

7

Section 2400h

Variance requested from required 140 ft. frontyard setback (west frontyard) to allow 7.80 feet being provided; a variance of 82.2 feet is being requested, due to the location of the new right-of-way line, being moved 10 feet to the east.

Section 2506.13

Variance requested for the width of the north end island; 8 feet is required under the ordinance, 5 feet more or less is being provided; a variance of 3 feet is being requested, to allow for a narrower island and to maintain the existing parking spaces.

Section 2506.13

Variance requested for the end island dimension is being requested for the width of the south end island: there are 8 feet required under the zoning ordinance, 4 feet more or less is being provided. The requested variance of 4 feet, is to allow for a narrower island and to maintain all existing parking spaces.

Section 2513

A corner clearance clear zone Variance is being requested along the north side of the relocated driveway, due to the location of a newly installed retaining wall. The Variance request is to allow a waiver of the required corner clearance for the relocated north driveway. Under the RCOC Rules and Regulations for commercial driveways, there should not be any vision obstruction, at the measured level of a motor vehicle operator's line of vision, measured from the established street grade. The clear zone is typically measured 25 feet along the right-of-way line, and is to remain clear of all objects which exceed 2 feet in height.

Section 2509.3b

Variance is being requested for the 25 foot-wide landscape area, contiguous and adjacent to the Novi Road frontage. This Variance is being requested from the required landscape width of 25 feet, as 7.8 feet is being provided. Therefore, a Variance of 17.2 feet is being requested, due to the location of the new right-of-way line, being moved 10 feet to the east.

Section 2509.3b

Variance request from required right-of-way trees along Novi Road. The Variance is being requested from the required canopy trees, as 7 are required, 3 can be provided; and sub-canopy tree requirement of 11 trees, with 3 capable of being provided. This Variance from the 4 required canopy trees and 8 required sub-canopy trees is based upon the fact that a retaining wall will be located in close proximity to the property line, and the existing trees that can remain; however, there is a reasonable likelihood these remaining trees will not be able to remain.

Section 2001.3

Variance is being requested from the required outdoor storage yard screening, which would require under the zoning ordinance parking lot screen wall, a landscaped earth berm or a chain-link fence along Novi Road, with heavy screen plantings, to screen the existing outdoor storage yard. The Variance is being requested to allow instead the maintenance of the existing landscaping along the Novi Road frontage, and to allow for the removal of a masonry screen wall. The screen wall is proposed to be removed, due to the proximity of the location of the proposed bridge retaining wall.

Section 28-5 of Ordinance 09-100.38

A variance to allow a permanent sign 30 ft. in height, based upon relocating the existing sign to a height of 30 ft., measuring 34 sq. ft. in area, to be placed perpendicular to Novi Road, approximately 3 to 5 ft., east of the new right of way line for Novi Road, approximately 3 to 5 south of the driveway access into and out of the subject property from Novi Road.

Section 28-6 of Ordinance 09-100.38

Allow a variance to construct a temporary 10 ft. high sign, for a term of approximately 18 months to 24 months to identify the southerly driveway location into and out of the subject property, which sign would measure approximately 34 sq. ft. in area, and which would be erected 10 ft. in height above grade, approximately 3 ft. to 5 ft. east of the new right of way line for Novi Road, approximately 1 ft. to 2 ft. north of the southerly property line of the subject property.

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 partial taking from the subject property located at 25100 Novi Road, in conjunction with the bridge overpass is being acquired by the RCOC. The taking from this property will create a highway easement over the west 10 feet of the north 175 feet of the property, that is not already encumbered by the highway easement. This easement will allow a bridge footing and a retaining wall to be installed along the entire frontage along Novi Road. The bridge will overpass the CSX rail-line to the north of the subject property, where it currently crosses Novi Road at grade. The easement itself is quite small; the bridge overpass that will be constructed within the right-of-way will impact the property in a negative manner, by placing the subject property below grade. After the taking, the easement acquired from the property will cause the property to no longer be at grade with Novi Road, due to the bridge overpass construction. The south extreme area of the property will be approximately 4 feet below road grade, while the north extreme location of the property will be approximately 18 feet below grade. The main access drive will change from its current grade level approximately 7 feet from the new road, down to the subject parking lot, as opposed to the current incline of approximately 2 feet prior to the taking. The auxiliary or emergency drive will drop approximately 3 feet from the new Novi Road right-of-way, to the level of the existing property.

