



## CITY of NOVI CITY COUNCIL

Agenda Item 4  
September 8, 2008

**SUBJECT:** Consideration of a request from JCK Group, applicant for Victor Muscat, for: 1) a variance from Section 11-239(b)(3) of the Design and Construction Standards, which prohibits parking to be located in the road right-of-way, to allow three parking stalls within the Old Novi Road right-of-way; and, 2) a variance from Section 11-276(b) of the Design and Construction Standards, which requires safety paths to be placed along the Old Novi Road frontage in accordance with the Bicycle & Pedestrian Master Plan, to eliminate the requirement for a portion of the safety path along the applicant's Old Novi Road frontage. (The subject property occupies multiple parcels located at 2215 Old Novi Road.)

**SUBMITTING DEPARTMENT:** Engineering *RA*

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

### **BACKGROUND INFORMATION:**

JCK Group, applicant for Victor Muscat (Muscat Parking Project), is requesting variances associated with a proposed site located on the east side of Old Novi Road, south of Thirteen Mile (see attached aerial maps). The proposed project involves the redevelopment the site for a new tenant to occupy an existing building. This request is unusual because it stems from the fact that, for reasons unknown to city staff, nearly half of the subject building was constructed in the city's Old Novi Road right-of-way. A review of archived aerial maps reveals that the building was built some time before 1949.

The variance request, a site location map and general site plan showing the proposed paving and pathway locations are attached to provide additional background information.

#### **Parking Within Road Right-of-Way**

The first part of the request is for a variance from Section 11-239(b)(3) of the Design and Construction Standards, which prohibits parking to be located in the road right-of-way. The variance requested is to permit three parking stalls to be located within the right-of-way of Old Novi Road. The proposed stall locations have historically been used for parking on the unpaved surface. To meet minimum parking space requirements and to preclude the need to extend the proposed parking lot further to the east to preserve a 12-inch diameter spruce tree, the applicant is requesting approval to construct two of the site's parking stalls completely and one stall partially within the Old Novi Road right-of-way.

The Engineering Department notes that the variance requested does not meet the minimum requirements of the Design and Construction Standards; however, given the unusual constraints for this particular site, the proposed development would most likely be an improvement over the existing layout. It is important to note that, although no future capital projects are planned for Old Novi Road, the proposed layout could hinder future work should the road ever be widened to add more lanes of traffic, or to lengthen the center turn lane.

The City Attorney sees no legal impediment to granting the variance (Beth Kudla's letter dated August 15, 2008, attached); and the Fire Department, Landscape Architect, Department of Public Works, and Community Development Department have no objections to the request.

There are a total of five buildings that encroach into Old Novi Road. One potential remedy to this encroachment issue would be to vacate portions of Old Novi Road, which has a 120 foot right-of-way width. Prior to the extension of "new" Novi Road, Old Novi was classified as a Minor Arterial (with a 120 foot right-of-way width). Old Novi Road is now classified as a Residential Collector, which means it technically should have a right-of-way width of 86 feet; however, the city has water (east side) and sanitary sewer (west side) within 15 feet of each right-of-way line. Therefore, it is recommended that the current 120 foot right-of-way width be maintained and that street vacations not be considered. Additionally, Engineering staff have received requests from residential landowners who have inquired about vacating portions of Old Novi adjacent to their properties. We have cited the presence of public and private utilities, as well as the city's need to avoid creating a "saw-tooth" right-of-way as reasons why we would not recommend such street vacations.

### **Pedestrian Safety Path**

The second part of the request is for a variance from Section 11-276(b) of the Design and Construction Standards, which requires safety paths to be placed along the frontage of the arterial and collector street system in accordance with the Bicycle & Pedestrian Master Plan. The variance requested is to eliminate the construction of 10 linear feet of 5-foot wide pedestrian safety path near the mid-point of the development's frontage on what will be a curbed island. The owner does not want to relocate the existing electrical utility pole that conflicts with the alignment of the proposed path. The proposed path location varies from the standard location of 1-foot inside the right-of-way due to the building's nonconformity as discussed above. Specifically, the path ranges from one foot to roughly 20 feet from the right-of-way line because of the location of the building.

The Engineering Department notes that the variance requested does not meet the minimum requirements of the Design and Construction Standards. However, because of the unique conditions created by the location of the building, Engineering does not object to the request with one minor exception: a second ramp with curb cut should be constructed on the west side of the island. If a vehicle is parked in the handicapped stall, then pedestrians would otherwise have to negotiate the curb to get back on the sidewalk.

