



CARVANA EXPANSION LOT JZ21-39

CARVANA EXPANSION LOT, JZ21-39

Consideration of the request of Carvana for Planning Commission's determination whether its proposed use for Unit 6 of the Adell Center is permitted in the TC District. The subject property is located at 26540 Adell Center Drive in Section 15, north of Grand River Avenue, west of Novi Road in the TC Town Center zoning district. The applicant would like to Amend a PRO Agreement in order to utilize Unit 6 of the Adell Center development for off-site parking/storage of vehicles for the Carvana car vending machine use on Unit 8. The Planning Department has determined that the use is not permitted in the TC District, and Carvana is challenging that determination.

Required Action

Determination of proposed use

| REVIEW | RESULT | DATE | COMMENTS |
|---------------|---------------------------------|-------------|--|
| Planning | Approval not recommended | 10/26/21 | <ul style="list-style-type: none"> Use proposed is not permitted in the TC, Town Center Zoning District, and therefore would not comply with the underlying zoning and would not be eligible for an amendment to the PRO Agreement as proposed |

MOTION SHEET

Denial – Use Determination

In the matter of Carvana Expansion Lot, JZ21-39, the Planning Commission finds the proposed use of the parcel is not permitted under the terms of the Zoning Ordinance in the Town Center District for the reasons detailed in the staff review letter, including:

1. The intent of the TC District stated in Section 3.1.25 clearly discourages activity in connection with car sales.
2. Section 5.2.8 of the Zoning Ordinance prohibits the storage of merchandise, including motor vehicles for sale, in off-street parking lots.
3. The TC District does not permit outdoor storage uses or outdoor space for sale of new or used automobiles.
4. The vehicles in inventory can reasonably be called merchandise involved in a sales transaction prior to being delivered to a buyer, and therefore not permitted in off-street parking lots.
5. Under Section 7.13.B of the Zoning Ordinance, a Planned Rezoning Overlay (PRO) shall not authorize uses or development not permitted in the district proposed by the zoning. The proposed use, which would be allowed either in the B-3 District as a used car lot or in the P-1 District as a storage lot for new and used vehicles for sale, is not permitted in the TC District.
6. The Unlisted Use Determination provisions of the Zoning ordinance, at Section 4.87, is not available for use by the applicant and the City on Unit 6, because the requested use is in fact provided for in the Zoning Ordinance, in the B-3 District as a used car lot or in the P-1 District as a storage lot for new and used vehicles for sale.
7. Section 6.2.B of the Zoning Ordinance states the Planning Commission (or the City Council when designated as the reviewing body) shall consider the following factors in exercising its discretion over site plan approval:
 - i. Whether the use proposed for the site is a use permitted in the district and complies with all the applicable requirements of the Novi Zoning Ordinance and/or any other code or ordinance regulating and controlling the use. *It is staff's opinion that this use is not permitted in the TC District and does not comply with the requirements of the TC District.*

-OR-

Approval – Use Determination

In the matter of Carvana Expansion Lot, JZ21-39, the Planning Commission determines the proposed use of the parcel is permitted under the terms of the Zoning Ordinance in the Town Center District based on the following:

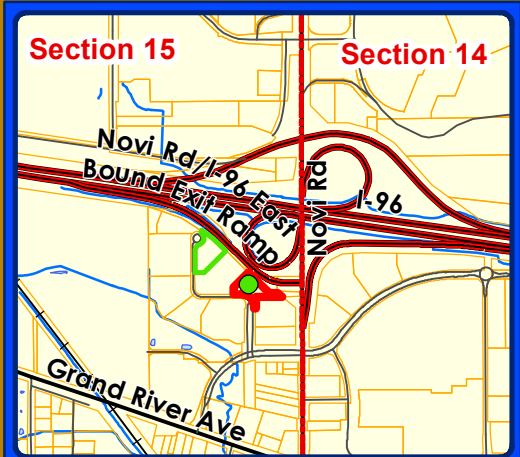
1. *Provide justification here if any*

(This motion is made because the plan is otherwise in compliance with Article 3.1.5, Article 4, Article 5 and Article 6 of the Zoning Ordinance and all other applicable provisions of the Ordinance.)


MAPS
Location
Zoning
Future Land Use
Natural Features

JZ21-39 CARVANA EXPANSION LOT

LOCATION



LEGEND

 Subject Property



City of Novi

Dept. of Community Development
City Hall / Civic Center
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

Map Author: Lindsay Bell
Date: 1/20/22
Project: CARVANA EXPANSION LOT
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1 inch = 208 feet