Under the Uniform Condemnation Procedures Act (UCPA), Section 4(2), corresponding to MCL 213.54(2), provides that if an acquisition of a portion of a parcel of property is needed by a condemning agency, leaving the remainder of the parcel in nonconformity with a zoning ordinance requirement, then 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), then the remainder parcel 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 the zoning variance was granted. However, if the property was also nonconforming for other reasons, then granting of that variance will have no effect on the status of those other preexisting nonconformities. (See attachments).

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

Due to the road project along Novi Road, this site will become a non-conformity with the City of Novi's zoning requirements. Under MCL 213.54(2), the RCOC is requesting that the ZBA for the City of Novi consider the potential benefits to the public use which the property is being acquired, in addition to the practical difficulty, caused by the road improvement project, for which the owner of the property is not responsible. The inability of the owner to conform to City of Novi's zoning ordinance requirements, is directly related to the Novi Road improvement project occurring at this location. Granting the requested variances will allow the spirit of the City of Novi zoning ordinance to be observed; public safety secured and substantial justice done.

The variance requested from the required 100 ft. front yard setback for the parking lot setback, under Section 2400h, will require an 82.2 ft. variance, due to the location of the new right of way line, being relocated 10 ft. to the east of its existing alignment. This will result in 7.80 feet of parking lot setback being provided.

A variance for the end island dimensions for the width of the north end island under Section 2506.13, is being requested, due to the fact that 8 ft. are required. However, a 3 ft. variance is requested because only 5 ft. can be provided in order to allow existing parking spaces to be maintained, and to allow the construction of a narrower island. It is the applicant's intention to maintain all existing parking spaces. To do so, requires the requested 3 ft. variance to allow the narrower island.

Under 2506.13, the RCOC is requesting a variance for the width of the south end island, to reduce the width of the south end island from the 8 ft. requirement to 4 ft. more or less. This will allow the maintenance of all existing parking spaces, currently on site at this location. This will result in 4 ft., more or less, of the width of the south end island being provided.

A corner clearance clear zone variance is being requested along the north side of the relocated driveway to and from the Collex property. This is under Section 2513, due to the location of a new retaining wall. The measurement for site distance has been verified under ASHTO Standards, which have indicated that a motor vehicle can sit in the Collex driveway and still see around the newly built retaining wall. In addition, the site distance standards for driveway permit applications made to the RCOC also have been confirmed under the design criteria submitted. The RCOC driveway permit regulations for site distance, are also attached. The drawing submission indicates that site distance will be adequate at this location for motor vehicles exiting from the Collex driveway who will be capable of observing the location within distance of the retaining wall.

A variance request is being made under Section 2509.3b for the required landscape width of 25 ft., adjacent to the Novi Road frontage. This specific variance sought is of 17.2 ft., due to the location of the new Novi Road right of way line, which alignment is now 10 ft. to the east of where it physically was situated before. This will result in 7.8 ft. being provided.

A variance request is being submitted under Section 2509.3b for the required canopy trees located along Novi Road. After the new MSE wall is constructed and the bridge overpass is constructed, it is not likely that the remaining canopy trees and sub canopy trees will be capable of remaining alive. Therefore, the RCOC is seeking a variance from this requirement due to the fact that the retaining wall will be located in close proximity to the property line. The existing trees likely will not be capable of continued growth and development at this location.

A variance is sought under Section 2001.3 for the requirement of outdoor storage yard screening; including a parking lot screen wall; landscaped earth berm or chain link fence along Novi Road. This variance is being sought due to the lack of a required masonry wall, landscaped earth berm and/or chain link fence, with heavy screen plantings to screen the existing outdoor storage yard. This would allow instead maintenance of the existing landscaping along the Novi Road frontage, and at the owner's request, to allow removal of the masonry screen wall. If this variance is granted, it would allow the owner to remove the screening wall in accordance with ZBA requirements.

Section 28-5 of Ordinance 09-100.38

With respect to the Collex signage currently located on the property, it is contemplated that the sign will be removed and relocated, approximately 1 to 3 ft. east of the new right of way line, with placement on a 30 ft. high post, to allow visibility of the sign upon northbound and southbound Novi Road. The sign itself will remain of the existing dimensions of 8.05 ft. by 4.15 ft.. It will be a backlit sign with navy blue background and the name "Collex" in white lettering and the words "Collision Experts" in red lettering. This would be the permanent sign height.

