



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item 4
August 27, 2007

SUBJECT: Consideration of requests from Triangle Main Street, LLC, applicant for Main Street Novi, for the following:

- a. Variance from Figure VIII-C of the Design and Construction Standards which indicates the typical cross section for a collector road, to allow angled and parallel on-street parking along Paul Bunyan Drive (proposed Memorial Street).
- b. Approval of the renaming of Paul Bunyan Drive and Sixth Gate Road, two public streets within the Main Street Novi development, as regulated in Section 31.53 of the Ordinance. Paul Bunyan Drive is proposed to be Memorial Street and Sixth Gate Road is proposed to be City Gate Street.
- c. Deferral of the dedication to the City of approximately 520 linear feet of additional right of way along the south side of Paul Bunyan Drive (proposed Memorial Street).

SUBMITTING DEPARTMENT: Community Development - Planning ^{Burb}

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Triangle Main Street, LLC, applicant for Main Street Novi, is requesting consideration of three items from the City Council at this time. On November 13, 2006, the City Council approved the Preliminary Site Plan for Main Street Novi, and later approved a modified site plan in May, 2007. The 20-acre development is proposed to be located in the TC-1 District, south of Grand River Avenue, east of Novi Road and along the north and south sides of Main Street. The applicant has appeared in front of the Zoning Board of Appeals and received necessary variances for the modified site plan. The applicant has submitted for review of a Final Site Plan for Phase I, a mixed medical office/retail building fronting on Novi Road, and the reviews have been completed for administrative approval. The applicant has now returned to the City Council for consideration of three items related to the public rights of way:

- (A) Angled parking and parallel parking are proposed within Paul Bunyan right of way, as shown on the Final Site Plan for Phase I. This road remains a public right of way, and is identified as Memorial Street on the attached site plan. The Design and Construction standards do not provide an allowance for angled parking or parallel parking, but do provide a typical cross section for a collector road in Figure VIII-C (see attached).

The Planning Division recommends approval of this request as the proposed on-street parking is in keeping with the Main Street concept and the intent of the Town Center Districts. The Engineering Division, Building Division, City Attorney's Office, Fire Department and DPW have no objections to the request. Please note the three conditions allowing City Council to grant a variances, noted in Section 11-10, and provided in the letter from the City Attorney's office.

- (B) The applicant is requesting approval to rename two public roads within the proposed Main Street Novi development. The proposed name changes are as follows: Paul Bunyan Drive will become Memorial Street and Sixth Gate Road will become City Gate Street. All departments indicated no exception to the proposed name changes.

A staff committee responsible for reviewing project and street names reviewed the applicant's request and recommended approval to the City Council of the proposed name changes. The proposed street names have been reviewed to insure compliance with

Section 31-54, the criteria for naming public streets. The applicant is now seeking the approval of the City Council, as required by Section 31-53 of the Ordinance.

- (C) Triangle Main Street is requesting a deferral from City Council for the dedication of approximately 20 feet of additional right of way along the south side of Paul Bunyan Drive (see attached exhibit). The applicant stated in the letter dated August 1, 2007, that Triangle Main Street is prepared to dedicate additional right of way in order to avoid having a small portion of Paul Bunyan Drive as a private street while the majority remains public, but the applicant would prefer to defer the decision until the "concept of vacating Paul Bunyan is finalized or is laid to rest". The current right of way line would bisect proposed parking spaces creating a situation where a portion of the parking space is private and the remainder is public. Please note, however, that the City Council approved the revised Preliminary Site Plan on May 1, 2007 subject to "Applicant providing additional right of way for Paul Bunyan along its southern length and the eastern edge." It is staff's opinion that the City Council required the dedication of right of way, and the applicant is now requesting deferral of the actual dedication.

We believe the City Council has addressed this topic. The Planning Division recommends the City Council deny the request for deferral and require acceptance of the additional right of way prior to Final Site Plan approval to eliminate the dimensional concerns of the right of way line passing through the middle of angled parking spaces and areas of the curb returns not being included within the right of way. Draft maintenance and/or license agreements for the western portion of the street that would remain public will be required prior to Stamping Set approval. If the applicant seeks to vacate the right of way in the future, the entire right of way could be considered for vacation by the City Council. The Engineering Division recommends the City either acquire the additional right of way as offered by the applicant, or vacate those portions of the street to address potential maintenance and liability concerns (see attached memo from Engineering). The City Attorney's office has indicated that the applicant was required to provide additional right of way for Paul Bunyan along its southern length and eastern edge, as stated in the revised Preliminary Site Plan approval motion of May 1, 2007. The Department of Public Works recommends the City accept the additional right of way along Paul Bunyan (see attached memo from DPW). The Building Division and Fire Department have no objections to the proposal to dedicate right of way. If the City Council does not approve the applicant's request to defer the dedication of right of way at this time, the City Attorney will work with the applicant on the proper conveyance documents for approval by the City Council at a future meeting.

RECOMMENDED ACTION

Approval of requests from Triangle Main Street, LLC, applicant for Main Street Novi, for the following:

- a. Variance from Figure VIII-C of the Design and Construction Standards which indicates the typical cross section for a collector road, to allow angled and parallel on-street parking along Paul Bunyan Drive (proposed Memorial Street).
- b. Approval of the renaming of Paul Bunyan Drive and Sixth Gate Road, two public streets within the Main Street Novi development, as regulated in Section 31.53 of the Ordinance. Paul Bunyan Drive is proposed to be Memorial Street and Sixth Gate Road is proposed to be City Gate Street.
- c. Denial of the request for deferral of acceptance and require dedication to the City at this time of approximately 20 feet of additional right of way along Paul Bunyan Drive (proposed Memorial Street).

	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				

VARIANCE REQUEST FROM MAINSTREET NOVI

August 1, 2007

City Council
City of Novi
45175 West 10 Mile Road
Novi, Michigan 48375



Subject: MainStreet Novi Items for City Council Consideration

Dear Honorable Council Members,

In regards to the unique proposed mixed-use MainStreet Novi project, I respectfully submit to you the following three items for your consideration.

I. Request for Variance: On-street angled and parallel parking.

Chapter 11 of the City of Novi’s Zoning Ordinance does not explicitly permit on-street angled and parallel parking directly adjacent to streets. As such, a variance is being sought in order to construct the planned angled and parallel parking areas along Paul Bunyan.

Angled and parallel parking areas are crucial to the MainStreet concept. Traditional downtowns are ripe with examples of these parking tools, which create safe and comfortable pedestrian environments while providing a more “urban” and bustling experience for the visitor. Providing these amenities in the MainStreet Novi development is compatible with the letter and spirit of the Town Center District. In fact, the angled and parallel on-street parking areas achieve the intent of the Town Center District better than would a traditional parking lot area set back from the lot line.

II. Request for Approval: Change in road name designations.

Two existing streets within the proposed MainStreet Novi development are proposed for name changes. We are requesting that “Paul Bunyan” be renamed “Memorial” and “Sixth Gate” be renamed “City Gate Street”. The project and the street naming committees have approved the proposed name changes.

The requested name changes, if approved by City Council, will lend to a more cohesive development with a signature identity.