The City Attorney sees no legal impediment to granting the variance (Beth Kudla's letter dated August 15, 2008, attached); and the Fire Department, Landscape Architect, Department of Public Works, and Community Development Department have no objections to the request.

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

- 1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- 2) The alternative proposed by the applicant shall be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and
- 3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property.

**RECOMMENDED ACTION:** Consideration of a request from JCK Group, applicant for Victor Muscat, for:

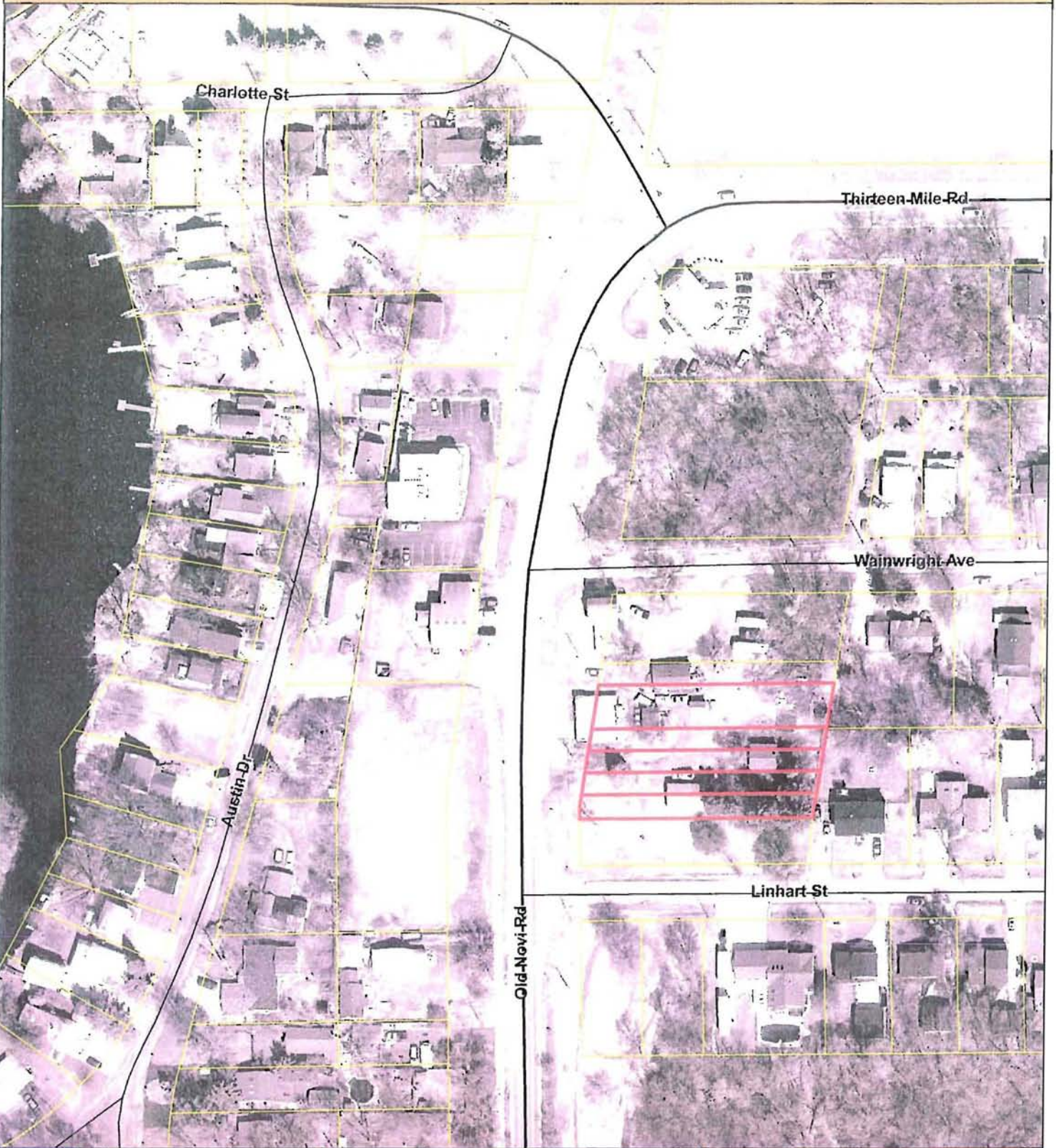
1) a variance from Section 11-239(b)(3) of the Design and Construction Standards, which prohibits parking to be located in the road right-of-way, to allow three parking stalls within the Old Novi Road right-of-way; and, 2) a variance from Section 11-276(b) of the Design and Construction Standards, which requires safety paths to be placed along the Old Novi Road frontage in accordance with the Bicycle & Pedestrian Master Plan, to eliminate the requirement for a portion of the safety path along the applicant's Old Novi Road frontage. (The subject property occupies multiple parcels located at 2215 Old Novi Road.)