Section 28-6 of Ordinance 09-100.38

At the request of the owner, the temporary sign height for the Collex sign would be 10 ft. in height and would measure 34 sq. ft. in area. The allowance for the temporary 10 ft. high sign would operate for a period of approximately 18 to 24 months, to assist vehicular traffic on and along Novi Road, for our business invitees or customers of the Collex location.

#10

Each of the property owners whose property is located within the alignment which is affected by the Novi Road Midsection Project, which principally consists of the construction of the CSX bridge overpass, are in a unique circumstance, whereby due to the partial taking, by way of an acquisition from their property by the RCOC, the CSX bridge overpass will be constructed. This partial acquisition is due to circumstances beyond the control of each of the property owners. It is authorized by law, and by the Michigan Constitution. To undertake this acquisition, the RCOC was required to deposit into escrow a sum which is 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. The RCOC has determined in its eminent domain proceeding, that it is necessary to acquire a portion of the property owned by Gagliano Enterprises, Inc. (Collex), for the widening of Novi Road, in the area effected for public health, safety and welfare reasons. The main concern to the RCOC is the flow of traffic in a densely developed area. This is both the current traffic pattern situation; and it is contemplated under the Novi Master Plan, with respect to any presently vacant parcels. In seeking these variances from the Novi ZBA, the RCOC recognizes that the property owner has neither caused nor created these circumstances. Moreover, under the previously cited provision under MCL 213.54(2) the RCOC is not to be penalized by seeking the requested variances.

These variances are necessary due to the road improvements that RCOC is undertaking on and along Novi Road. The variances sought for the subject property, if granted, should include as part of the resolution adopted by the Novi Zoning Board of Appeals, the specific language contained in MCL 213.54(2), which states 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 each zoning variance was granted, without the consent of the City of Novi."

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

Different sight distances are required for yield or signal controlled intersections. Contact R.C.O.C. design division for determining corner sight distance at yield or signalized approaches.

POINT OF OBSERVATION

Major Road Paved Surface:
(A) Fifteen (15) minimum feet from edge of pavement of through lanes.

Major Road Gravel Surface:
(A) Fifteen (15) minimum feet from edge of gravel.

For gravel surfaced roads an assumed speed of 45 mph. shall be used to determine sight distance unless otherwise posted. Certain existing conditions may require an engineering study to determine the sight distance.

The point of vision shall be from the height of eye, 3.5 feet above the proposed intersecting elevation to a height of object 3.5 feet above the existing or proposed road centerline and shall be continuously visible within the specified limits.

Notes:

1. Any deviation from given data requires an engineering study approved by the R.C.O.C. in accordance with 2001 AASHTO policy on geometric design.
2. This design guide also applies to new Permit & Plat construction projects.
3. The above data is based on a left turn maneuver into the intersecting major roadway as described in AASHTO. Due to the higher potential accident severity, the left turning sight distance was used to determine the corner sight distance required. Right turn onto major roads shall have the same sight distances.

THROUGH ROAD POSTED SPEED IN MPH	MINIMUM SIGHT DISTANCE IN FEET, BOTH DIRECTIONS	
	2 OR 3 LANE THRU ROAD	4 OR 5 LANE THRU ROAD
25	280	295
30	335	355
35	390	415
40	445	470
45	500	530
50	555	590
55	610	650

GUIDE FOR CORNER SIGHT DISTANCE

ROAD COMMISSION
FOR OAKLAND COUNTY
Beverly Hills, Michigan

APPROVED BY

GERALD W. HOLBERG P.E.
COUNTY HIGHWAY ENGINEER/
DEPUTY MANAGING DIRECTOR

STATE OF MICHIGAN
PROFESSIONAL ENGINEER
NO. 2008
EXPIRES 12/31/2011

7-24-10 DATE (SEAL)

Page 1 of 1

51

RULE 6.2 CLEAR VISION AREAS, BUFFER AREAS, AND SIGHT DISTANCE

6.2.1 At intersections or railroad crossings where the Board controls limited access right-of-way to provide a clear vision area, no driveway shall enter or cross any part of that clear vision area. Where the Board has an easement for a clear vision area at an intersection or railroad crossing, driveways shall not be permitted through the clear vision area if another reasonable access point is available.

