

**# 7**

**Section 2400**

Variance requested from required 40 ft. building setback (frontyard east) to allow 25 foot setback being provided.

**Section 2400h**

Variance requested parking lot setback from required 40 ft. setback for front yard on east side, to allow 1.5 feet being provided.

**Section 2400c, h**

Variance requested parking lot setback variance for exterior side yard, south side to allow 25 ft. being provided, from 40 ft. required.

**Section 2506.13**

Variance requested for end island for lack of required raised, curbed end island, southeast of existing block building (striped island proposed instead).

**Section 2509**

Variance requested from required landscape plans submission and ordinance requirements for new parking lot.

**Section 2511**

Variance requested waiver from requirement to provide outdoor lighting plan and outdoor lighting for new parking lot; to utilize two existing light illuminations provided on principal building; (a) on the side of the building and (b) in the front of the principal building.

**# 9**

The Road Commission for Oakland County (RCOC) is undertaking a road improvement project along Novi Road between Grand River Avenue south to Ten Mile Road, in which a highway overpass will be constructed over the existing CSX Railroad right-of-way in the southeast portion of the City of Novi. The subject property is located southwest of the Novi Road alignment which is the subject of the road improvement project. The RCOC has acquired a highway easement over the west 32 feet of the east 65 feet of the property. This taking widens Novi Road right-of-way to 65 feet. The area which is now encumbered by a new highway easement for public highway purposes is estimated to be 6,955 feet, more or less. In addition, a temporary construction easement over a 75 foot wide strip of land, which is parallel with and contiguous to the west boundary of the proposed highway easement acquisition is likewise being acquired. The total area to be encumbered by the temporary construction easement is estimated to be 6,979 square feet, more or less. Due to the partial taking of property, the size of the parcel will be decreased from 100,685 square feet, more or less, or 2.31 acres, more or less; to 93,730 square feet, more or less; or 2.15 acres, more or less. After the taking, access to the subject property will be via routed Gen Mar Road.

Under the Uniform Condemnation Procedures Act (UCPA), Section 4(2), or MCL 213.54(2), provides that if an acquisition of a portion of a parcel of property needed by a condemning agency, will leave the remainder of the parcel in nonconformity with a zoning ordinance, the condemning agency can either, before or after acquisition, apply for a zoning variance for the remainder of the property. When determining whether to grant the zoning variance, the local unit of government (City of Novi ZBA) must consider the potential benefits to the public use for which the property is being acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance or regulation. The condemning agency must have actually or will actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder of the parcel. If a variance is granted under MCL 213.54(2), the property is to be considered by the City of Novi to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that zoning variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance will have no effect on the status of those other preexisting nonconformities. (See attachments).

In the Zoning Enabling Act, Section 604(MCL 125.3604), specific statutory authority is recognized as well to allow for a variance from a zoning ordinance requirement to be applied for and granted.

Due to the proximity of the bridge overpass to the subject property, and a new parking configuration, location and proximity to the new Novi Road right-of-way line created by the acquisition by the RCOC, together with the ingress/egress alignment for truck deliveries and parking area, to the extent possible to cure the effects of the taking on the remainder of the property, the RCOC is requesting that the City of Novi ZBA grant the requested variances, so that the spirit of the City of Novi zoning ordinance is observed; public safety secured and substantial justice is done.

The variance requested from the required 40 foot setback for the building under Section 2400 will result in a 15 foot variance being granted, to allow 25 feet instead of the required 40 foot setback.

With regard to the parking lot setback of 40 ft., again due to the proximity and location of the parking lot area in conjunction with the new alignment for Novi Road, there will be one and one half (1 ½ ) feet actually provided from the required 40 ft. setback. For the exterior side yard to the south, a 25 ft. setback is provided from the required 40 ft. setback leaving the need for a 15 foot variance being granted.

With respect to Section 2506.13 which would require a raised, curbed end island, the RCOC is proposing to paint this island instead of having it be raised and curbed end island. The truck traffic ingress/egress as depicted on the drawings being submitted to the City of Novi ZBA, identify a configuration which will provide both safe and secure parking for customers of Stricker Paint Products, as well as to allow ingress and egress for deliveries to the principal building location, as well as the storage area. The RCOC proposes to provide the same number of parking spaces (12 required and 12 provided) as has previously been in existence.

The handicap space currently located is identified as the space located closest to the door of the block building.