235 East Main Street
Suite 405
Northville, MI 48167
TEL 248-598-0930
FAX 248-598-0930

451 South Washtenaw Street
Suite 020
Eatonville, MI 49007
TEL 269-382-4443
FAX 269-382-4540

30 East Mulberry Street
Suite A
Lebanon, OH 45036
TEL 513-634-2045
FAX 513-634-2840

111 West Streetsboro Street
Suite 204
Hudson, OH 44126
TEL 330-528-3142
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Dundee@mcckenna.com

III. Request for Decision: Paul Bunyan right-of-way.

The City's engineers have suggested that the City may wish to acquire approximately 20' of right-of-way along Paul Bunyan (proposed Memorial Street) in order to avoid having a small portion of private road within the on-street angled parking stalls.

We are prepared to dedicate the approximately 20' section to the City for additional right-of-way, if deemed appropriate by the City Council and if this portion of the street remains public. However, there is a possibility that we will be re-petitioning the City Council for the vacation of this portion of the road within the next year.

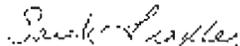
Accordingly, we propose that the Council defer this decision until the concept of vacating Paul Bunyan is finalized or is laid to rest. Therefore, if the City Council feels that there is a need for the additional approximately 20' of right-of-way along Paul Bunyan (proposed Memorial Street), we are prepared to dedicate that portion within the coming year if plans for vacation do not materialize. Exact area of the potential dedicated land will be determined with the input of the City's planners and engineers, but we look forward to receiving the Council's policy decision on this matter.

Conclusion

We look forward to moving forward with this project and gathering your approvals and input for this unique mixed-use development in the heart of Novi's downtown area.

Respectfully submitted,

McKENNA ASSOCIATES, INCORPORATED



Sarah Traxler
Senior Planner

Cc: Dave Nona, Triangle MainStreet, LLC

CITY ATTORNEY'S COMMENTS



August 10, 2007

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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

Kristen Kapelanski, Planner
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Main Street
Variance from Design and Construction Standards
Our File No. 55142 NOV**

Dear Ms. Kapelanski:

We have reviewed the materials you forwarded with respect to the Main Street Development regarding:

1. Request for variance for on-street angled and parallel parking;
2. Request for approval of street name change; and
3. Request regarding additional right-of-way.

We have the following comments:

On-Street Angled and Parallel Parking

The request for a variance from the City's Design and Construction Standards is a request to permit on-street angled/parallel parking which is not specifically considered within the City's Design and Construction Standards.

The Applicant requests a variance because the design of the Development, overall, is intended to have a "downtown" feel.

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, Fire Department, and Traffic Engineer should review and comment on the proposed variance from an access, pedestrian, fire safety 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 legal impediment to granting a variance.

Proposed Changes to Street Names

The Applicant has requested to re-name two streets within the Development. Portions of Paul Bunyan are public and private. Sixth Gate Drive is private. Chapter 31, Article IV of the City of Novi, Code of Ordinances provides for changing of private street names (Section 31-52), and changing of public street names (Section 31-53). Both sections require that the proposed name changes be reviewed and approved by the City's Street Names Review Committee, and, subsequently approved by City Council. You have confirmed approval has been granted by the Street Names Review Committee. It is our understanding that the Street Name Review Committee includes representatives of the Fire and Police Departments, the Building Department and the Planning Department, and thus the names have been considered from planning and safety view points. As such, we see no legal impediment to approval of the proposed street name changes.

Additional Road Right of Way

The Applicant has requested that City Council make a determination as to whether a portion of Paul Bunyan Drive should remain public, or whether it should be vacated. Further, if it is to remain public, the Applicant is requesting City Council to determine whether the City should accept additional right-of-way within the proposed angled parking area.

As discussed at the May 1, 2007 Meeting, there is a question regarding the boundaries of the property if vacated. It is our understanding that the Developer and the adjacent Property Owner are continuing to try to resolve the dispute and complete the vacation of the road. In any event, the May 1, 2007 determination made by City Council provided for an amended site plan approval with a public road and conditions relating to access as follows:

- 5) License Agreements being developed for all fixed objects and non-standard parking in the Paul Bunyan right-of-way,**
- 6) Applicant providing additional right-of-way for Paul Bunyan along its southern length and the eastern edge,**
- 7) Applicant providing two curb cuts to the properties to the north,**

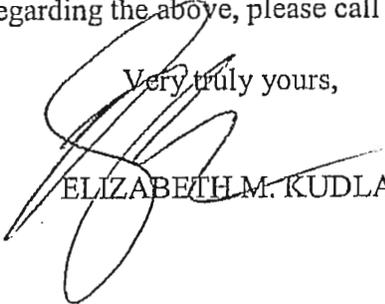
It appears that City Council previously considered and required additional right-of-way to be provided, per its condition 6) above. You may be able to confirm whether this is the same area, thus making this additional request unnecessary.

In the event that you determine that it is different, or additional right-of-way, we see no legal impediment to its conveyance to the City, subject to the Developer providing a warranty deed and title work for the additional area. As indicated in condition 5) above, it is our understanding that regardless of the conveyance, it is the Developer's intent to perpetually maintain and repair the right-of-way pursuant to the terms and conditions of a license agreement with the City.

If the City determines that it desires to proceed to vacate the Paul Bunyan right-of-way, it is our recommendation that the property owner provide a commitment for title insurance identifying the ownership of the property in dispute.

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)

Kristen Kapelanski, Planner
August 10, 2007
Page 4

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)

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ENGINEERING DEPARTMENT'S COMMENTS



CITY OF NOVI
Engineering Department

MEMORANDUM

TO: Kristen Kapalanski, Community Development

FROM: Rob Hayes, PE *R24*
City Engineer

DATE: August 17, 2007

SUBJECT: Variance from Design & Construction Standards and Other Considerations
Main Street, SP06-38

The Engineering Division has reviewed the three requests by McKenna Associates related to the proposed Main Street development. We have no objection to Items 1 and 2 related to the on-street parking and the street name changes, respectively. Item 3, however, describing the location of the existing Paul Bunyon right-of-way in relation to the proposed modifications adjacent to the street right-of-way (proposed as Memorial Stet) is a situation that should be avoided due to potential maintenance and liability concerns. If the right-of-way is left as it currently exists, the right-of-way would bisect the proposed angled parking stalls when constructed. It is our opinion that this scenario should be avoided, and the additional 20-foot width should be dedicated so the proposed road and parking stalls remain within a contiguous right-of-way, not split between public and private property. An alternate scenario, previously discussed by the City, where the existing right-of-way is vacated (rather than expanded as discussed above) would also be acceptable since the result would eliminate the situation where right-of-way bisects the roadway/parking.