6.2.2 Adjacent to driveways, a buffer area between the right-of-way line and the pavement edge shall be used, as determined by the Permits & Environmental Concerns Department, to provide a permanent physical barrier between moving traffic and private property and unobstructed visions on either side of the driveway. This buffer area may consist of a lawn area, a low shrub area, a ditch, or equivalent method and may require the removal of trees, brush, earthen embankments, and other obstructions. Where encroachment of parked vehicles may take place, the Permits & Environmental Concerns Department may require this buffer area to be established by curb or equivalent method.

A) Minimum sight distance for commercial driveways and private road approaches shall in accordance with figure 6-1, the "Guide for Corner Sight Distance" dated January 4, 1994:

B) Sight distance for residential drives shall be measured 10 feet from the edge of the traveled portion on gravel roads or 10 feet from the edge of pavement on paved roads in accordance with the table 6-1:

Table 6-1:

Speed Limit, M/P/H	25-30	35	40	45	50	55
Minimum Sight Distance	260-310	360	410	460	510	560

- Sight distance will be measured from an eye height of 3.5 feet to an object height of 3.5 feet.

6.2.3 The Road Commission for Oakland County recommends and may require that the driveway be located in a location that provides sight distance in excess of the minimums provided herein.

6.2.4 Applications for driveways, which do not provide minimum adequate sight distance, may be denied.

Different sight distances are required for yield or signal controlled intersections. Contact R.C.D.C. design division for determining corner sight distance at yield or signalized approaches.

POINT OF OBSERVATION

Major Road Paved Surface:
(A) Fifteen (15) minimum feet from edge of pavement of through lanes.

Major Road Gravel Surface:
(A) Fifteen (15) minimum feet from edge of gravel.

For gravel surfaced roads an assumed speed of 45 mph. shall be used to determine sight distance unless otherwise posted. Certain existing conditions may require an engineering study to determine the sight distance.

The point of vision shall be from the height of eye, 3.5 feet above the proposed intersecting elevation to a height of object 3.5 feet above the existing or proposed road centerline and shall be continuously visible within the specified limits.

Notes:

1. Any deviation from given data requires an engineering study approved by the R.C.D.C. in accordance with 2001 AASHTO policy on geometric design.
2. This design guide also applies to new Permit & Plat construction projects.
3. The above data is based on a left turn maneuver into the intersecting major roadway as described in AASHTO. Due to the higher potential accident severity, the left turning sight distance was used to determine the corner sight distance required. Right turn onto major roads shall have the same sight distances.

TABLE 1
MINIMUM CORNER SIGHT DISTANCE

THROUGH ROAD POSTED SPEED IN MPH	MINIMUM SIGHT DISTANCE IN FEET, BOTH DIRECTIONS	
	2 OR 3 LANE THRU ROAD	4 OR 6 LANE THRU ROAD
25	280	295
30	335	355
35	390	415
40	445	470
45	500	530
50	555	580
55	610	650

GUIDE FOR CORNER SIGHT DISTANCE

ROAD COMMISSION FOR OAKLAND COUNTY
Severely MS, Michigan

APPROVED BY
[Signature]
GERALD M. HOLMBERG P.E.
COUNTY HIGHWAY ENGINEER / DEPUTY MANAGING DIRECTOR

7-24-10 DATE

STATE OF MICHIGAN
GERALD M. HOLMBERG
ENGINEER
NO. 20098
PROFESSIONAL SOCIETY

(SEAL)

Page 1 of 1

RULE 6.3 DEFINITIONS OF STANDARD DRIVEWAY DIMENSIONS

The design features described herein with their appropriate illustration of various driveway features as shown in tables 6-2 through 6-9 shall be used by the Applicant in dimensioning proposed driveways or driveway systems on plans accompanying driveway permit applications. These standard dimensions will be used unless conditions require a deviation and the Applicant can show cause for deviation. The Permits & Environmental Concerns Department reserves the right to determine whether this deviation shall be granted and may specify particular dimensions in order that particular driveway system will accommodate the vehicles normally expected without creating undue congestion or hazard on the road. The letters in parentheses accompanying the following design feature titles are used to illustrate these design features in tables 6-2 through 6-9.