Part of the plans for the subject property include paving over the City of Novi water main which is located within the green space area.

The RCOC is seeking a waiver from the requirements of Section 2509 to eliminate the need to submit a landscape plan, with details of the new parking lot landscaping, as there is no intention to screen along the "new parking spaces" due to the location and proximity of the new bridge overpass wall.

With regard to the City of Novi outdoor lighting requirements under Section 2511, there is no change from the existing current lighting located on the principal building. Rather the existing lighting located on the building, both on the side and in the front of the building would continue to be utilized.

The RCOC likewise contemplates the erection of a new sign for the subject property to provide identification of the building and its functionality to actual and potential customers, traveling northbound and southbound on Novi Road at or near the bridge overpass location. The sign that will be proposed will be a two sided sign. A height variance is being requested, to allow the sign to be of sufficient height, above the bridge overpass so that it will be visible for traveling motorists both on northbound and southbound Novi Road, as well as traveling motorists heading southbound on Novi Road, from the Grand River intersection. The sign is contemplated to contain the name of the business; "Stricker Paint Products, Inc." being visible in both directions from Novi Road.

The 8 ½ x 17 drawings accompanying the submission identify the subject property; as well as identifying the parking lot plan; ingress and egress to and from the site from relocated Gen Mar Road. The buildings on site are clearly demarcated; as is the edge of the pavement to be removed from the site.

**# 10**

Each of the property owners whose property is located within the alignment affected by the Novi Road Midsection Project, consisting of the construction of the CSX bridge overpass, are in the unique circumstance, whereby a partial taking by way of acquisition from their property has had to occur, so that the CSX bridge overpass can be constructed. This partial acquisition is due to circumstances beyond the control of the property owners. It is authorized by law, and the Michigan Constitution. In order to undertake this acquisition, the RCOC was required to deposit in escrow a sum estimated to be the just compensation for the partial acquisition of the subject property; leaving the property owner with the ability to contest the amount of the compensation as to whether it is adequate or inadequate in court. These are unique circumstances which are beyond the control of the property owner. The property owner neither caused nor created these circumstances, and the RCOC should not be penalized by seeking the requested variances. The variance, if granted, should include as part of the resolution adopted by the Zoning Board of Appeals, the language contained in Section 4(2) of the UCPA, which corresponds to MCL 213.54(2). The specific language requested is as follows:

“The property shall be considered by the City of Novi to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which each variance was granted. Moreover, if the subject property was also nonconforming for other reasons, by granting the requested variances, the City of Novi ZBA has not taken any position on the effect on the status of the other preexisting nonconformities. The owner of the subject property may not increase the nonconformity for which each zoning variance was granted, without the consent of the City of Novi.”

The RCOC stands ready, willing and able to provide further explanation, detail, drawings, or supporting documentation as may be requested or needed by the ZBA.

## 125.3603. General powers and duties of board; voting requirements for determinations

## Notes of Decisions

## 9. Appeals, generally

Zoning board of appeals (ZBA) validly exercised its powers by reviewing and affirming the township board's decision to deny a landowner's proposed planned unit development (PUD); ordinance which provided for appeal to ZBA for a planned

unit development (PUD) was authorized by statute, which provided that for PUD decisions, "an appeal may be taken to the board of appeals only if provided for in the zoning ordinance." *Hughes v. Alma Twp.* (2009) 771 N.W.2d 453, 284 Mich. App. 50. Zoning And Planning ⇐ 440.1

## 125.3604. Appeals; right to appeal; statement of grounds for determination of board; time for appeal; stay of proceedings; notice and hearing; representation of parties; dispositions by board; granting of variances

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

(2) An appeal under this section shall be taken within such time as \* \* \* prescribed by the zoning board of appeals by general rule, by \* \* \* filing with the body or officer from whom the appeal is taken and with the zoning board of appeals \* \* \* a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed \* \* \*. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, \* \* \* proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request \* \* \* for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.<sup>1</sup>

(5) \* \* \* If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, \* \* \* the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear \* \* \* personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

(7) If there are practical difficulties for nonuse variances as provided in subsection (3) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as \* \* \* otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of  $\frac{2}{3}$  of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section \* \* \* does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

P.A.2006, No. 110, § 604, Eff. July 1, 2006. Amended by P.A.2008, No. 12, Imd. Eff. Feb. 29, 2008.

