestion that we probably need to add a couple of specific facts as far as the element of unnecessary hardship as to why the Board is seeing it as unique circumstances and not peculiar, that type of thing, some specifics.

MEMBER GHANNAM: Well, I can state because I live not too far from this area actually that there are no businesses of a similar nature nearby. I think it's actually a better place to put a repair shop as opposed to seeing a garage filled with cars making the area look more blighted. I think it's set back reasonably well. It's not close to any residential neighbor that would certainly create any noise or odors and things of that nature. And I think that given the support of their neighbors that it would be reasonably fit for this particular purpose.

CHAIRPERSON SANGHVI: Okay. Yes, Mr. Bauer?

MEMBER BAUER: You mentioned 1902. It should be 1903.

MEMBER GHANNAM: Yes, you are right. I apologize. It is Section 1903.0. With that amendment.

CHAIRPERSON SANGHVI: All right, now we have got the correct number and everything, section number and all that. Very good. Any further discussion? Seeing none, will you please call the roll.

MR. BOULARD: Member Wrobel?

MEMBER WROBEL: Yes.

MR. BOULARD: Chairman Sanghvi?

CHAIRPERSON SANGHVI: Yes.

MR. BOULARD: Member Krieger?

MEMBER KRIEGER: Yes.

MR. BOULARD: Member Ibe?

MEMBER IBE: Yes.

MR. BOULARD: Member Ghannam?

MEMBER GHANNAM: Yes.

MR. BOULARD: Member Bauer?

MEMBER BAUER: Yes.

MR. BOULARD: Motion passes 6-0.

CHAIRPERSON SANGHVI: Congratulations.

MR. QUINN: Thank you very much. I appreciate your consideration.

CHAIRPERSON SANGHVI: Off to the Planning Commission.

MR. QUINN: Our job is just beginning. Thank you.

PREVIOUSLY APPROVED SITE PLAN

PROPERTY DESCRIPTION

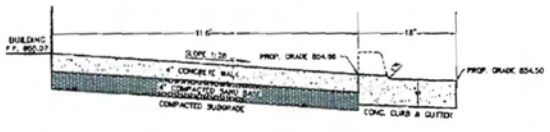
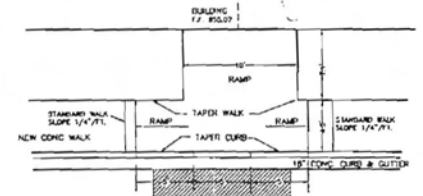
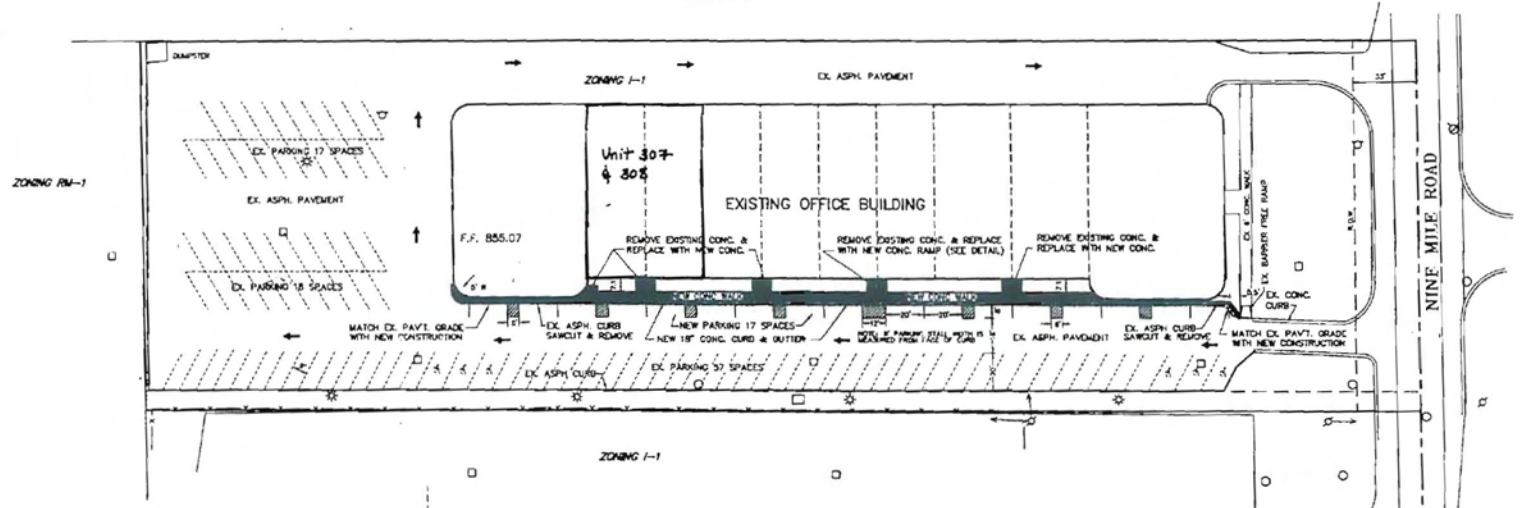
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LEGEND