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

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

# MUSCAT PARKING

## Location Map



**CITY OF NOVI**  
 ENGINEERING DIVISION  
 44175 W. 13th Mile Road  
 Novi, MI 48240-1024  
 (248) 547-6434  
 MAP@CITYOFNOVI.NovI,MI



**MAP INTERPRETATION NOTICE**  
 Map information displayed is not intended to represent or constitute any official or advisory records. This map was created to provide historical information regarding the location and use of the land shown. 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 1977 or amended. Please contact the City GIS Manager for further details and accuracy information related to this map.



2215 Old Novi Road (View to North)



View from the south (subject power pole in foreground).



View from the north.



View from the west.



## Request for Variance Design and Construction Standards

### Applicant Information

Name: Victor Muscat

Address: 426 E. Walled Lake Dr.  
Walled Lake, Mi. 48390

Phone No: 248-624-3560

### Engineer Information

Name: JCK Group

Address: 8615 Richardson Rd.  
Commerce Twp., 48390

Phone No: 248-363-2550

### Applicant Status (please check one):

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

Project Name Muscat Property - Abode Beauty Salon S.P. #08-18A

Project Address/Location 2215 Old Novi Rd. - East side Old Novi Rd., south of Thirteen Mile Rd.

Variance Request Parking within the road right-of-way & eliminate sidewalk across the entire frontage of site

### Justification (attach additional pages if necessary)

Parking - The project site is an existing building part of which is in the right-of-way of Old Novi Road. To provide parking at a location that is in close proximity to the entrance of the building the applicant hereby request a variance from the design and construction standards prohibiting parking within a road right-of-way.

The proposed site plan has 2 parallel parking spots in front of the building 20 feet to 22 feet from the roadway and 5 spaces along the side of the building, 4 of which are outside of the road right-of-way, 37 feet to 39 feet from the existing roadway at their closest point.

Also by placing all of the parking outside of the right-of-way, a 12" spruce tree would have to be removed, the applicant would like the tree to remain.

Sidewalk - A sidewalk has been provided from the south to the entrance of the parking area and across the front of the building. With the curbed island as proposed, there is no place to extend the sidewalk across the entire frontage of the site. There is an existing 6-foot wide sidewalk along the west side of Old Novi Road.

#### INTERNAL USE

Date Submitted: 7/29/08

Code Section from which variance is sought: SECTION 11-239(b)(3) AND 11-276(b) OF THE DCS.

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



# OLD NOVI ROAD



REMOVE 126 S.Y. EXIST BIT APPROACH

BM

EX GRAVEL DRIVE

PROP SIDEWALK WITH THICKEND EDGE

Three parking stalls proposed in Old Novi Road right-of-way.

EX BLDG #2215  
F.F. ELEV 958.31

RESERVED PARKING SIGN MOUNTED TO WALL

24" MDOT C-4 CURB & GUTTER

RAMP W/ CURB CUT

MATCH EXIST CURB ELEV.

18" ON-SITE CURB & GUTTER

ELECTRICAL UTILITY POLE

Proposed sidewalk gap

TREE TO BE PRESERVED

EX 60' ROW

MDOT TYPE C4 CURB & GUTTER

CONST CURB CUT W/RAMP

18" ON-SITE CURB & GUTTER

SAWCUT & REMOVE 23' OF EXIST CURB & GUTTER  
CONST MDOT DETAIL M DRIVE OPENING

18" ON-SITE CURB & GUTTER

EX BIT PAVT

22' ELM

X 956.53

COA CUR



August 15, 2008

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

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

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

**Re: Muscat Property – Abode Beauty Salon SP08-8A  
Request for Variance from Design and Construction Standards  
Our File No. 55142.NOV**

Dear Mr. Croy:

Our office has reviewed the proposed request for two variances from the City's design and construction standards which would permit the property owner (1) to provide three parking spaces within the future road right-of-way for Old Novi Road, and (2) eliminate construction of a pedestrian safety path across the Old Novi Road frontage of the subject property.