- 6.3.1 "Intersecting Angle" (A), the clockwise angle from the road edge of pavement or road centerline if unpaved to the driveway reference line (the centerline or edge of the driveway).
- 6.3.2 "Driveway Width" (B), the distance between driveway edges of pavement (or edges of the gravel surface, if applicable) measured at the point where the edges of the driveway become parallel (point b in the sketches). If the right-of-way line is so close to the pavement that point b falls on the applicant's property, then the width of the driveway at the right-of-way line shall be based on the projected Driveway Width.
- 6.3.3 "Entering Radius" (C), the radius of the driveway edge curve on the right side of a vehicle entering the applicant's property.
- 6.3.4 "Exiting Radius" (D), the radius of the driveway edge curve on the right side of a vehicle exiting the applicant's property.
- 6.3.5 "Curb Ending" (E), the length of the height transition of the driveway curb from ground level to full curb height along an uncurbed road. This curb transition shall be 10 feet minimum.
- 6.3.6 "Right-Turn Lane Length" (F), the length of auxiliary lane constructed preceding the driveway to accommodate traffic entering the applicant's property.
- 6.3.7 "Right-Turn Lane Width" (G), the width of pavement from the outside edge of the through lane to the outside edge of the Right-Turn Lane, or the width of road from outside edge of the through lane to the outside edge at the full width of the Entering and Exiting tapers.
- 6.3.8 "Entering Taper" (H), the length of the diagonal pavement widening, preceding the driveway.
- 6.3.9 "Exiting Taper" (J), the length of the diagonal pavement widening, following the driveway.
- 6.3.10 "Entrance Drive Width" (K), the width of the half of a Divided or a Directional driveway which has been designated for the use of a vehicle entering the applicant's property.
- 6.3.11 "Exit Drive Width" (L), the width of the half of a Divided or a Directional driveway which has been designated for the use of a vehicle exiting the applicant's property.
- 6.3.12 "Island Width" (M), the edge-to-edge distance between the Entrance Drive and Exit Drive.

- 6.3.13 "Island Length" (N), the distance between ends of the island, measured parallel to the Entrance Drive.
- 6.3.14 "Nose Offset" (P), the distance between the edge of the turn lane or through land and the traffic island of a Divided or a Directional driveway.
- 6.3.15 "Curb Opening/Cut" (R), the length of the opening along the road curb for an approach and its radii.
- 6.3.16 "Passing Lane Approach Length" (S), the length of auxiliary lane constructed on the opposite side of the road preceding the driveway to accommodate through traffic passing the left turn traffic entering the applicant's property.
- 6.3.17 "Passing Lane Departing Length" (T), the length of auxiliary lane constructed on the opposite side of the road following the driveway to accommodate through traffic passing the left turn traffic entering the applicant's property.
- 6.3.18 "Passing Lane Width" (U), the width of pavement from the outside edge of the through lane to the outside edge of the Passing Lane.
- 6.3.19 "Passing Lane Approaching Taper" (V), the length of the diagonal pavement widening preceding the Passing Lane.
- 6.3.20 "Passing Lane Departing Taper" (W), the length of the diagonal pavement widening following the Passing lane.
- 6.3.21 "Exiting Lane Length" (X), auxiliary lane extension from exiting radius to beginning of exiting taper.

RULE 6.4 STANDARD DIMENSIONS FOR RESIDENTIAL DRIVEWAYS

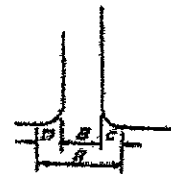
The dimensions of a residential driveway shall conform to those given in tables 6-2 and 6-3.

Table 6-2:

Residential Driveway

Design Features

		<u>Typical</u>	<u>Range</u>
Intersecting Angle	A	90°	60° to 90°
Driveway Width	B	16'	12' to 35'
Entering Radius	C	10'	5' to 35'
Exiting Radius	D	10'	5' to 35'
Total B+C+D=	R	36'	14' to 55'

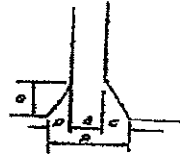


NOTE:

The TYPICAL dimension shall be used unless the Permits & Environmental Concerns Department specifies or the applicant shows cause for, a different value. The RANGE in dimensions indicates the working value for each design feature.