DEPARTMENT OF PUBLIC WORK'S COMMENTS



Memorandum

City of Novi
Department of Public Works

To: Benny McCusker

From: Howard Aube

Date: August 22, 2007

Subject: Variance from Design & Construction Standards
Main Street, SP06-38

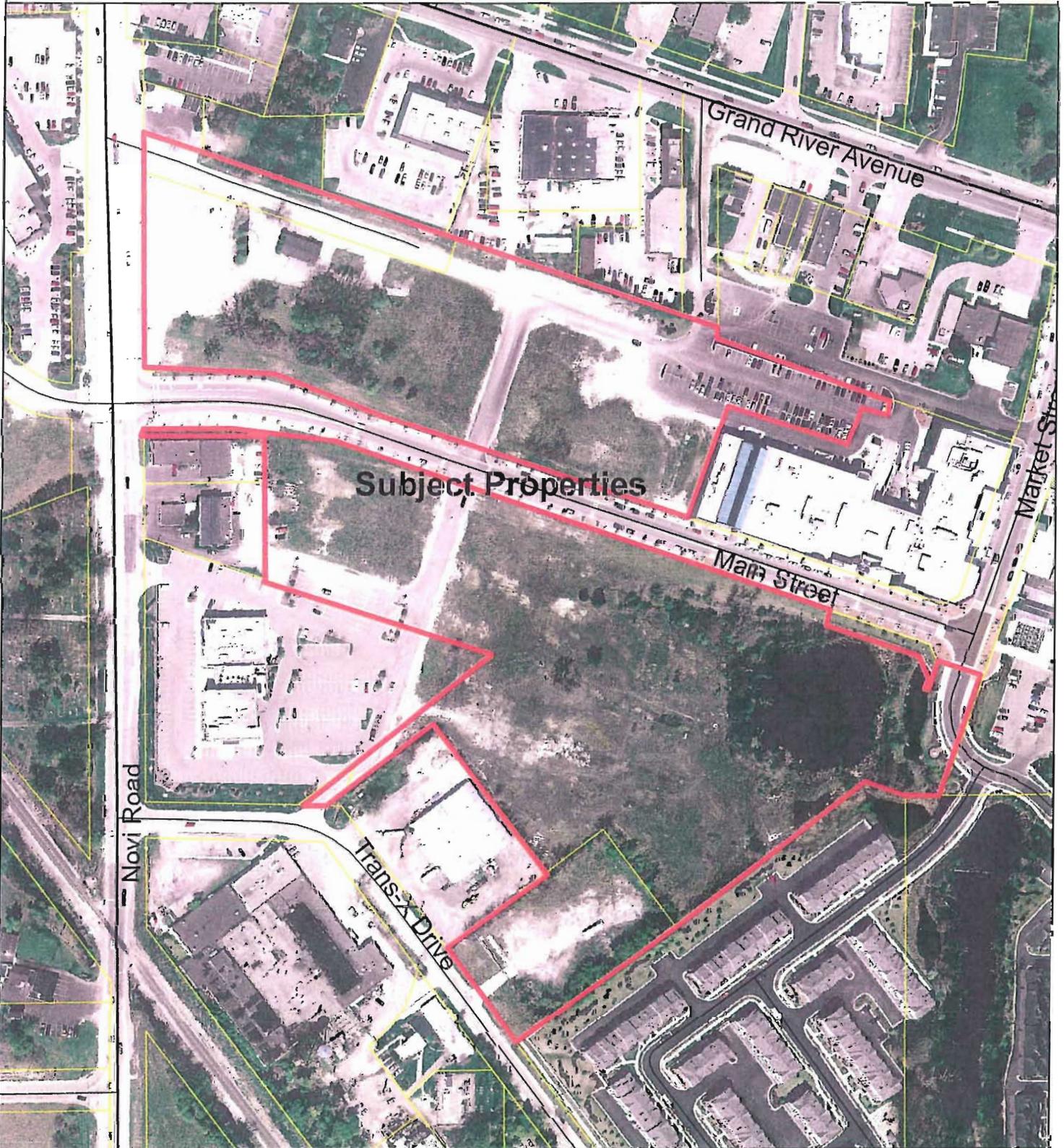


We have reviewed this request for a variance from the Design and Construction standard and recommend the variance regarding the Right-of-way of Paul Bunyan be approved. Maintaining very small segments of public road intermingled with private roads is undesirable and confusing to the public when the private segments are not maintained at the same level. We are recommending that a Maintenance Agreement between the City of Novi and Triangle Main Street LLC be in place requiring the winter maintenance of Paul Bunyan/Memorial St by the Main Street Development.

LOCATION MAP/AERIAL PHOTO

SP06-38 Main Street Novi

Aerial Photo of Subject Properties



CITY OF NOVI
 PLAN REVIEW CENTER
 Timothy R. Schmitt, AICP
 NOVI CITY HALL/CIVIC CENTER
 45175 W. TEN MILE ROAD
 NOVI, MI 48375-3024
 (248) 347-3279
 WWW.CI.NOVI.MI.US



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.

ORDINANCE EXCERPT – SECTION 11-10: VARIANCES

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;

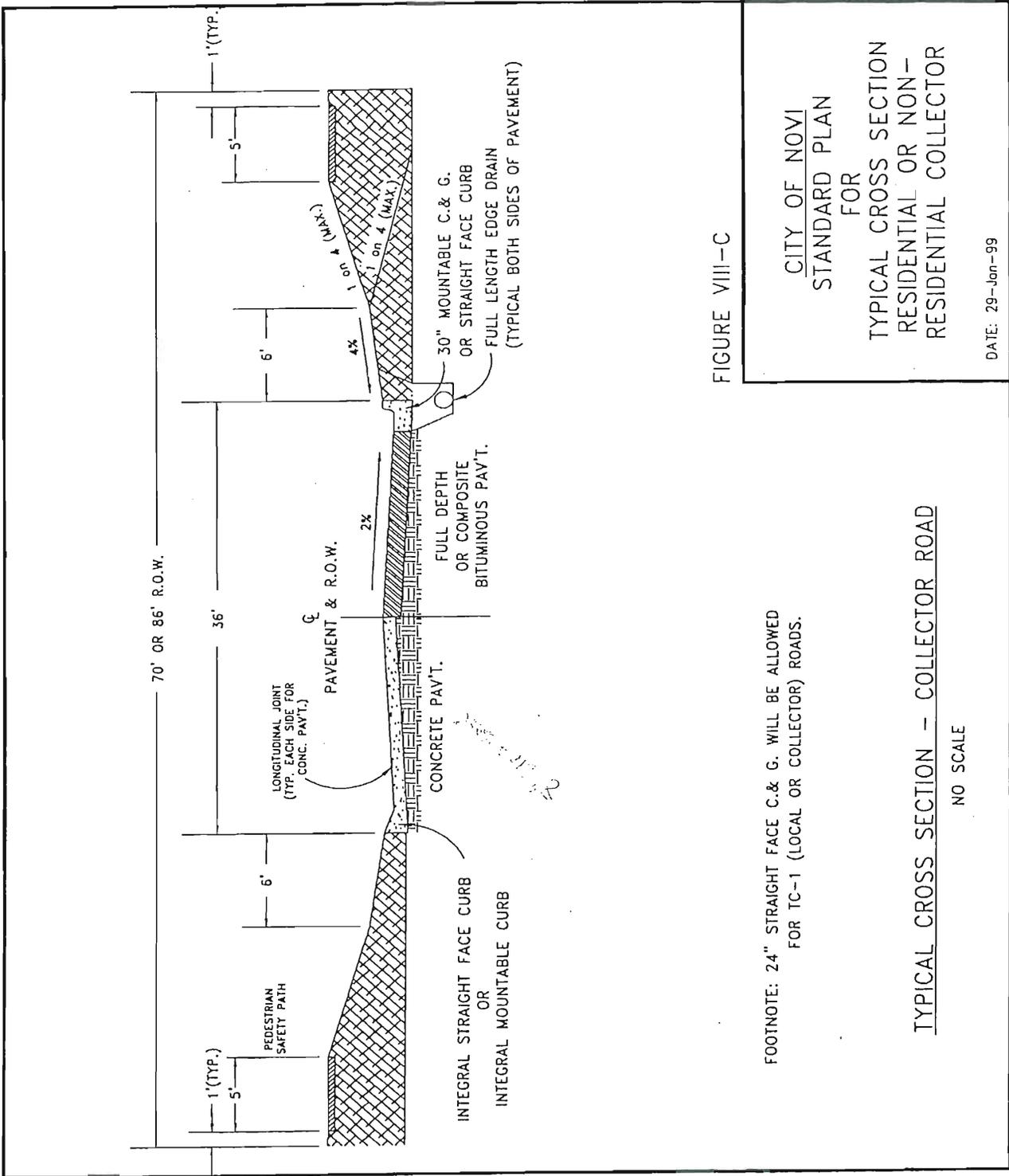
(2) The alternative proposed by the applicant shall be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and