- FIRE HYDRANT
- CATCH BASIN
- SEWER MANHOLE
- LIGHT POLE
- UTILITY POLE
- ← GUT ANCHOR
- ← TRAFFIC FLOW

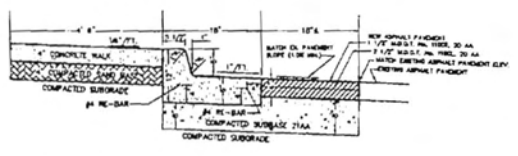


ZONING I-1



RAMP DETAIL
NO SCALE

NOTES
THERE ARE NO ANTICIPATED CHANGES IN THE EXISTING BUILDING. REPAIRS ON THE EXISTING ASPHALT PAVEMENT IS NOT PLANNED AS PART OF THE CONSTRUCTION.



TYPICAL CONC. WALK, CONC. CURB & ASPHALT PAVING DETAIL
NO SCALE

Arpee/Donnan

PREPARED FOR
DIAL CONSTRUCTION
43000 NINE MILE ROAD, SUITE 100
NOVI, MICHIGAN 48375
(248) 344-8995

ARPEE/DONNAN, INC.
LAND SURVEYING - ENGINEERING - MAPPING
36937 SCHOEN CRFT
LIVONIA, MICHIGAN 48150
PHONE (734) 953-3300 FAX (734) 953-3324