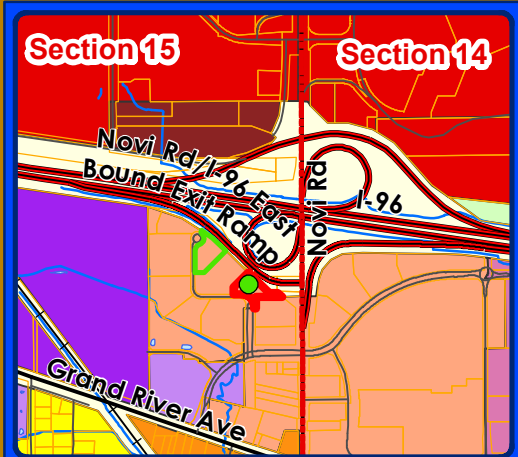
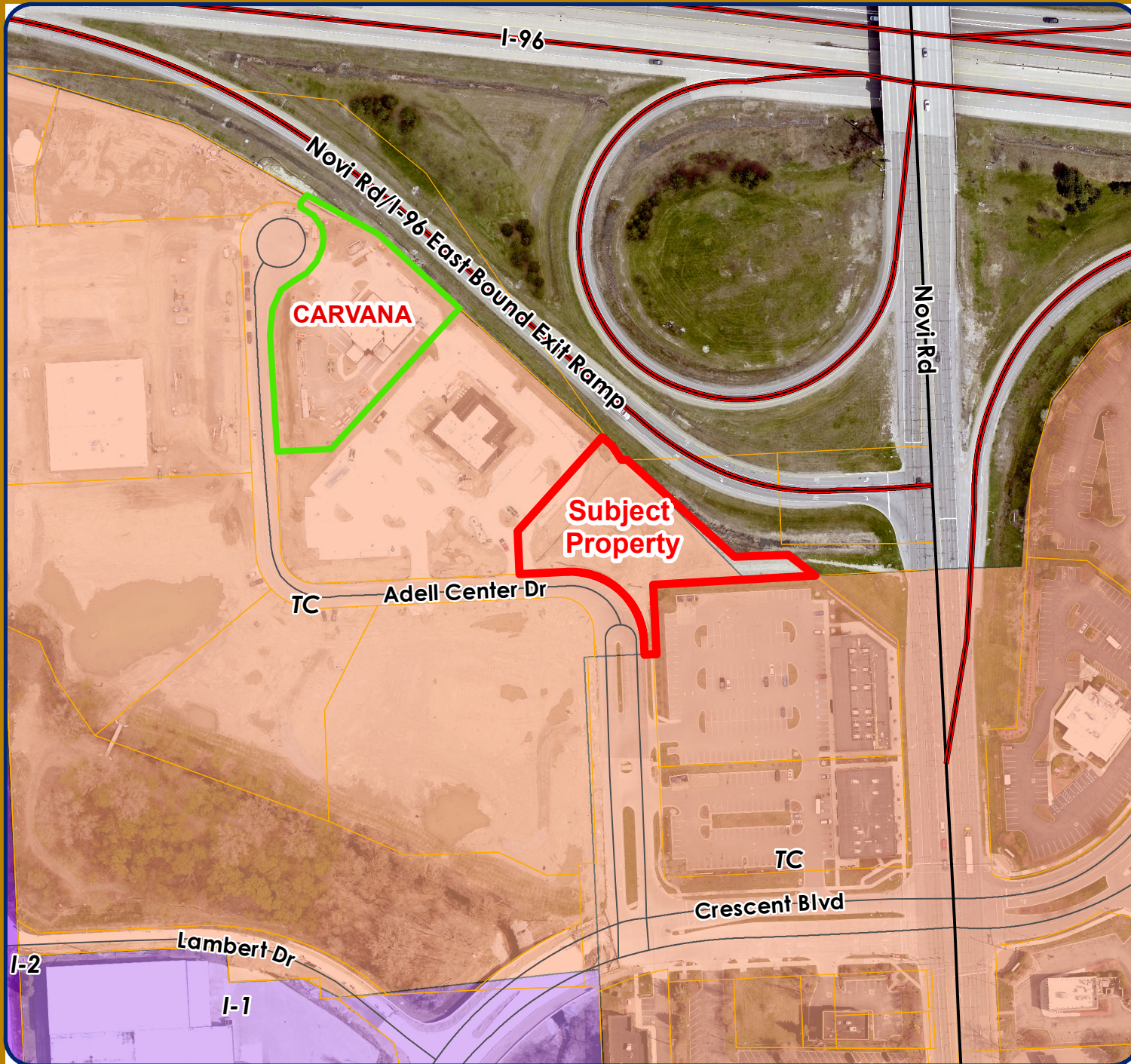


MAP INTERPRETATION NOTICE

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.

JZ21-39 CARVANA EXPANSION LOT

ZONING



LEGEND

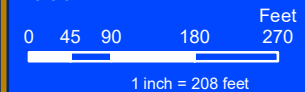
- R-A: Residential Acreage
- R-4: One-Family Residential District
- C: Conference District
- I-1: Light Industrial District
- I-2: General Industrial District
- OSC: Office Service Commercial
- RC: Regional Center District
- TC: Town Center District
- TC-1: Town Center -1 District
- Subject Property



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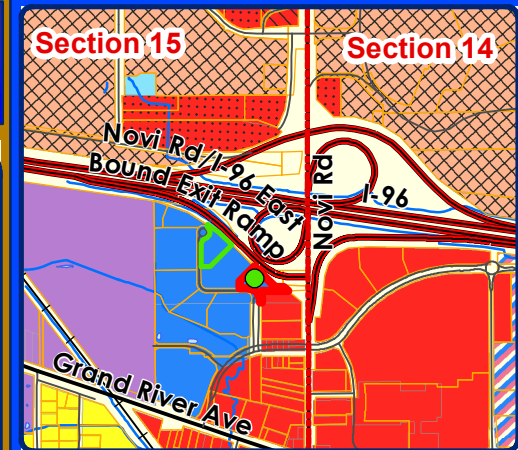
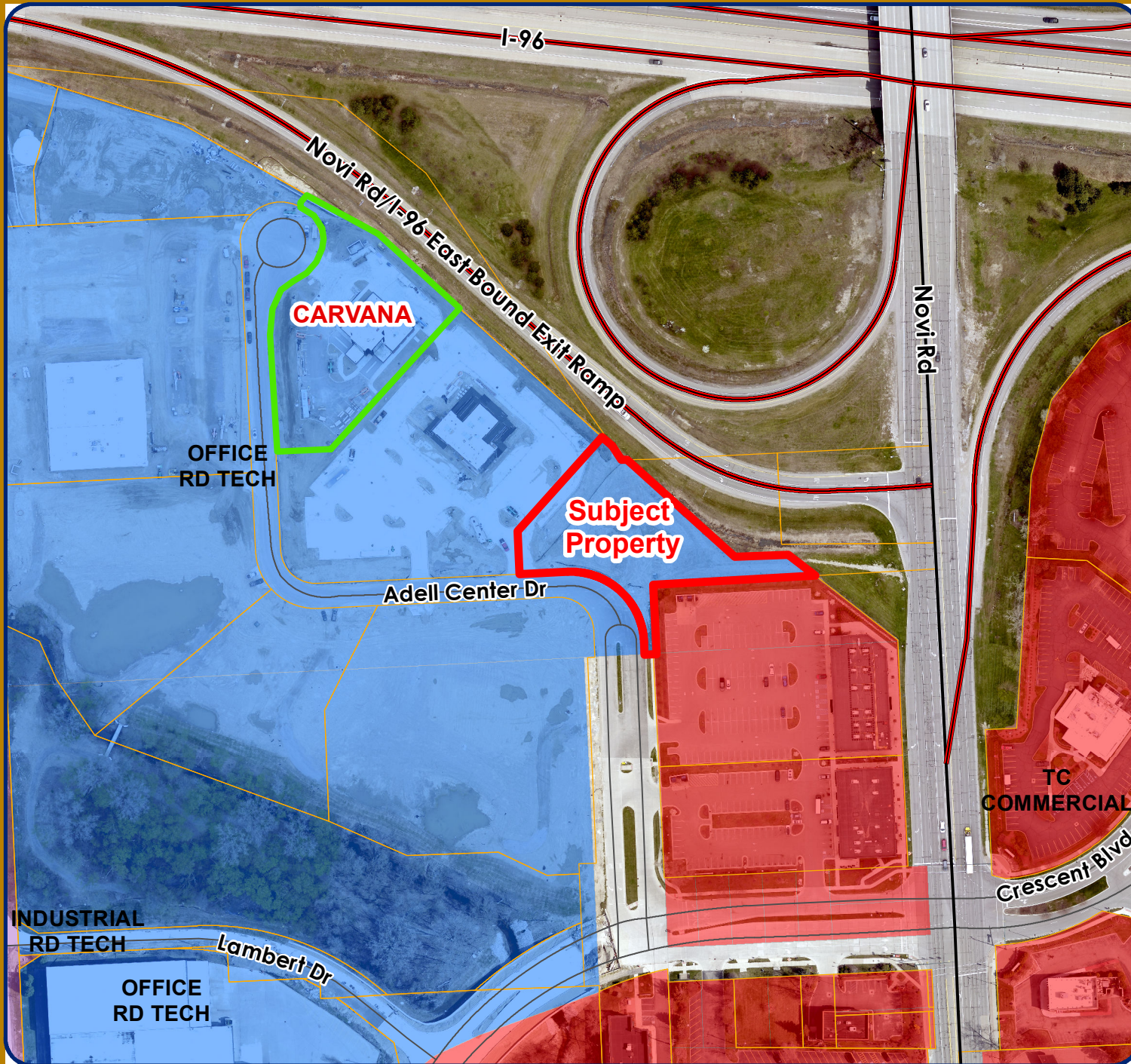