**Parking within Future Road Right-of-Way**

Section 11-239 (b)(3) of the City's Design and Construction Standards prohibits parking spaces to be located within the future road right-of-way:

(3) *Pavement layout and schematics.* Parking spaces, maneuvering lanes, driveways, and end islands shall conform in size and configuration to the requirements of section 2506, Appendix A, "Zoning Ordinance." No parking areas shall be permitted in the future road right-of-way as designated in the city master plan for land use.

The applicant indicates that there is a practical difficulty in meeting the standard because the existing building that is the subject of this project is within the future road right-of-way of Old Novi Road. In order to use the building and have parking spaces close to the building, the applicant requests a variance to permit three of seven parking spaces to be located within the future road right-of-way of Old Novi Road.

**Pedestrian Safety Paths**

Section 11-276 (b) of the City's Design and Construction Standards requires the placement of a safety path across the frontage of the subject property along Old Novi Road:

(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).

The applicant indicates there is a practical difficulty in meeting the standard because the curbed island proposed for the front of the site will prevent the placement of a sidewalk across the entire property frontage. The applicant indicates that there is an adequate alternative in that a partial sidewalk is provided, including up to the parking lot and then along a portion of the building, as well as an existing sidewalk along the west side of Old Novi Road.

City Council will consider the variance standards set forth in Section 11-10 of the Design and Construction Standards for both the parking and sidewalk proposals. Section 11-10 of the Ordinance Code permits the City Council to grant a variance from the Design and Construction Standards with respect to proposed public improvements, when the property owner shows all of the following:

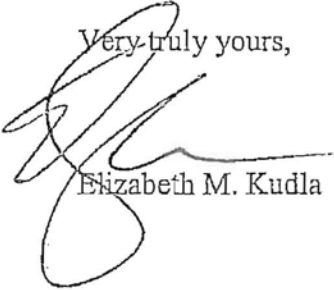
- (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- (2) The alternative proposed by the applicant shall be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict 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.

In the event that City Council finds that the standards for a variance or waiver have been met in each case, our office sees no legal impediment to granting the variances, subject to the condition that the Planning Department and Traffic Engineer have also reviewed and approved the proposed plan from an access and traffic safety standpoint.

Benjamin Croy, Civil Engineer  
August 15, 2008  
Page 3

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Elizabeth M. Kudla', written over the typed name.

Elizabeth M. Kudla










EMK  
Enclosure

cc: Maryanne Cornelius, City Clerk (w/Enclosure)  
Steve Rumpel, Community Development Director (w/Enclosure)  
Benny McCusker, DPW Director (w/Enclosure)  
Rob Hayes, City Engineer (w/Enclosure)  
David Beschke, Landscape Architect (w/Enclosure)  
Frank Smith, Fire Department (w/Enclosure)  
Thomas R. Schultz, Esquire (w/Enclosure)

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**LEGEND**

-  FREEWAY OR CONTROLLED ACCESS
-  MAJOR ARTERIAL (160')
-  ARTERIAL (120')
-  MINOR ARTERIAL (120')
-  RESIDENTIAL COLLECTOR (86')
-  NON-RESIDENTIAL COLLECTOR (70')
-  SCENIC ROAD (56')
-  FRONTAGE ROAD
-  GRADE SEPARATION



**THOROUGHFARE PLAN**  
CITY OF NOVI MICHIGAN

BIRCHLER/ARROYO ASSOCIATES, INC.  
Traffic consultants  
BETHOOD M. ROGERS & ASSOCIATES, P.C.  
Community planning consultants  
October, 1992

[ Source : "master Plan for Land Use Thoroughfare Plan Element Update" ]  
Birchler Arroyo, 1992