(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)

FIGURE VIII-C



FOOTNOTE: 24" STRAIGHT FACE C.& G. WILL BE ALLOWED FOR TC-1 (LOCAL OR COLLECTOR) ROADS.

TYPICAL CROSS SECTION - COLLECTOR ROAD
NO SCALE

FIGURE VIII-C

CITY OF NOVI
STANDARD PLAN
FOR
TYPICAL CROSS SECTION
RESIDENTIAL OR NON-
RESIDENTIAL COLLECTOR

DATE: 29-Jan-99

ORDINANCE EXCERPT – SECTION 31-53: PUBLIC STREETS

Sec. 31-53. Public streets.

The names of public streets may be changed by resolution of the council, after review and approval by the street name review committee in the same manner as provided in section 31-51. New street names shall satisfy the criteria of section 31-54.

(Ord. No. 86-123, § 6.01, 4-21-86)

**ORDINANCE EXCERPT – SECTION 31.54: CRITERIA FOR NAMING PUBLIC
STREETS**

Sec. 31-54. Criteria.

The naming and designation of streets shall be subject to the following conditions:

(1) Streets having center lines offset by one hundred twenty-five (125) feet or more should be given separate names.

Layout figures

(2) Loop streets with ingress and egress from a single thoroughfare and other meandering streets shall be named with a single name for their entirety, except when the use of a single name will interfere with street numbering. When the use of a single name will interfere with street numbering, the loop or meandering street shall be named with respect to the dominant direction of its segments.

(3) Streets intersecting at right angles should be given separate names.

(4) Small cul-de-sacs and courts may be named after the street with which they intersect, provided the street suffixes in subsection 31-54(7) are utilized, and provided distinctions are maintained when more than one cul-de-sac or court intersects with a given street.

(5) Streets having the same alignment should be given the same name. The permanency of interruption should rule decisions on links of the same street; i.e., streets whose links could reasonably be expected to be united into one (1) continual street, should be given the same name.

(6) Streets with different spelling but of the same or similar pronunciation should be discouraged. Likewise, streets with partially duplicated names, such as John Dr. and John R. Dr., should be omitted. The city reserves the right to require the developer to change any street name that is conflicting, similar sounding, or not in good judgment. All names of streets must be checked relative to existing street names before they are approved.

(7) Designations for street suffixes shall be in accordance with the following usages:

a. *Cul-de-sac*. Culs-de-sac should be named "Court."

b. *Meandering streets*. Meandering streets should be named "Drive," "Lane," "Circle," "Way," "Place," "Path," "Trail."

c. *Major and collector streets*. All major and collector streets with rights-of-way greater than seventy (70) feet should be called "Road." Subdivision collector streets with seventy (70) feet of rights-of-way should be called "Drive."

d. *Streets with planted median strips*. Only streets containing planted median strips should be given the designation "Boulevard" or "Parkway."

(Ord. No. 86-123, § 3.01, 4-21-86; Ord. No. 89-123.02, Pts. I, II, 6-5-89)

STREETS TO BE RENAMED

(b)

AREA UNDER CONSIDERATION FOR DEDICATION TO CITY

*
(c)

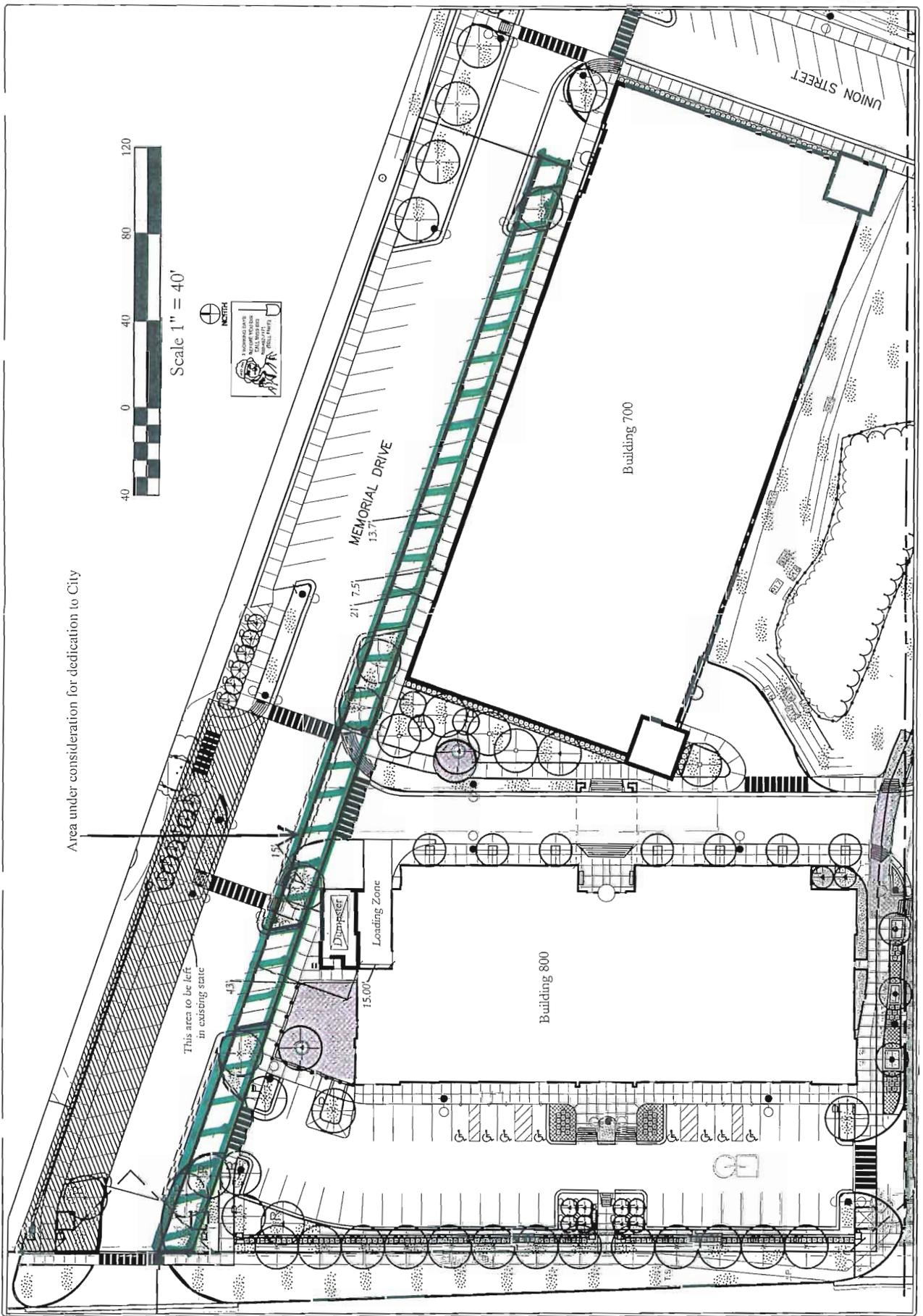
PROJECT MGR.
 DATE: 7/15/2017
 DRAWN BY:
 CHECKED BY:
 PROJECT #:
 SCALE: 1/4" = 1'-0"