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JZ21-39 CARVANA EXPANSION LOT

FUTURE LAND USE



LEGEND

- Single Family
- Office Research Development Technology
- Office Commercial
- Industrial Research Development Technology
- Regional Commercial
- TC Commercial
- TC Gateway
- PD2
- Public
- Subject Property



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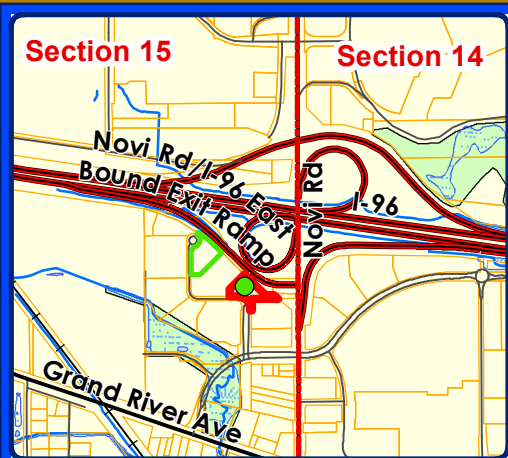
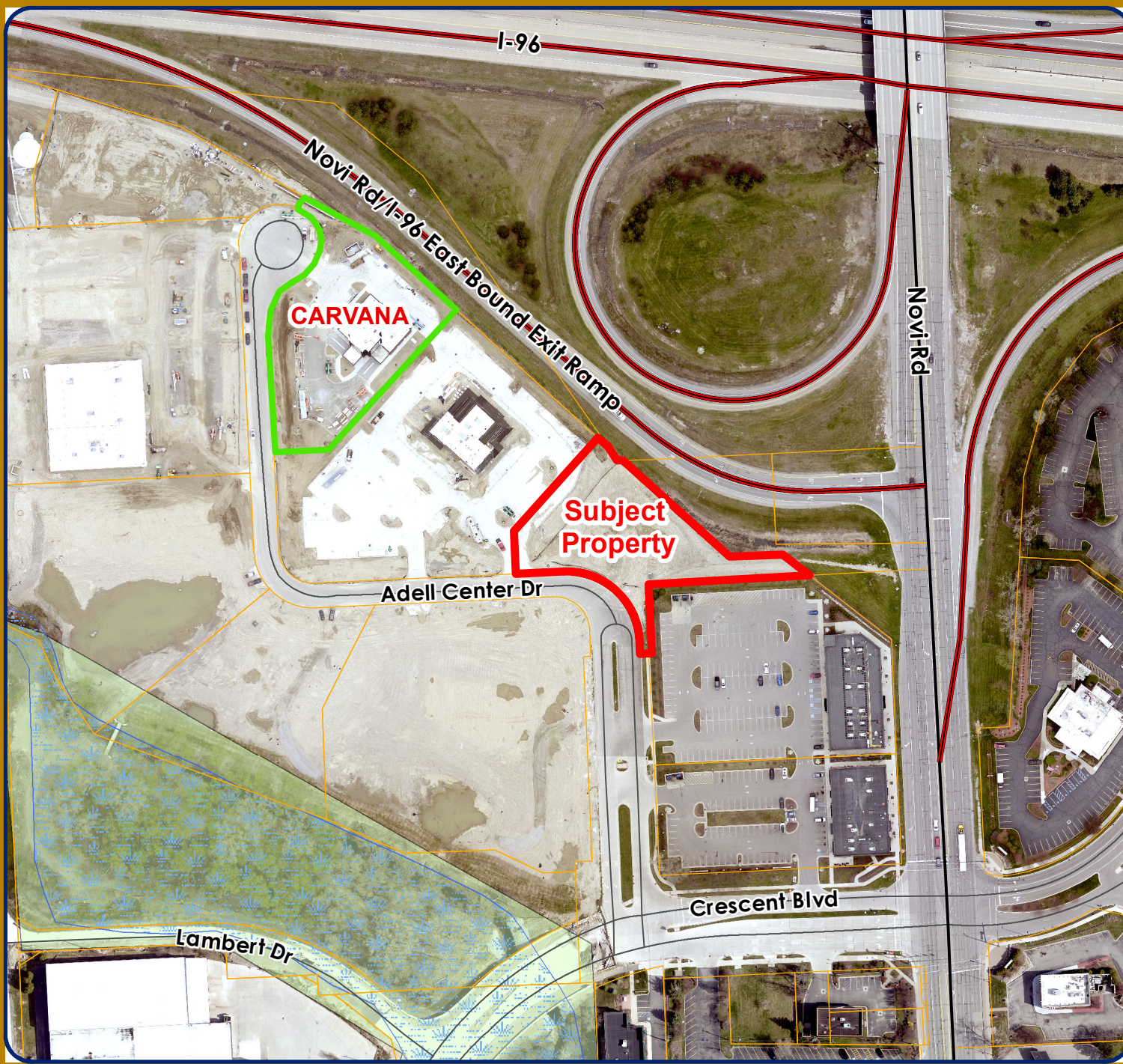