PROPOSED PARKING

DATE: 03/27/2003
DRAFTED BY: WRD
CHECKED BY:
FILE #
JOB #
03020

MAPS

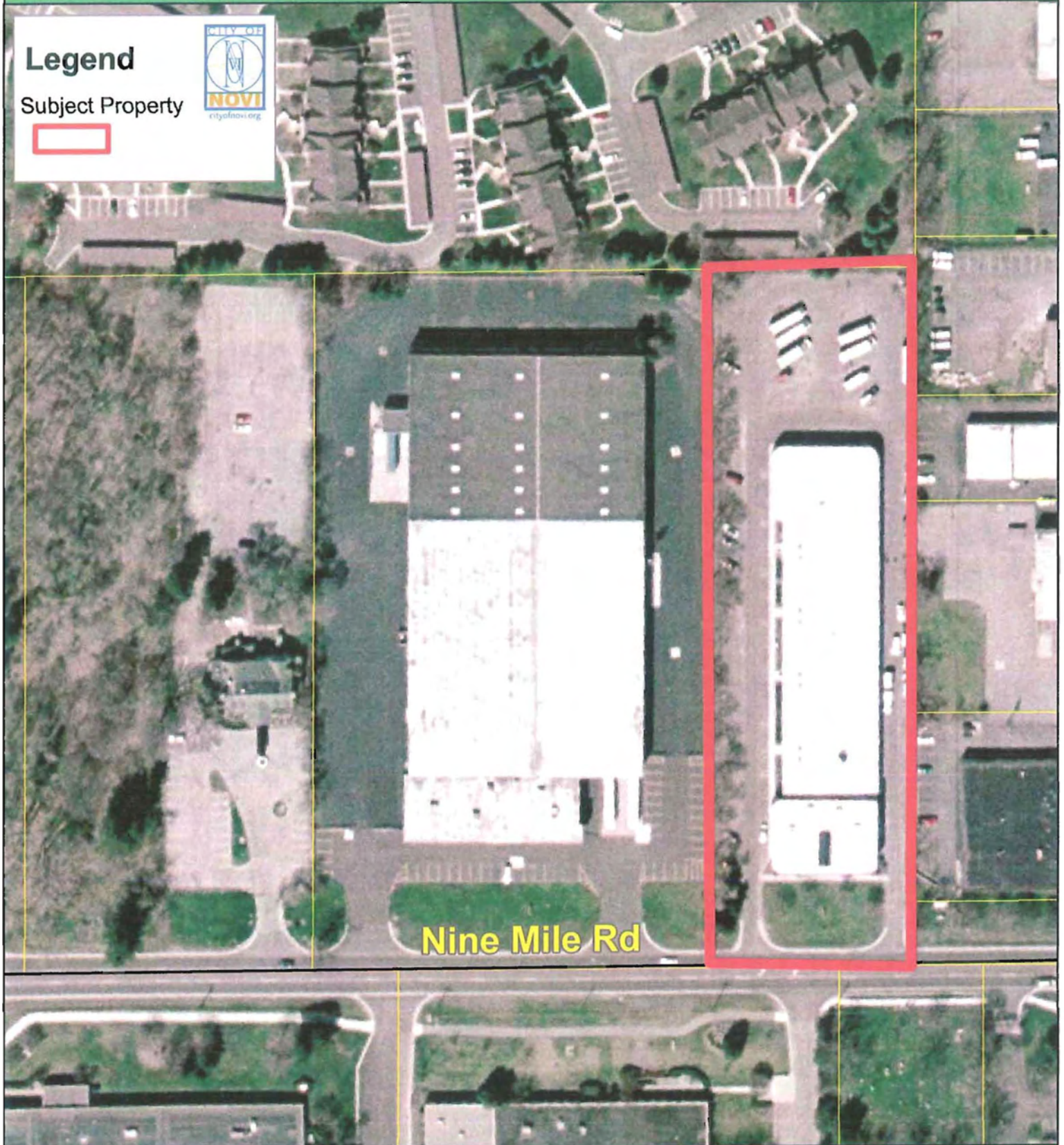
**Location/Air Photo
Zoning**

Ramayah Auto, Inc. SP09-09

Location

Legend

Subject Property



CITY OF NOVI

DEPARTMENT OF COMMUNITY DEVELOPMENT

45175 W. TEN MILE ROAD
NOVI, MI 48375-3024
(248) 347-0415

MAP AUTHOR: Kristen Kapelanski, Planner



0 45 90 180 270

FEET

1 INCH = 125 FEET

MAP PRINT DATE: 05/29/09