<sup>1</sup> M.C.L.A. § 125.3103.

## Historical and Statutory Notes

## 2008 Legislation

P.A.2008, No. 12, in subsec. (1), in the first sentence substituted "this" for "the" preceding "state", and inserted "the" preceding "local unit"; in subsec. (2), in the first sentence deleted "shall be" preceding "prescribed", "the" preceding "filing", and "of" preceding "a notice", and inserted "body or"; rewrote subsec. (3); in subsec. (4), deleted "concerning a request" following "written request"; rewrote subsec. (5); in subsec. (6), in the first sentence substituted "a" for "the" preceding "hearing" and "personally" for "in person", and inserted "under subsection (5)"; and, in subsec. (11), substituted "does not" for "shall not be construed". Prior to the amendment, subssecs. (3) and (5) read:

"(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, in which

case proceedings may be stayed by a restraining order issued by the zoning board of appeals or a circuit court."

"(5) Upon receipt of a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the township and shall be sent to the person requesting the interpretation not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term 'occupant' may be used."

## Law Review and Journal Commentaries

The "finality rule" of *Paragon v. City of Novi*: The achievement of fairness in land use jurispru-

dence. Gerald A. Fisher, Mich. Pub Corp LQ 1 (Winter 2010).

## Research References

## Encyclopedias

Mich. Civ. Jur.—Zoning § 37, Variances, Exceptions, and Special Uses.

Mich. Civ. Jur.—Zoning § 43, Zoning Board of Appeals—Statutory Powers and Duties.

Michigan Civil Practice Forms § 196:11, for Injunction—Against Gun Club.

Michigan Legal Forms § 38:11.10, Michigan Zoning Enabling Act.

**213.54. Acquisition of just compensation for whole parcel; nonconformance with zoning ordinance; entry upon property, purposes, obstruction or denial of entry, lawful possession; definitions**

Sec. 4. (1) If the acquisition of a portion of a parcel of property actually needed by an agency would destroy the practical value or utility of the remainder of that parcel, the agency shall pay just compensation for the whole parcel. The agency may elect whether to receive title and possession of the remainder of the parcel. The question as to whether the practical value or utility of the remainder of the parcel of property is in fact destroyed shall be determined by the court or jury and incorporated in its verdict.

(2) If the acquisition of a portion of a parcel of property actually needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, the agency, before or after acquisition, may apply for a zoning variance for the remainder of the parcel. In determining whether to grant the zoning variance, the governmental entity having jurisdiction to grant the variance shall consider the potential benefits of the public use for which the property would be acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance, or regulation. The agency must actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder. If a variance is granted under this subsection, the property shall be considered by the governmental entity to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance has no effect on the status of those other preexisting nonconformities. An owner shall not increase the nonconformity for which a variance is granted under this section without the consent of the governmental entity. An agency has the same right to appeal action on a zoning variance as would a property owner seeking a zoning variance. This section does not deprive a governmental entity of its discretion to grant or deny a variance.

(3) An agency or an agent or employee of an agency may enter upon property before filing an action for the purpose of making surveys, measurements, examinations, tests, soundings, and borings; taking photographs or samplings; appraising the property; conducting an environmental inspection; conducting archaeological studies pursuant to section 106 of title I of the national historic preservation act, public law 89-665, 16 U.S.C. 470f; or determining whether the property is suitable to take for public purposes. The entry may be made upon reasonable notice to the owner and at reasonable hours. An entry made pursuant to this subsection shall not be construed as a taking. The owner or his or her representative shall be given a reasonable opportunity to accompany the agency's agent or employee during the entry upon the property. The agency shall make restitution for actual damage resulting from the entry, which may be recovered by special motion before the court or by separate action if an action for condemnation has not been filed. The term "actual damage" as used in this subsection does not include, and an agency shall not make restitution



DATE: 04/27/10  
DRAWN BY: JIM JACOBSON  
CHECKED BY: JIM JACOBSON  
DESIGNED BY: JIM JACOBSON  
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SHEET NO.: 1 OF 1