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JZ21-39 CARVANA EXPANSION LOT

NATURAL FEATURES



- LEGEND**
- WETLANDS
 - WOODLANDS
 - Subject Property



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SITE PLAN

PLANNING REVIEW



PLAN REVIEW CENTER REPORT

Planning Review

Carvana Expansion Parking (Unit 6)

JZ21-39

October 26, 2021

PETITIONER

Carvana

REVIEW TYPE

PRO Concept Plan/Second Amendment to Adell Center PRO

PROPERTY CHARACTERISTICS

| | | |
|----------------------|---|--|
| Section | 15 | |
| Site Location | 22-15-478-011; South of I-96, west of Novi Road, northwest of Crescent Boulevard | |
| Site School District | Novi Community School District | |
| Site Zoning | TC with PRO | |
| Adjoining Zoning | North | C-Conference district (across I-96) |
| | East | TC |
| | West | TC with PRO |
| | South | TC with PRO |
| Current Site Use | Water Tower | |
| Adjoining Uses | North | Hotel (across I-96) |
| | East | Texas Roadhouse Restaurant |
| | West | Planet Fitness facility across Adell Drive |
| | South | SW: Currently vacant (hotel use proposed across Adell Drive) SE: retail center |
| Site Size | 1.08 Acres | |
| Plan Date | August 17, 2021 | |

PROJECT SUMMARY

The applicant is proposing to build an inventory vehicle storage lot on unit 6 with 47 parking spaces for use by Carvana, the vehicle vending machine use located on Unit 8. The sites are separated by unit 7, the Texas Roadhouse. The Adell Center is subject to the terms and conditions of a PRO Agreement as well as the Zoning Ordinance.

RECOMMENDATION

Planning does not recommend approval of the proposed amendment of the PRO Agreement for Adell Center, because the use, as described by the applicant, is not a permitted use in the TC, Town Center Zoning District, and therefore would not comply with the underlying zoning and would not be eligible for an amendment to the PRO Agreement as proposed; the PRO ordinance specifically prohibits allowing uses that are not permitted in the new underlying zoning district. Moreover, separate and apart from that reason for disapproval, the Town Center district specifically discourages "uses which have as their

principal function the sale or servicing of motor vehicles." The proposed use is therefore both prohibited and discouraged.

ORDINANCE REQUIREMENTS

This project was reviewed for conformance with the Zoning Ordinance with respect to Article 3 (Zoning Districts), Article 4 (Use Standards), Article 5 (Site Standards), and any other applicable provisions of the Zoning Ordinance. Items in **bold underline** are significant issues to be addressed or would require new or modified deviations in the 2nd Amendment of the PRO Agreement:

1. Use: The applicant indicates in the narrative provided that this site would be used for parking/short-term outdoor storage of vehicle inventory associated with the Carvana Vending Machine located on a separate site (Unit 8) in the Adell Center condominium. **While off-street parking is a permitted use in the TC District, under the applicant's own narrative that is not what this is.**

The language of the TC District clearly intends to prohibit this kind of activity in connection with car sales. Section 5.2.8 prohibits the storage of merchandise, including motor vehicles for sale, in off-street parking lots. The TC District does not permit outdoor storage uses or outdoor space for sale of new or used automobiles. Because the PRO Ordinance does not permit deviations from the uses permitted in the underlying district, this proposed vehicle storage use in connection with the applicant's principal use one parcel over is simply not permitted under the Zoning Ordinance at this location.

In fact, based upon staff's initial conversations with the applicant, it is staff's position that the described use would likely be a new or used car lot, which in the City's Zoning Ordinance is more formally called "Outdoor space for exclusive sale of new or used automobiles, campers, recreation vehicles, mobile homes, or rental of trailers or automobiles," and which is a use permitted only in the B-3 General Business District. Alternatively, the use might fall under "Parking for sale of new, unlicensed motor vehicles and parking of licensed rental and loaner motor vehicles," which is a special land use in the P-1 Vehicular Parking District. **Neither of those uses is allowed in the TC District.**

In response to the staff's indication that its described use was an unpermitted new/used car lot, the applicant revised the site plan to show that employees of Carvana would be permitted to park in designated spaces in the lot. It then argued that because employee parking was allowed on the site, it was no longer possible for the City to say that it was "exclusively" for the sale of new or used automobiles, so the use should be permitted. The applicant is, in staff's view, misreading the sentence at issue, essentially by asking the City to rearrange the words in the sentence. The sentence does not describe the use as outdoor space exclusively for the sale of new or used automobiles; it says outdoor space for the exclusive sale of new or used automobiles. As actually written in the ordinance phrase "exclusive sale," the word "exclusive" modifies the word "sale"; it does not modify the word "use" (as in "exclusive use").