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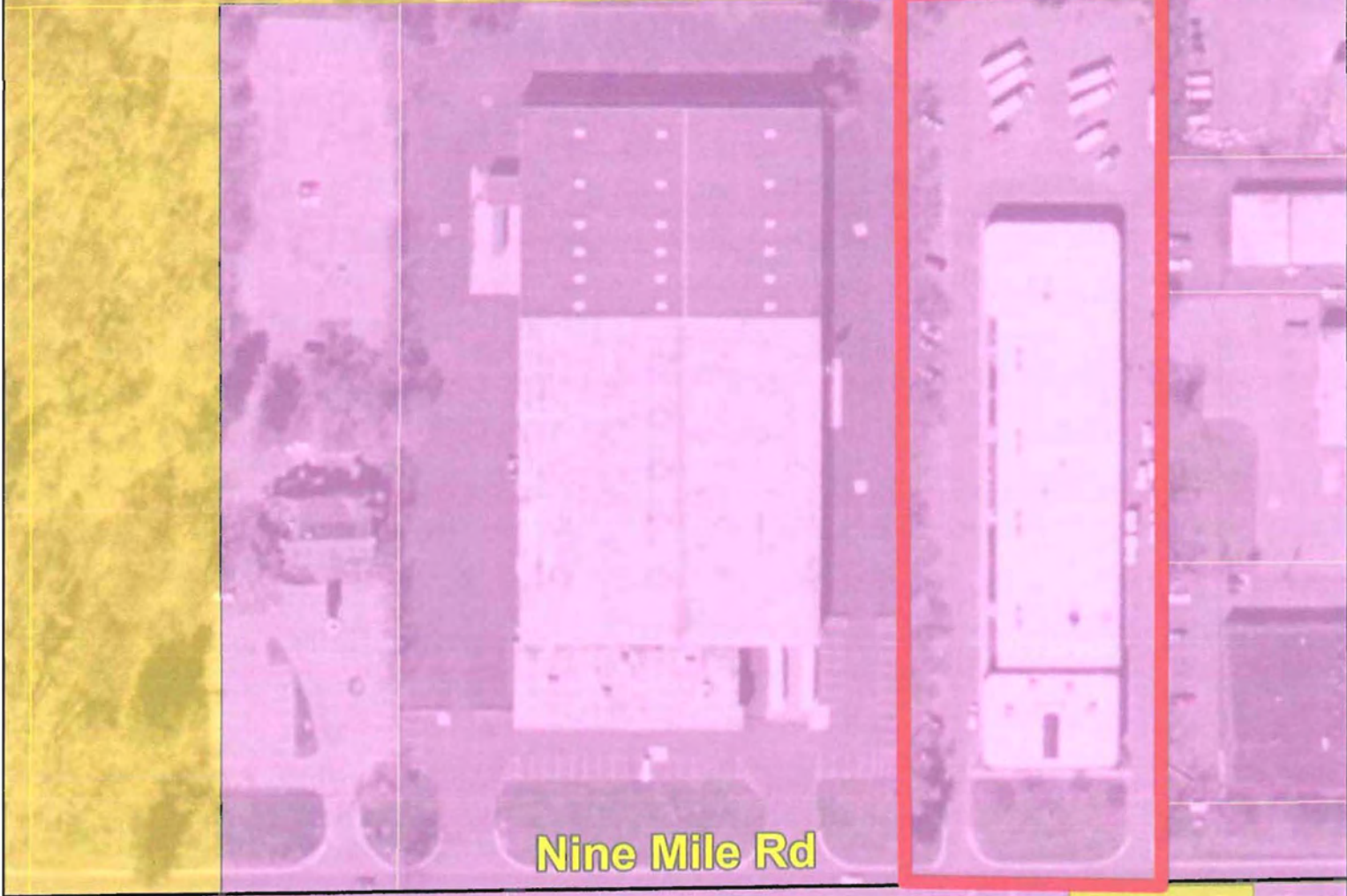
Ramayah Auto, Inc. SP09-09

Zoning

Legend

-  R-1: One-Family Residential District
-  RM-1: Low-Density Multiple Family
-  I-1: Light Industrial District

Subject Property 



Nine Mile Rd

CITY OF NOVI

DEPARTMENT OF COMMUNITY DEVELOPMENT

45175 W. TEN MILE ROAD
NOVI, MI 48375-3024
(248) 347-0415

MAP AUTHOR: Kristen Kapelanski, Planner



1 INCH = 125 FEET

FEET

MAP PRINT DATE: 05/29/09

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