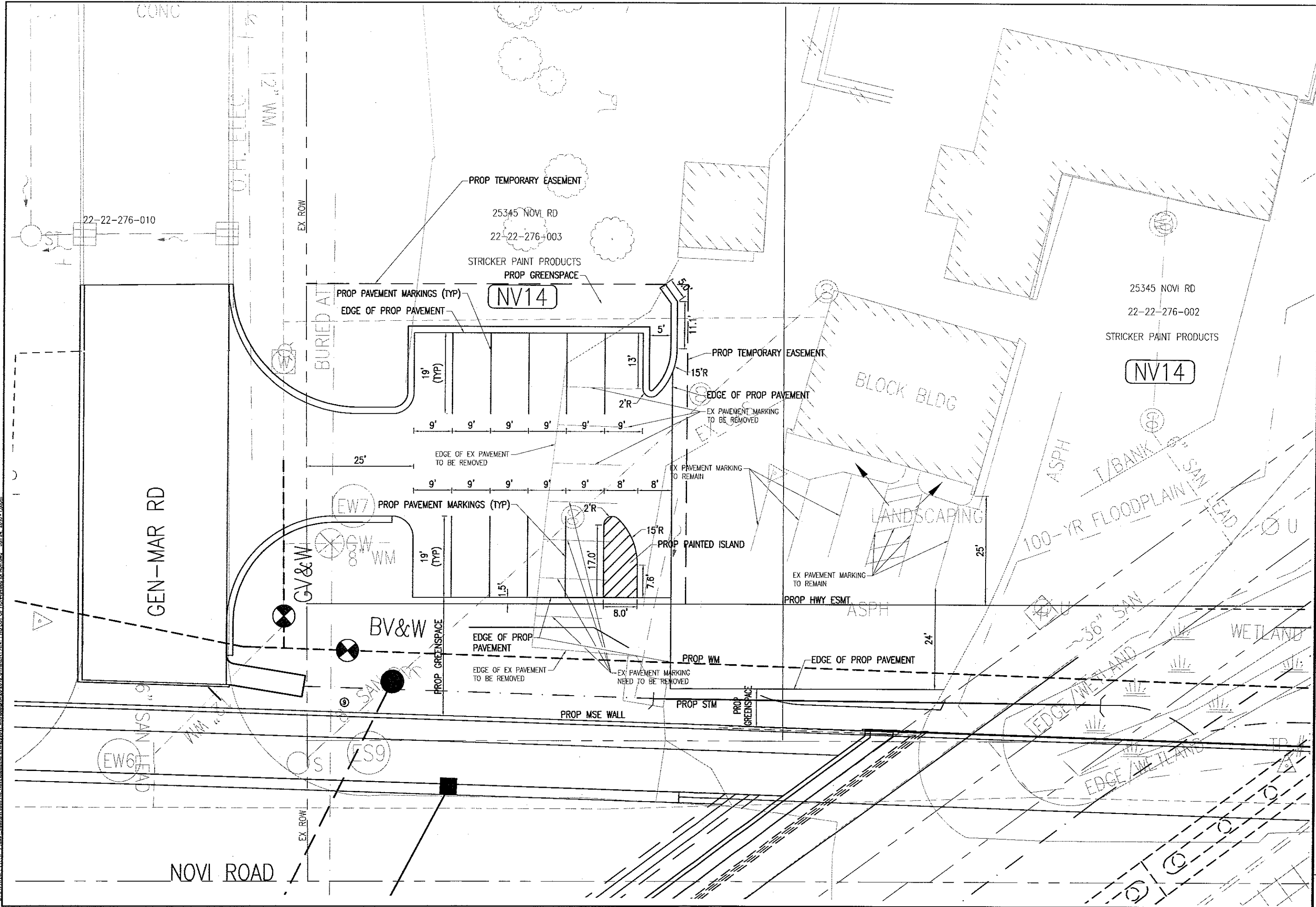
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COUNTY: OAKLAND  
TOWN: T1  
RANGE: 3 E  
SECTION: 2823

SCALE: H: 1"=20'  
V: N/A  
JOB NO.: 22-22-276-002  
DATE: 04/27/10

VERTICAL DATUM: U.S.G.S.  
HORIZONTAL DATUM: SP-MID-SOUTH  
JOB NO.: 22-22-276-002  
DATE: 04/27/10

NOVI ROAD  
NORTH OF TEN MILE RD TO MAIN ST  
NV 14: STRICKER  
REVISED PARKING LOT PLAN

SHEET 1 OF 1



DRAWING PATH: P:\2007\_0800\473000\140\_Novi\666666\WETLAND\NOVI\_MIDWEST\NOVI\_04-26-2010\_STRICKER\_PARKING\_LOT\_OPTION.dwg  
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