It is staff's interpretation that "exclusive sale" in this definition does not mean that the use is exclusive to new or used car sales, and nothing else—like parking customer or employees' cars, or a car wash for detailing cars as they leave the lot. That's particularly clear in light of the fact that this is the section of the Zoning ordinance that the City has used to describe all of its new and used car lots, which do in fact sometimes have those other related uses on them. The phrase is old (it might even be from the original zoning ordinance for the City). But it is also not uncommon, and in fact can be found in the ordinances of some surrounding communities (e.g., South Lyon, where it is also used to describe new and used car dealerships). In that context, the phrase "exclusive sale" was more likely intended to confirm that the vehicles would be "for sale by a single private dealer," and not a lot that is open for anyone to bring a car to sell. If it were to mean that only inventory vehicles could be parked in it, an auto dealership in the B-3 district would be required to build a separate parking lot for employees in order to have the inventory parking lot be "exclusive" to vehicles for sale and look

for a different parcel to detail and/or service its vehicles. **Put simply, adding employee parking to the proposed parking lot clearly does not negate the “exclusive” part of the use definition. What the applicant is proposing just is not permitted in the TC District.**

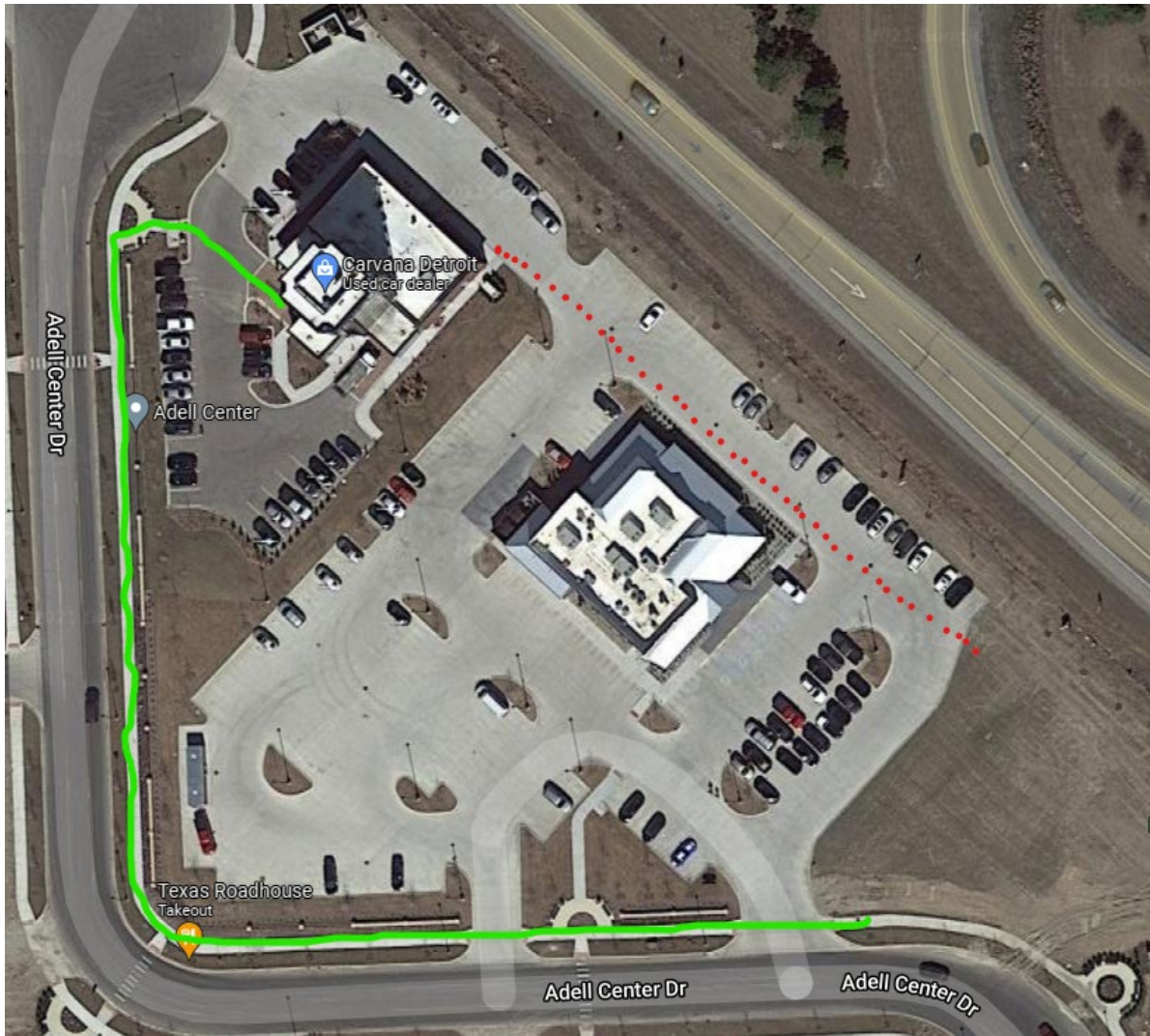
The applicant also argues the duration of cars stored in the lot does not meet the ordinance definition of “Open Storage, Motor Vehicle” which states: *The outdoor standing or placement of motor vehicles including truck trailers for more than three (3) days, including new or used motor vehicles on display for lease or sale.* The applicant states the vehicles would not remain in the lot for more than 48 hours. Section 5.2.8 does not reference open storage of motor vehicles. Staff continues to classify the vehicles to be stored as “merchandise” that are in the process of a sales transaction, whether the money changes hands virtually or on-site and whether a buyer views the product online or on-site. **The vehicles in inventory are still merchandise involved in a sales transaction prior to being delivered to a buyer, and therefore not permitted in off-street parking lots.**

Despite the staff's indication that the use is not permitted, the applicant has stated its continued disagreement with the staff's reading of the language and wants to seek a ruling by some higher authority. Staff, however, questions whether the entire PRO application—including a substantive review of plans and conditions and public benefits the like—should even proceed forward, given the clear prohibition on the ability to approve the use. After consulting with the City Attorney's office, it has been determined that the applicant may ask the Planning Commission to review the use and determine if the use is authorized in the TC District. **That question could be put to the Planning Commission at any available meeting; the issue would not need to be noticed as a public hearing, as the Planning Commission would just be making a determination whether the full PRO amendment application can proceed at a future meeting.**

We leave the choice whether to seek a preliminary determination from the Planning Commission as to the whether the use is permitted to the applicant. The remainder of this review on the PRO amendment, should it go forward, is for the applicant's information.