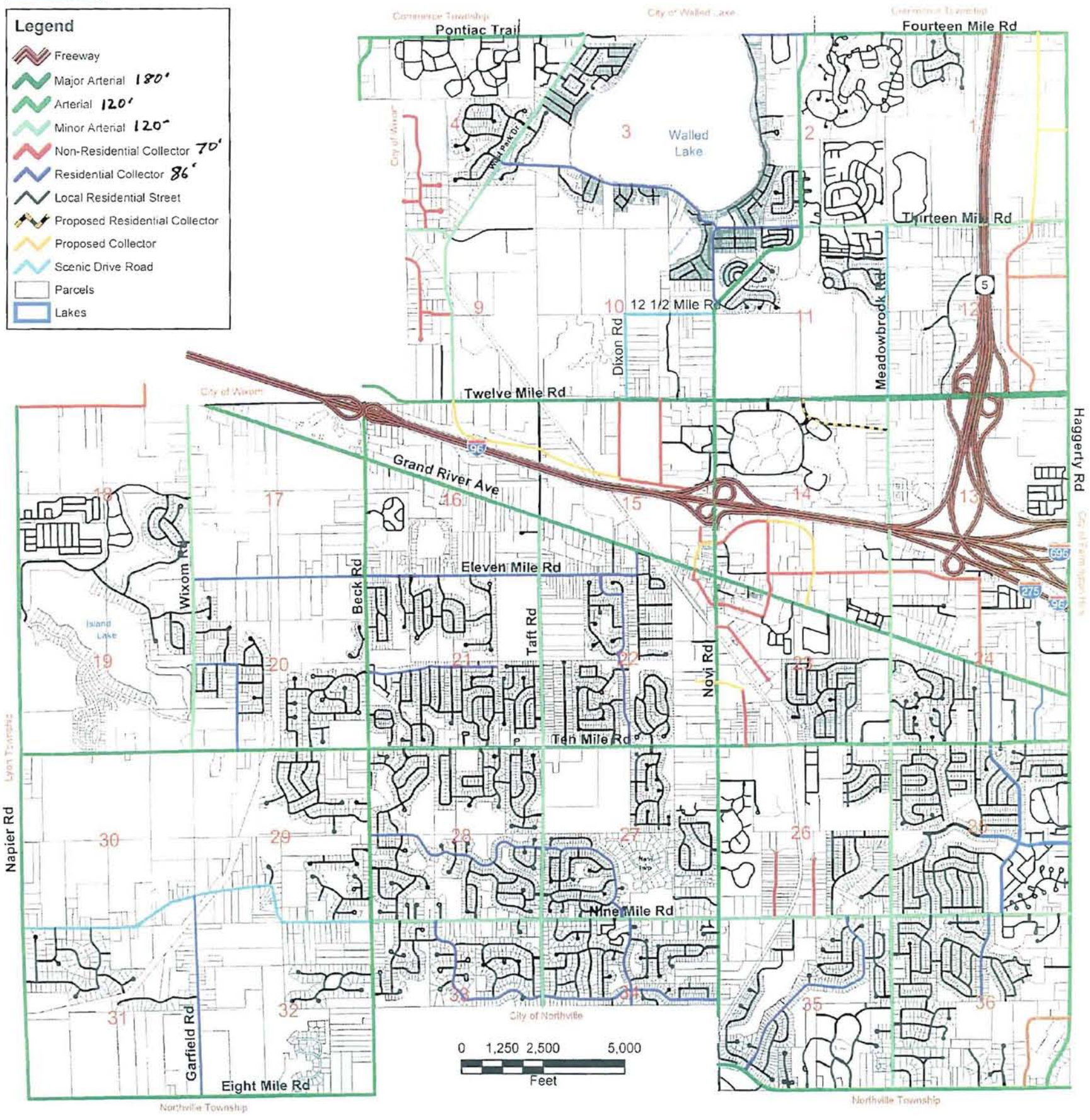
# Thoroughfare Classification

City of Novi, Michigan  
January 23, 2004



**Legend**

- Freeway
- Major Arterial 130'
- Arterial 120'
- Minor Arterial 120'
- Non-Residential Collector 70'
- Residential Collector 86'
- Local Residential Street
- Proposed Residential Collector
- Proposed Collector
- Scenic Drive Road
- Parcels
- Lakes



Created using the (GIS) Geographic Information System of the City of Novi  
45175 W. Ten Mile Road  
Novi, Michigan 48375

Created by:  
Bill Berdelman  
GIS Technician  
Department of GIS/  
Environmental Services

Date Initially Created:  
February 28, 2001  
Date of Last Revision:  
January 23, 2004  
Project Filename:  
P:\Proj2003\Thoroughfare.mxd  
Map Name: Thoroughfare

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This map complies with the National Map Accuracy standards. The City of Novi and its Department of GIS/ Environmental Services assume no legal responsibility for the content and/or inappropriate use of this document.

Figure 58. Thoroughfare Classification.