SHEET TITLE:
 ZBA Variance Plan
 BASIS DATA PROVIDED BY:
 DESIGNER:

PROJECT LOCATION:
 Novi, Michigan
 PROJECT CLIENT:
 MainStreet Novi
 PROJECT #:
 DRAWN BY:
 CHECKED BY:

REVISIONS:	DATE:	BY:	DESCRIPTION:
1			
2			
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10			

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EXCERPT – MAY 1, 2007 CITY COUNCIL MINUTES

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, MAY 1, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

Mayor Landry called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello, Council Members Gatt, Margolis, Mutch, Nagy, Paul

3. Consideration of the request of Triangle Development for Main Street Novi, SP06-38, for modifications to conditions of the Preliminary Site Plan approval. The subject property is located in Section 23, south of Grand River Avenue and east of Novi Road, in the TC-1, Town Center District. The subject property is approximately 20 acres and the applicant is proposing modifications to the previously approved site plan to accommodate leaving Paul Bunyan, aka Sixth Gate, as a public street.

Mr. Pearson said this had come back in this form after the Council asked the applicant to review their request originally for vacation. They had withdrawn their immediate request and were going the route of suggesting improvements to the City's right-of-way, which the City owned and controlled. He said these were revisions to the preliminary site plan and there were several conditions which were not atypical. He said there was a positive recommendation from the Planning Commission and the City attorney had reviewed it and found that it met the requirements of the Zoning Ordinance and Council requirements.

Sarah Traxler, Senior Planner with McKenna and Associates, Inc., was present to represent Triangle Development LLC on site planning issues for the proposed Main Street Novi Project. She said Triangle Development LLC was very willing to work with the City to accomplish this landmark Main Street development. She said Council had a letter, written within the past couple of weeks, expressing their willingness to provide an additional curb cut at the north western portion of Paul Bunyan. She said in light of comments during audience participation portion of the meeting she wanted to make a few comments in reply, and she would be willing to answer any questions Council might have.

Ms. Traxler said the preliminary site plan was approved by this Council and recommended by the Planning Commission months ago. At that time, Council had in front of them a parking study by Reid, Cool, and Michalski, that pointed out that there was no parking shortage on this site but rather a parking surplus. She said that was their acknowledgement that when there were a mixture of uses on one site there would be an ebb and flow with the demand for parking spaces that often were not at the same times. Thereby providing a complementary situation by which different uses could accommodate fewer parking spaces than

if they were counted simply as individual uses. She said that was the basis for Council's preliminary approval of this plan.

Ms. Traxler said they believed that the comments regarding the dumpster location, which would as Mr. Cassis' attorney Ernest Essad pointed out require a ZBA variance, was something that would be necessary were that road to remain in the public right-of-way. However, Building 800 was of exceptionally high quality and design standards. She said surrounding that dumpster was a brick wall dumpster enclosure that provided continuity in design with the building that provided something other than the standard dumpster. She said that view would be just as pleasant as the view at the building, and the building would be in view as well.

Ms. Traxler said most importantly to this discussion this evening was that they were prepared to delete the parking from the entire western most portion of Paul Bunyan if that suited the City. If the City wished to remove all those parking spaces in the public right-of-way, that was something they would be more than willing to accommodate. Therefore, that western portion of Paul Bunyan would be used simply for access to the development and to neighboring developments. It would also be landscaped to the high quality and design standards that were seen at the rest of the site.

Mr. Nona said Ms. Traxler was fairly new to the project, and he wanted to offer clarification on the issue of the parking study. He said they had studies done by Reid, Cool and Michalski. The shared parking study for his development only did show a shortage in parking of about 30 or so parking spaces. He said at the suggestion of the Council they did a shared parking study with the Red, Hot and Blue building because they had some parking on his property that they had to move. He said that shared parking study when they combined their development with their development then that showed a surplus. He said that study was made available to the City Planning Department so there was a report to that effect. Mr. Nona said right now, as it was, they did have a parking shortage of about 30 parking spots, and that was for the entire development when it was built. As Ms. Traxler indicated, they were prepared to delete the side angle parking from the 250 feet western part of Paul Bunyan so that they would only have an access road in there. He said that way they would landscape both sides of the road and Mr. Cassis could do whatever he wanted to do when he developed that property.

Mr. Nona said he had several very friendly discussions with Mr. Cassis and the concept of the shared parking between Mr. Cassis' development and his development was something that he, Mr. Nona, had initiated and suggested. In fact, at the first meeting Mr. Nona said he offered to have his architect do conceptual site plan on Mr. Cassis' property to show what could be built on that property with and without shared parking. Mr. Nona said it was obvious that with shared parking Mr. Cassis could build approximately 20% more building than he would otherwise on a stand alone building. Mr. Nona said the problem came in

when his attorney started putting the agreement together. He said when he put the agreement about shared parking the way it was written, his understanding of shared parking was that the customer's from Mr. Cassis could use Mr. Nona's parking but the customers of Main Street could not use the parking on the proposed Cassis property. Mr. Nona told him that was not the way shared parking worked, and he tried to explain that to Mr. Cassis, and that was basically the breakdown on the shared parking. Mr. Nona said he still had that agreement that was drafted by the attorney, and could make it available to Council, traffic consultants and to others to decipher.

Mr. Nona said, having said that, they were prepared to enter into shared parking because their intent was to have a nice Town Center development in Novi, whereby all the adjoining properties and developments could share parking. He said that was a concept for downtown. The reason they were putting in angled parking on Paul Bunyan was not because they were over building or because they needed parking; it was because they were providing street parking on all the streets that they were providing. He said it was a large development and they were putting a lot of effort and investment into it, and they really hadn't come in requesting any substantial assistance from the City. He said they appreciated all the cooperation and support that they had received but they stand to do what was right to work with Mr. Cassis and the City to accomplish a good development.