2. Off-Premises Parking (Section 5.2.3): The ordinance permits off-premises off-street parking lots under certain conditions, and requires Special Land Use approval from the Planning Commission. *Off-street parking for other than residential use shall be either on the same parcel of and or within three-hundred feet of the building it is intended to serve, measured along a pedestrian walkway from the nearest point of such building to the nearest point of the off-street parking lot. **The sidewalk route from the parking lot to the Carvana building is shown below in green, and measures over 700 feet, which would require a new deviation.***

The ordinance goes on to say: *The pedestrian walkway shall be on the applicant's property or within a dedicated right-of-way, provided that a pedestrian walkway approved by the planning commission may cross intervening parcels of land under separate ownership where the applicant has secured necessary permanent easements from the owners of the intervening parcels and the walkway provides a reasonably safe method of pedestrian access between the parking area and the building served.* Adell Drive is a private street in a general condominium, with all owners sharing rights within the 60-foot access easement which includes the sidewalk. There is also shared access easements through the properties. There is a shorter route (dotted red line in the below image – measures approximately 320 feet) through the Texas Roadhouse property northeast of the building, however there is no sidewalk in this location. **Staff anticipates dangerous conditions with Carvana employees frequently traversing between the building and the off-premises parking lot, both on foot and driving the inventory cars, through the Texas Roadhouse parking lot. During peak dining hours the safety hazards would be particularly high. Therefore, we do not support a deviation to permit an off-premises parking lot greater than 300 feet of the primary property in this case.**



3. Special Land Use (Section 6.1.2.C): Off-premises parking lots are subject to Special Land Use approval from the Planning Commission. The Planning Commission shall consider the following in the review of the Special Land Use Permit request (**staff comment in bold**):
 - i. Whether, relative to other feasible uses of the site, the proposed use will cause any detrimental impact on existing thoroughfares in terms of overall volumes, capacity, safety, vehicular turning patterns, intersections, view obstructions, line of sight, ingress and egress, accel/decel lanes, off-street parking, off-street loading/unloading, travel times and thoroughfare level of service. **Impacts on existing City thoroughfares are not anticipated.**
 - ii. Whether, relative to other feasible uses of the site, the proposed use will cause any detrimental impact on the capabilities of public services and facilities, including water service, sanitary sewer service, storm water disposal, and police and fire protection to serve existing and planned uses in the area. **Impacts on existing public services are not expected.**
 - iii. Whether, relative to other feasible uses of the site, the proposed use is compatible with the natural features and characteristics of the land, including existing woodlands, wetlands, watercourses and wildlife habitats. **There are no existing natural features on the site.**
 - iv. Whether, relative to other feasible uses of the site, the proposed use is compatible with adjacent uses of land in terms of location, size, character, and impact on adjacent property or the surrounding neighborhood. **The storage of inventory vehicles is not a permitted use in the Town Center District. The ordinance states that in the Town Center District “uses which have as their principal function the sale or servicing of motor vehicles, such as automobile service**

establishments, car washes, or new and used motor vehicle sales or service establishments... have a disruptive effect on the intended pedestrian orientation of the districts.” Therefore, other feasible uses of the site would be more compatible with the adjacent uses of land, including restaurants, retail, personal service, and office uses.

- v. Whether, relative to other feasible uses of the site, the proposed use is consistent with the goals, objectives and recommendations of the City's Master Plan for Land Use. **The Master Plan recommended this area be utilized for office uses to help support nearby retail and restaurant uses. One goal in the Master Plan also states for the I-96/Novi Road area: “Gradually phase out outdoor storage uses over time as redevelopment occurs....”**
 - vi. Whether, relative to other feasible uses of the site, the proposed use will promote the use of land in a socially and economically desirable manner. **The site is currently vacant. However, in the longer term there could be uses proposed that would be of greater social and economic value.**
 - vii. Whether, relative to other feasible uses of the site, the proposed use is:
 - a. Listed among the provision of uses requiring special land use review as set forth in the various zoning districts of this Ordinance, and
 - b. Is in harmony with the purposes and conforms to the applicable site design regulations of the zoning district in which it is located. **The site design of the use requires additional deviations to be granted including the distance of the off-street lot to the building it serves, parking setbacks distances less than the other units in Adell Center, and absence of a loading zone.**
4. Amendment to existing PRO Plan: The subject property is part of a Planned Rezoning Overlay Agreement for the Adell Center Development, which was approved by City Council at its October 22, 2018 meeting. The proposed use and development do not conform to the approved PRO plan for Unit 6, which is indicated to be a restaurant in the PRO Agreement. **An amendment to the PRO Concept plan and the agreement are required to develop this property for the proposed use. However, as noted above, no deviations may be granted for uses not permitted in the underlying district (TC). If the use were permitted in the TC District, new dimensional deviations and conditions would be required based on the layout provided, as well as amendment of previous deviations and conditions.**
5. PRO Agreement Conditions/Deviations: If for some reason the use was permitted, the PRO Agreement contains the following general and specific conditions and deviations related to Unit 6, with staff comments in bold related to the submitted PRO Plan amendment:
- A. When either Unit 6 or Unit 7 is proposed for development, the developer or its successor shall incorporate enhanced pedestrian flow elements with pedestrian crossings, to be approved by the City at the time of preliminary site plan review; **Proposed plan does not incorporate enhanced pedestrian flow or amenities. This condition would need to be amended. As only Carvana employees would access Unit 6, and there is an existing sidewalk and amenity seating area along Adell Drive, this amendment would be supported.**
 - B. Deviation from section 5.12 to allow lack of required frontage on a public road for units 1-8. Frontage for such units shall be on the private drive as shown in the PRO Plan, which shall be built to City standards. **Complies with deviation.**
 - C. Deviation from minimum required exterior side yard building setback (50 feet) to allow a 32.5 foot setback. **No building proposed – complies with deviation.**
 - D. Deviation to allow 18-foot front parking setback from the proposed access easement (along Adell Drive); **Proposed plan proposes a 6.7-foot parking setback from the access easement – additional deviation required. All other units have an 18-foot front setback. Staff does not support additional parking setback reduction as it interrupts the consistency in streetscape design achieved by having a consistent setback throughout the development.**
 - E. Deviation allows minimum parking setback of 0 feet on the west side for Unit 6; **Additional setback shown – complies with deviation.**