**Table 6-3:
Residential Driveway - Subdivision**

<u>Design Features</u>		<u>Typical</u>	<u>Range</u>
Intersecting Angle	A	90°	60° to 90°
Driveway Width	B	16'	10' to 25'
Entering Taper Width	C	6'	2' to 15'
Exiting Taper Width	D	6'	2' to 15'
Taper Depth	Q	10'	10' to 20'
Total	R	24'	14' to 55'
B+C+D=			



NOTE:

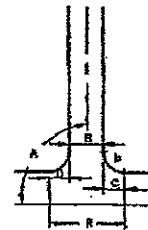
The TYPICAL dimension shall be used unless the Permits & Environmental Concerns Department specifies or the applicant shows cause for, a different value. The RANGE in dimensions indicates the working value for each design feature.

RULE 6.5 STANDARD DIMENSIONS FOR COMMERCIAL DRIVEWAYS AND PRIVATE ROADS

6.5.1 Two-way Commercial driveways shall be designed to accommodate one lane of traffic in each direction. The dimensions of a Two-way Commercial driveway shall conform to those given in table 6-4.

**Table 6-4:
Two-Way Commercial Driveway Dimensions**

<u>Design Features</u>		<u>Typical</u>	<u>Range</u>
Intersecting Angle	A	90°	60° to 90°
Driveway Width	B	24'	22' to 40'
Entering Radius	C	35'	10' to 35'
Exiting Radius	D	35'	10' to 35'
Total	R		42' to 105'
B+C+D=			



NOTE:

The TYPICAL dimension shall be used unless the Permits & Environmental Concerns Department specifies or the applicant shows cause for, a different value. The RANGE in dimension indicates the working value for each design features.

6.5.2 The dimensions of a Directional One-way Commercial driveway system shall conform to those given in table 6-5.

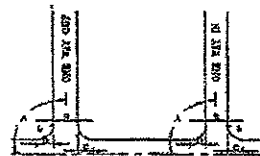


Table 6-5:

Directional (One-Way) Commercial Driveway Dimensions

	<u>Design Features</u>		<u>Typical</u>	<u>Range</u>
One Way IN	Intersecting Angle	A	90°	60° to 90°
	Driveway Width	B	16'	16' to 20'
	Entering Radius	C	35'	20' to 35'
	Exiting Radius	D	5'	5' to 10'
One Way Out	Entering Radius	C	5'	5' to 10'
	Exiting Radius	D	35'	10' to 35'
	Total B+C+D=	R	25'	42' to 105'

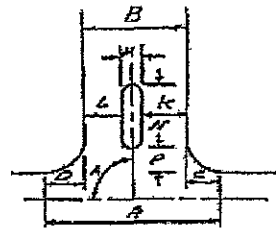
NOTE:

The TYPICAL dimension shall be used unless the Permits & Environmental Concerns Department specifies or the applicant shows cause for, a different value. The RANGE in dimension indicates the working value for each design features.

6.5.3 A Divided Commercial driveway shall have a curbed island separating the Entrance Drive and the Exit Drive. The radii forming the edges on this island shall be designed to accommodate the largest vehicle that will normally use the driveway. The minimum area of the island shall be 50 square feet. The dimensions of a Divided Commercial driveway shall conform to those given in table 6-6.

Table 6-6:

<u>Design Features</u>		<u>Typical</u>	<u>Range</u>
Intersecting Angle	A	90°	60° to 90°
Driveway Width	B	60'	46' to 78'
Entering Radius	C	35'	15' to 35'
Exiting Radius	D	35'	10' to 35'
Entrance Drive Width	K	22'	20' to 27'
Exit Drive Width	L	22'	20' to 27'
Nose Offset	P	12'	6' to 18'
Island width	M	16'	6' to 24'
Total B+C+D=	R		71' to 148'



NOTE:

The TYPICAL dimension shall be used unless the Permits & Environmental Concerns Department specifies or the applicant shows cause for, a different value. The RANGE in dimension indicates the working value for each design features.

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. Almena 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 218.54, 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 103.¹

(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 (8) 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 alterations

(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 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.

¹ 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 to". Prior to the amendment, subsecs. (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 jurisprudence.

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