Mayor Pro Tem Capello said he made the motion to table this a while back to give Mr. Nona and Mr. Cassis an opportunity to talk to each other to see if they could resolve this. He said he had very little faith that they would come to any resolution, and his intuition was correct. He didn't feel that Council could hold up the development of Main Street because of a boundary dispute between the two property owners. He said he had heard Mr. Nona say that he would withdraw that request for a variance and delete the west 250 feet of parking along the south side of Paul Bunyan Drive, correct. Mr. Nona said they were prepared to do that, if that was what Council wanted. Mayor Pro Tem Capello thought there was adequate parking there. They were putting in a parking structure, and if they had a parking problem they would have to deal with it more than Council would. He said their tenants would complain, move out or not move in. Mayor Pro Tem Capello said if Mr. Nona was comfortable so was he. He felt if there was a parking problem in a downtown district, good for them, because it would work itself out. He thought people would just park a little further away and walk. He was concerned that Mr. Cassis had a point in regard to the dumpster. Mayor Pro Tem Capello didn't feel that just having the same brick wall to enclose the dumpster that the building was made out of was adequate. He had seen too many of them, and if Paul Bunyan was now going to be an actual City street instead of a vacated street and part of a parking lot, and would be in that 250 feet, there would be landscaping along the right-of-way and they could landscape around that dumpster as opposed to just having a solid brick wall. Mr. Nona said in addition to the wall there would be landscaping around the dumpster, and he

added that this was a dumpster around the medical building. He said the medical building was really visible from four sides. He said there was no front and back of the medical building, and it was brick on all sides, and was a high quality aesthetically pleasing building. Mr. Nona said if the dumpster was going to have a fairly tall brick wall and anything else that was needed to shield that area. Mayor Pro Tem Capello said then his answer was yes, and Mr. Nona was willing to give additional landscaping around that brick wall to make it less visible from Paul Bunyan since they were not vacating it.

Mayor Pro Tem Capello said at first he thought Mr. Cassis wanted two curb cuts, and then he thought today that he said he didn't want them. Mr. Cassis replied that he had never said he didn't want his own curb cut that was existing there. He said that was his and had been there and it should stay there. Mayor Pro Tem Capello asked if he wanted a second curb cut. Mr. Cassis responded that he didn't care whether Mr. Nona gave him a second curb cut or not. He said that area was another parcel of land and it was not developed. He said his main curb cut was what Mr. Nona was encroaching on, and Mr. Cassis didn't know where it would be. Mayor Pro Tem Capello said that Mr. Cassis had the main curb cut and asked again if he wanted another one. Mr. Cassis said he had no problem with a second curb cut.

Mayor Pro Tem Capello said he could be in favor of this with deleting item #3, enhancing item #4 with additional landscaping and keeping the curb cuts.

CM-07-05-092 Moved by Capello, seconded by Margolis; MOTION FAILED:

To approve the request of Triangle Development for Main Street SP06-38 for revision to the Preliminary Site Plan approval granted November 13, 2006 subject to the following recommendations of the Planning Commission:

- 1) All comments of the City Council's approval of November 13, 2006 approval remaining in effect, with the removal of the condition of to vacate Paul Bunyan,**
- 2) City Council building setback waiver for the 700 and 800 buildings, with respect to the Paul Bunyan right-of-way, 3) Zoning Board of Appeals variance for lack of parking lot setback along the Paul Bunyan right-of-way,**
- 4) Zoning Board of Appeals variance to allow a dumpster enclosure in the front yard, along Paul Bunyan right-of-way,**
- 5) License Agreements being developed for all fixed objects and non-standard parking in the Paul Bunyan right-of-way,**

6) Applicant providing additional right-of-way for Paul Bunyan along its southern length and the eastern edge,

7) Applicant providing two curb cuts to the properties to the north,

8) All the conditions and comments in the staff and consultant review letters.

Mayor Landry said it still had to be subject to the ZBA variance on #3. Mr. Schultz thought it would be a lesser variance but there would be some areas where the parking lot set back variance would still be needed. Mr. Schultz said, as he understood it, it was the area within that west 250 feet on the north side of the road that was now not going to be parking spots. He said there would be other areas that would still need setback relief. Mayor Pro Tem Capello would include that amendment.

Member Gatt said he had been a big supporter of this project from day one, and he continued to support it but he would not support this motion because he would prefer that Mr. Nona and Mr. Cassis try once again to work out a shared parking solution that both of them seem to want. Member Gatt said when Mr. Nona was describing the attorney's agreement Mr. Cassis was shaking his head like that was not what he understood it to be. He asked that this matter be tabled as he didn't want to vote on something that would hurt a 33 year resident of this City, and he would not support that.

Member Nagy echoed the comments of the previous speaker. She thought that Mr. Nona and Mr. Cassis' attorney came forward and made comments and she felt this was an inappropriate place to make comments. She commented that she didn't understand why this couldn't be worked out right now in the hallway. She wouldn't support the motion. She felt this had gone on for a long time and didn't seem to be that difficult to work out. She said Mr. Cassis had been around long enough to know what shared parking meant and being Chair of the Planning Commission he knew what it meant. She said somewhere there must be a breakdown in communication and the two of them needed to work it out. She said they do support the development and had worked with Mr. Nona. However, there was also a person present who owned property, had been a good resident for 33 years, and had brought business into the community. She said they were two businessmen who should be able to sit down and figure this out. She said she would prefer that this not come to Council again with this tit for tat. She asked them to work it out, and said she would support a motion to table this.

Mr. Schultz said initially Council was talking about having the parties reach a shared parking arrangement because the proposal was to vacate Paul Bunyan. He said it would be owned by someone and there needed to be a right of ingress and egress. He said what was before

Council now was to leave it a public road, which the Planning Commission decided it was OK with. He said if the issue being considered by some Council members was let's go back to a shared parking arrangement; essentially that was a determination that Council wanted to see a road vacated again, which was tabled the last time Triangle was here. He said that was a policy decision that had to be made first before they could talk about whether there ought to be a shared parking arrangement. If the road wasn't vacated, the City had no ability to tell to the petitioner they had to go to the neighbor and give a shared parking arrangement. He thought there might have been some misconception, probably early on, that really once it becomes considered a public area again, they were in a different section of the ordinance. The Town Center Ordinance said "if parking is permitted on a public street and there is a public street adjacent to your property you can reduce your onsite off street parking area". He said that was essentially the issue here; should there be some consideration given to the site plan approval here if some of the parking spaces were shown on that public road. He thought what Mr. Nona said was that in deference to the idea that the property owner on the other side of the road might want to also use that public right-of-way to count for that credit, he would remove those from the plan and he would still meet the requirement. Mr. Schultz said he wanted to be sure that Council was aware that that was the overlying issue here. If it was going to stay a public street, shared parking was something they didn't have the ability to impose. If Council wanted it vacated, shared parking was something that was required. However, they had to answer the first question first that being would it stay a public street, and if so, it was hard for them to talk about requiring shared parking arrangements, and requiring an agreement.