- F. Two ground signs are permitted on Unit 6; **No signage proposed besides existing monument sign previously approved.**
 - G. All site plans for the individual units within the Development shall comply with the maximum 15 bay parking requirement; **All bays meet condition.**
 - H. Deviation allows alternate location for dumpsters, provided proposed location does not impact traffic circulation and appropriate screening is provided; **No dumpster proposed. The ordinance does not require a dumpster for similar uses, such as a used car sales or storage lot.**
 - I. Deviation granted to allow loading area within the interior side yard and partly the exterior side yard of Unit 6 (as shown on 1st Amendment PRO Plan); **No loading area proposed. A new deviation is required for absence of loading zone.**
 - J. Deviation to allow applicant to provide supporting data to justify proposed loading area square footages at the time of site plan review, to be determined by Planning Commission; **Planning Commission may approve no loading zone, or request deviation in PRO Amendment. The applicant requests a deviation to not provide a loading zone, as they state all truck deliveries would take place on Unit 8.**
 - K. Deviation from the maximum 1 foot candle spillover in section 5.7.3.K., along the interior side property lines internal to the development, provided the applicant submits a photometric plan that demonstrates that the average to minimum light level ratio is kept to the maximum allowable 4:1. **Photometric plan provided shows site average to minimum ratio is 3.1:1. Complies.**
 - L. Deviation to allow light levels to exceed 1 foot-candle along interior property lines and adjacent to Adell drive; **Photometric plan provided shows interior property lines do not exceed 1.0 fc. Complies.**
 - M. Deviation from the required minimum of 15% of the total site area to be designed as permanently landscaped open areas and pedestrian plazas in Section 3.27.1.F(A), to allow the minimum required open space for each Unit to be part of the common element spread within the development boundaries as shown in the Open Space Plan. **The open space requirement is provided by the larger development.**
 - N. The PRO Concept Plan and Roads & Utilities plans show a decorative wall/fence matching the other units in the development along the Adell Drive frontage; **A wall/fence is now shown.**
 - O. Deviation to allow placement of transformers in alternate locations instead of the rear yard, subject to review and approval by the Planning Commission; **Existing transformers/other utility boxes shown.**
 - P. Deviation to allow reduction of the minimum required exterior side parking setback to 13 feet along the northeast property boundary indentation for approximately 50 feet. **14 foot setback shown on plan would be consistent with deviation.**
6. Parking Setbacks: The **Plan proposes a 16-foot parking setback along the south lot line where 20-feet is required. A new deviation would be required for reduction in parking setback.**
7. Screening: Applicant indicates existing berm on I-96 frontage will be maintained. Decorative fence, new trees and existing hedges around pedestrian area will all provide screening along Adell Drive.

NEXT STEPS:

It is the opinion of staff that Amendment of the PRO Agreement cannot be approved by the Planning Commission or City Council because the proposed use is not permitted in the Town Center District. The applicant would like to pursue the amendment further as they believe a different conclusion may be reached by the Planning Commission and City Council. **The applicant may seek the Planning Commission's determination on the issue whether the use is permitted. If that is how the applicant wants to proceed, please let staff know no later than seven days prior to the scheduled Planning Commission meeting at which you would like to appear.**

Alternatively, the applicant could apply to amend the Town Center District in order to include the use described as a permitted use. However, it is staff's opinion that this use would represent a significant change to the overall intent of both the PRO Agreement for Adell Center as well as the Town Center District. The ordinance states the Town Center District intent in Section 3.1.25.A, including: "Furthermore, it is recognized that uses which have as their principal function the sale or servicing of motor vehicles, such as automobile service establishments, car washes, or new and used motor vehicle sales or service establishments, and drive-in restaurants and restaurants with drive-through facilities, have a disruptive effect on the intended pedestrian orientation of the districts."

If the applicant has any questions concerning the above review or the process in general, do not hesitate to contact me at 248.347.0484 or lbell@cityofnovi.org.



Lindsay Bell, AICP – Senior Planner

APPLICANT RESPONSE LETTERS



CARVANA
Jo M. Ryan, AICP
Manager, Real Estate
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jo.ryan@carvana.com
503.515.7861

December 1, 2021

Lindsay Bell, AICP
Senior Planner, City of Novi
45175 Ten Mile Road
Novi, Michigan 48375

RE: JZ21-39 Carvana Expansion Lot
Adell Center Unit 6

Dear Lindsay Bell:

In response to the Staff Report issued by the City of Novi on October 26, 2021, recommending denial of the above referenced case, Carvana submits this letter to appeal staff's determination to the Planning Commission. Staff comments are copied below in black, and our responses are provided in blue.

Because the Carvana Vending Machine currently operating on Unit 8 at Adell Center lacks an adequate number of on-site parking spaces, Carvana respectfully requests the ability to provide for employee parking and temporary (less than 48 hours) outdoor vehicle storage of inventory on the nearest available parcel – Unit 6.

Our justification for the Appeal is provided at the end summarizing our responses that support our proposal.

PROJECT SUMMARY

The applicant is proposing to build an inventory vehicle storage lot on unit 6 with 47 parking spaces for use by Carvana, the vehicle vending machine use located on Unit 8. The sites are separated by unit 7, the Texas Roadhouse. The Adell Center is subject to the terms and conditions of a PRO Agreement as well as the Zoning Ordinance.

RECOMMENDATION

Planning does not recommend approval of the proposed amendment of the PRO Agreement for Adell Center, because the use, as described by the applicant, is not a permitted use in the TC, Town Center Zoning District, and therefore would not comply with the underlying zoning and would not be eligible for an amendment to the PRO Agreement as proposed; the PRO ordinance specifically prohibits allowing uses that are not permitted in the new underlying zoning district. Moreover, separate and apart from that reason for disapproval, the Town Center district specifically discourages “uses which have as their principal function the sale or servicing of motor vehicles.” The proposed use is therefore both prohibited and discouraged.

RESPONSE: In 2018, Carvana’s Vending Machine Fulfillment Center was approved as an “Unlisted Use” by City Council, but with no prescribed parking requirements. Having successfully operated here for more than a year, Carvana’s operations now demand additional off-site parking for employees and additional storage of pre-sold vehicles.