Member Margolis commented that she would support the motion and certainly regretted that they had this difficulty between two well respected business owners in the community. She said as a Council member she was looking at the action they would take tonight. She believed it was reasonable under the circumstances. She noted when they were here before they decided to table the vacation of the street and move in a different direction. She said this was what came back to them and it had a positive recommendation from the Planning Commission and from staff so she would be supporting the motion. Secondly, she did not want to see the Main Street project continue to be delayed as it was too important to the City and to the City's future.

Member Paul asked Ms. McBeth to shed some light from a planning perspective, if she was comfortable with this site. Ms. McBeth said the plan was the same as essentially the plan that the Council approved in November 2006. She said they didn't make any noticeable modifications to the plan, and were just requesting the removal of the one condition, which was to vacate a portion of Paul Bunyan. She said they were as comfortable with the plan as they had been in the past. She noted that it seemed that the applicant was trying to take into consideration the property to the north, if the street was not vacated by providing the two curb

cuts; one to the existing building, and one curb cut to the vacant piece of property.

Member Paul commented she was struggling because they had to very respectable business men in our community and she wanted to support both of them. She said Mr. Nona was bringing a new project that they were really looking forward to because it brought a lot of people into this area. She also wanted to support Mr. Cassis because he had been a business member of the community for 33 years and had been a very active participant in the City. However, she felt if the road needed to be vacated they would have to address both owners, but without the vacation she didn't see any legal reason they could hold this project up. She asked Mr. Schultz if she was correct. Mr. Schultz said if it stayed a public street, and that was the proposal, the question the Council would be asking itself was did they want to permit counting those spots that were in the public right-of-way and shown as improvements that the applicant was going to build, and if Council thought that was appropriate then they would approve the plan the way it was presented. He said they could require removal of those spaces, but then the question would be do they still meet parking requirements. Mr. Schultz thought the answer to that, within the 250 feet, was probably that they did. He said this was an approvable plan if the Council made the determination that it was OK to have that parking in the City right-of-way, which still remained the City's right-of-way and could be changed just like any other street. He said Council controlled the street regardless of what the site plan was. He said that was also true when the property owner to the north came in and said they wanted to change it to do this; it would still be the City's right-of-way and still Council's authority.

Member Paul asked Ms. McBeth to share with her some of the comments that Mr. Schultz made and add comments regarding if they use the parking spaces that were on Paul Bunyan, and would the parking requirements still be met, if those parking spaces were not included on Paul Bunyan Road. Ms. McBeth thought it was consistent with what Mr. Nona had indicated. She said they did supply the shared parking study, which showed that when they included the adjacent property to the south of the Red, Hot and Blue property they met the requirements. However, she understood there was also a revised shared parking agreement that they would expect to be submitted with the final site plan. She said they would make a determination, at that point, whether that was done accurately and had the adequate number of parking spaces. She noted that at this point they were not highlighting any waiver for parking spaces in the recommendations they had made because to this point they had not seen a need for a waiver for parking spaces.

Member Paul said with those comments she felt Council was required to make a judgment tonight and not table it again. She felt they were meeting the parking requirements. She wanted to hear other comments but didn't understand why they should not support this.

Member Mutch asked Ms. Traxler to illustrate to Council her earlier comment when she indicated that they would be removing the parking from the Paul Bunyan right-of-way.

Ms. Traxler showed, on the overhead, the parking they were prepared to eliminate on the northern portion of Paul Bunyan if that would make Council more comfortable with the proposal to eliminate the condition of vacating Paul Bunyan.

Member Paul said that would be strictly along the portion that Mr. Cassis owned. Ms. Traxler said yes. Member Mutch said going further east there was a second curb cut and then additional parking, which would all remain. Mr. Traxler responded yes, it would remain.

Member Mutch said in terms of vacating a portion of Paul Bunyan as he understood it now the site plan approval contemplates leaving a portion of that as a public street and the remainder would be vacated. Ms. McBeth commented that was one option that was discussed in the write up in the packet that the western portion adjacent to the two parcels controlled by Mr. Cassis, at this point, would remain a public road. The east portion could be vacated, and they were looking for some input and direction from Council, if they were to bring something like that forward. Member Mutch said, in terms of that demarcation between public and private would take place, was that approximately where that second curb cut would be. Ms. McBeth said the second curb cut would be included in the public road portion, and everything beyond that would be considered for possible street vacation. Member Mutch said currently it was still considered a public street, and Ms. McBeth agreed.

Member Mutch said he had an issue with that. He thought from a policy perspective Council needed to address that issue first. He didn't think it had to hold up the motion tonight but thought they were putting the cart before the horse here because they were approving a site plan with various conditions and sending it to the ZBA when vacating that eastern portion controlled a number of the issues they were talking about. Member Mutch also thought they needed to address it in terms of a control issue whether they, as a City, either need or want to retain control over that public right-of-way for that portion that was not adjacent to the properties that Mr. Cassis owned. Member Mutch said he would rather see that vacated and not be the City's responsibility. He thought that would get them out of some of the needs for setback variances, potentially, for Building 700, therefore, he thought they were out of order in that sense.

Member Mutch had a question about the parking requirements in the TC District. He said he was looking at this based on previous discussion with the understanding that if Paul Bunyan was vacated the northern half would go to Mr. Cassis, and the southern half to Triangle. He was looking at this public street in the same sense, and asked how it was that Triangle, as previously contemplated,

was able to take credit for the public street parking that was occurring on the north half of the street, and, in fact, were doing that for the portion further east.

Mr. Schultz responded that this was the first time Council had seen this area where the parking was as a public road instead of a vacated area that would be private property covered by a shared parking area. He said when that came to the Planning Commission they looked at the layout and it was essentially the same as had already been approved as an appropriate way to develop the site. Although, he didn't think there was a particular discussion about it at the Planning Commission, it did fall within that provision in Section 1602 of the TC District that if adjacent to public streets and there was parking permitted, which there was, that might reduce required parking. He said, essentially, the way staff did that was to say those counted as parking spaces, which amounted to the same thing. Mr. Schultz said theoretically Council could say it said Council could count those or the Planning Commission, if it was the reviewing body, could count those. He said in order to not have them count Council would have to say those were not going to count towards their required off street parking and therefore they would need to find other spaces.

Member Mutch said from a policy viewpoint, he didn't know if they would run into this issue elsewhere in Town Center, but he would have a problem with allowing an applicant who didn't own property on both sides of the road to get credit for the parking on both sides of the road. He recognized, in this case, that some of the parking would only exist because the applicant would improve the street, but from a City policy perspective they should get their side of the road only. He thought that would be the fair way to address that. If Mr. Nona was eliminating the parking on the western portion that was contemplating remaining a public street, it sort of made that issue moot, but moving further east he had a problem with that viewpoint. He had a problem precisely because of the issue Mr. Cassis or Mr. Essad raised during public comments, which was OK they got credit for those parking spots and when he came in to do his development, absent a shared parking agreement, essentially the public street in front of his business had been taken over and credit given to another developer. Member Mutch said he could understand his concern there. He said it seemed to him that it was contrary to the previous discussion that a shared parking agreement was only necessary if the street was vacated. He thought a shared parking agreement would be necessary in either case to at least lay out who would get credit for what in terms of the use of the public street.

Mr. Schultz said there was nothing in the ordinance that would preclude the Council or the Planning Commission if it was a site that only went to the Planning Commission, from giving credit, essentially, to both property owners. It could be a factual determination at the site plan approval stage that these were compatible and it was OK, given the uses that were there, for both of these abutting parcels on either side to get full credit for it. He said in other words, there would be no requirement to hash out an agreement. Mr. Schultz said the only clear thing to

him regarding which property would go which direction was the first area right along Novi Road where there were properties within that same initial plat. He said where Paul Bunyan came in if they vacated that plat, half would clearly go in one direction and the other half in another direction. He said when past that easy area, which was past the existing building there, they would be in a more complicated situation because the entire road was only in the one plat. He said part of the complication, he was guessing, in terms of which side did the property owners want to be on was it was not clear that all of that didn't go in the Triangle direction. He said they didn't make a decision last time and it was an issue of which direction it would go. He wanted to make clear that it was not obvious, that in that public road, the north side would attach to the property on the north. He said it might, but it was not clear.

Member Mutch said he recognized that but was looking at it as long as the City was controlling the public right-of-way, and as long as this would be a public street, it should be up to the City to decide how that parking would be credited. He thought the point Mr. Schultz raised earlier that Council could decide to split the difference and give parking credit to both might be something to be contemplated in the motion or in a future motion because that would address at least some of the concerns.

Member Mutch said he was trying to understand where Mr. Cassis' concerns were. He said the curb cut was an issue and asked if it was his understanding that if the curb cut was left in place as is, he was fine with that. Mr. Cassis said he was. Member Mutch said if Mr. Nona removed the parking spaces on the north side of the road would that address his concerns. Mr. Cassis said the real issue was to go even further east. He also wanted to remind Mr. Schultz, who Mr. Cassis was glad he brought out the plat situation, that from a very authoritative source with Metropolitan Title because of no vacation on that plat on the first 100 feet or so of Paul Bunyan starting from Novi Road. If the street was vacated it would all go to his side. He said all the way out to the end of his property which was the second lot, the vacated lot, should be vacated too. He said there was no reason for one side of the street to take it from the other side. Mr. Cassis said what would satisfy him was he didn't want to be put in a situation where he was, right now, putting together a development, and if he came to do the development, Council would tell him the Mr. Nona took everything already and there wasn't any spare parking for him to have any shared parking. Mr. Cassis said he would be out and these were the main reasons he was objecting to this. Member Mutch asked if Mr. Cassis wanted Council to come further west with the vacation of the street. Mr. Cassis said he thought so because it would remove the City from having it half vacated and half not vacated, which would make it an even more complicated situation.

Member Mutch asked him how far east of Novi Road he would want to leave it as public. Mr. Essad said he had an old plat which showed that there was approximately 512 feet, and thought Mr. Nona probably had a good survey of it.

He said the point Mr. Cassis was making was that there was parking being counted to one parcel. If the development came to the north side they would want to count that parking again, and ultimately there would be a shortage of parking because the parking was double counted for two different projects. He said elimination of the road and an agreement, as provided for by ordinance, eliminated the issue of the City involvement with it and the City parking, and put the parking into private hands with enough parking for everybody.

Member Mutch asked what part of Paul Bunyan they contemplated remaining public. Mr. Cassis showed Council on the overhead and said he couldn't go any further because he didn't own beyond what he indicated. He said it was up to Council and City policy.

Mr. Cassis pointed out the Tom Marcus property, how far back it went, and also pointed out what belonged to the old plat that had not been vacated yet. He said if it was vacated it would go all of Paul Bunyan to the north side, and who got what where didn't matter to Mr. Cassis. He said what he wanted to do was what was good for the City. He said he didn't want any favors he just didn't want mistakes of the past repeated in this City. Mr. Cassis said Council was entering into a license or whatever they wanted to call it with Mr. Nona, and he might sell it and Council had seen that happen from Mr. Chen and others.

Member Mutch said he was like other members as he didn't want to hold up this project any longer, but he thought they needed to address, as a Council, the issue of how much of the street would be vacated and how it would impact the various projects. He thought they also needed to discuss the issue of whether they could credit parking to both projects because it would address some of the concerns of Mr. Cassis regarding the impact on his property.

Member Mutch said regarding the properties Mr. Cassis showed Council, it looked like there was another parcel between his property and the parking lot on the north side, and asked if there was.

Mr. Schultz thought that parcel was a number of narrow platted lots combined together, and in the original plats the numbering of those lots continued to the south so that the frontage along Novi Road were originally in that same plat.

Mayor Landry said he would support the motion. He said this was before Council on February 12 th, and out of deference to the parties it was tabled to allow the involved parties time to work it out. He said that was almost 90 days ago, and he agreed with Mayor Pro Tem Capello that if it had not been worked out by now it would not be worked out among the parties. He said this plan was basically the plan previously approved by City Council, Planning Commission and Administration. He said what they were discussing was a concept of whether the parties could work out shared parking. He said what this did, in effect, was have

the City do the shared parking because by allowing them to use the roadway Council had the ability to

allow both parties to use the roadway. He said that was Council accomplishing what they were unable to. Mayor Landry said Council could allow them to share the road and the parking. He said this project needed to go forward and Council needed to move this on. He noted Mr. Cassis would get his two curb cuts and the project moved on. He said none of the road would be vacated, and Mr. Schultz agreed. Mayor Landry said they would deal with the road vacation at a later time as the project needed to move forward.

Roll call vote on CM-07-05-092 Yeas: Capello, Margolis, Landry

Nays: Gatt, Mutch, Nagy, Paul

Member Paul asked if they could add as an addendum to the motion that the public road right-of-way on Paul Bunyan would have shared parking between both the north and the south side of the road.

Mayor Landry asked if that could be done, and Mr. Schultz said it could.

CM-07-05-093 Moved by Paul, seconded by Margolis; MOTION CARRIED:

To approve the request of Triangle Development for Main Street SP06-38 for revision to the Preliminary Site Plan approval granted November 13, 2006 subject to the following recommendations of the Planning Commission:

- 1) All comments of the City Council's approval of November 13, 2006 approval remaining in effect, with the removal of the condition of to vacate Paul Bunyan,**
- 2) City Council building setback waiver for the 700 and 800 buildings, with respect to the Paul Bunyan right-of-way,**
- 3) Zoning Board of Appeals variance for lack of parking lot setback along the Paul Bunyan right-of-way,**
- 4) Zoning Board of Appeals variance to allow a dumpster enclosure in the front yard, along Paul Bunyan right-of-way,**
- 5) License Agreements being developed for all fixed objects and non-standard parking in the Paul Bunyan right-of-way,**
- 6) Applicant providing additional right-of-way for Paul Bunyan along its southern length and the eastern edge,**

7) Applicant providing two curb cuts to the properties to the north,

8) All the conditions and comments in the staff and consultant review letters.

Also, shared parking for both the north and the south side property owners.

Roll call vote on CM-07-05-093 Yeas: Gatt, Margolis, Paul, Landry, Capello

Nays: Mutch, Nagy