The proposed use as an “Off-street parking lot” is permitted in the TC zoning district. The proposed off-street parking lot will be used for Carvana employees (16 spaces) and for the temporary storage of pre-sold vehicles waiting to be loaded into the Vending Machine tower. No vehicle would remain on the off-street parking lot for more than 48 hours. Each pre-sold vehicle stored on the off-street parking lot would be driven to the Vending Machine lot by a Carvana employee at a maximum rate of 3 to 4 cars per hour. Each pre-sold vehicle would then be loaded into the Vending Machine tower for customer delivery. Customer pick-up appointments are pre-scheduled when the vehicle is purchased online, at 15 to 20-minute intervals. The Vending Machine can only vend up to 4 vehicles per hour.

There will be no “sale or servicing of motor vehicles” on the proposed Expansion Lot as none of the vehicles will be “for sale”. Further, Carvana does NO servicing of vehicles on our Vending Machine or Expansion Lot sites.

We contend that the proposed Expansion Lot is consistent with the Village’s Off-street Parking Lot land use classification. The City’s prohibition of the sale and/or storage of motor vehicles within Off-street parking lots (Code section 5.2.8) does not apply as no vehicles will be for sale and no vehicles will be stored on site for longer than 48 hours.

ORDINANCE REQUIREMENTS

This project was reviewed for conformance with the Zoning Ordinance with respect to Article 3 (Zoning Districts), Article 4 (Use Standards), Article 5 (Site Standards), and any other applicable provisions of the Zoning Ordinance. Items in bold underline are significant issues to be addressed or would require new or modified deviations in the 2nd Amendment of the PRO Agreement:

1. Use: The applicant indicates in the narrative provided that this site would be used for parking/short-term outdoor storage of vehicle inventory associated with the Carvana Vending Machine located on a separate site (Unit 8) in the Adell Center condominium. While off-street parking is a permitted use in the TC District, under the applicant’s own narrative that is not what this is.

The language of the TC District clearly intends to prohibit this kind of activity in connection with car sales. Section 5.2.8 prohibits the storage of merchandise, including motor vehicles for sale, in off-street parking lots. The TC District does not permit outdoor storage uses or outdoor space for sale of new or used automobiles. Because the PRO Ordinance does not permit deviations from the uses permitted in the underlying district, this proposed vehicle storage use in connection with the applicant’s principal use

one parcel over is simply not permitted under the Zoning Ordinance at this location.

In fact, based upon staff's initial conversations with the applicant, it is staff's position that the described use would likely be a new or used car lot, which in the City's Zoning Ordinance is more formally called "Outdoor space for exclusive sale of new or used automobiles, campers, recreation vehicles, mobile homes, or rental of trailers or automobiles," and which is a use permitted only in the B-3 General Business District. Alternatively, the use might fall under "Parking for sale of new, unlicensed motor vehicles and parking of licensed rental and loaner motor vehicles," which is a special land use in the P-1 Vehicular Parking District. Neither of those uses is allowed in the TC District.

RESPONSE: Neither (a) the Vending Machine site nor (b) the proposed Expansion Lot will have merchandise for sale. Therefore, neither site is considered "car sales", but rather (a) a fulfillment center for delivery of online purchases, and (b) an Expansion Lot for employee parking and temporary storage of pre-purchased vehicles awaiting to be loaded into the Carvana Vending Machine.

In response to the staff's indication that its described use was an unpermitted new/used car lot, the applicant revised the site plan to show that employees of Carvana would be permitted to park in designated spaces in the lot. It then argued that because employee parking was allowed on the site, it was no longer possible for the City to say that it was "exclusively" for the sale of new or used automobiles, so the use should be permitted. The applicant is, in staff's view, misreading the sentence at issue, essentially by asking the City to rearrange the words in the sentence. The sentence does not describe the use as outdoor space exclusively for the sale of new or used automobiles; it says outdoor space for the exclusive sale of new or used automobiles. As actually written in the ordinance phrase "exclusive sale," the word "exclusive" modifies the word "sale"; it does not modify the word "use" (as in "exclusive use").

It is staff's interpretation that "exclusive sale" in this definition does not mean that the use is exclusive to new or used car sales, and nothing else—like parking customer or employees' cars, or a car wash for detailing cars as they leave the lot. That's particularly clear in light of the fact that this is the section of the Zoning ordinance that the City has used to describe all of its new and used car lots, which do in fact sometimes have those other related uses on them. The phrase is old (it might even be from the original zoning ordinance for the City). But it is also not uncommon, and in fact can be found in the ordinances of some surrounding communities (e.g., South Lyon, where it is also used to describe new and used car dealerships). In that context, the phrase "exclusive sale" was more likely intended to confirm that the vehicles would be "for sale by a single private dealer," and not a lot that is open for anyone to bring a car to sell. If it were to mean that only inventory vehicles could be parked in it, an auto dealership in the B-3 district would be required to build a separate parking lot for employees in order to have the inventory parking lot be "exclusive" to vehicles for sale and look for a different parcel to detail and/or service its vehicles. Put simply, adding employee parking to the proposed parking lot clearly does not negate the "exclusive" part of the use definition. What the applicant is proposing just is not permitted in the TC District.

The applicant also argues the duration of cars stored in the lot does not meet the ordinance definition of "Open Storage, Motor Vehicle" which states: The outdoor standing or placement of motor vehicles including truck trailers for more than three (3) days, including new or used motor vehicles on display for lease or sale. The applicant states the vehicles would not remain in the lot for more than 48 hours. Section 5.2.8 does not reference open storage of motor vehicles. Staff continues to classify the vehicles to be stored as "merchandise" that are in the process of a sales transaction, whether the money changes hands virtually or on-site and whether a buyer views the product online or on-site. The vehicles in inventory are still merchandise involved in a sales transaction prior to being delivered to a buyer, and therefore not permitted in off-street parking lots.

Despite the staff's indication that the use is not permitted, the applicant has stated its continued disagreement with the staff's reading of the language and wants to seek a ruling by some higher authority. Staff, however, questions whether the entire PRO application—including a substantive review of plans and conditions and public benefits the like—should even proceed forward, given the clear prohibition on the ability to approve the use. After consulting with the City Attorney's office, it has been determined that the applicant may ask the Planning Commission to review the use and determine if the

use is authorized in the TC District. That question could be put to the Planning Commission at any available meeting; the issue would not need to be noticed as a public hearing, as the Planning Commission would just be making a determination whether the full PRO amendment application can proceed at a future meeting.

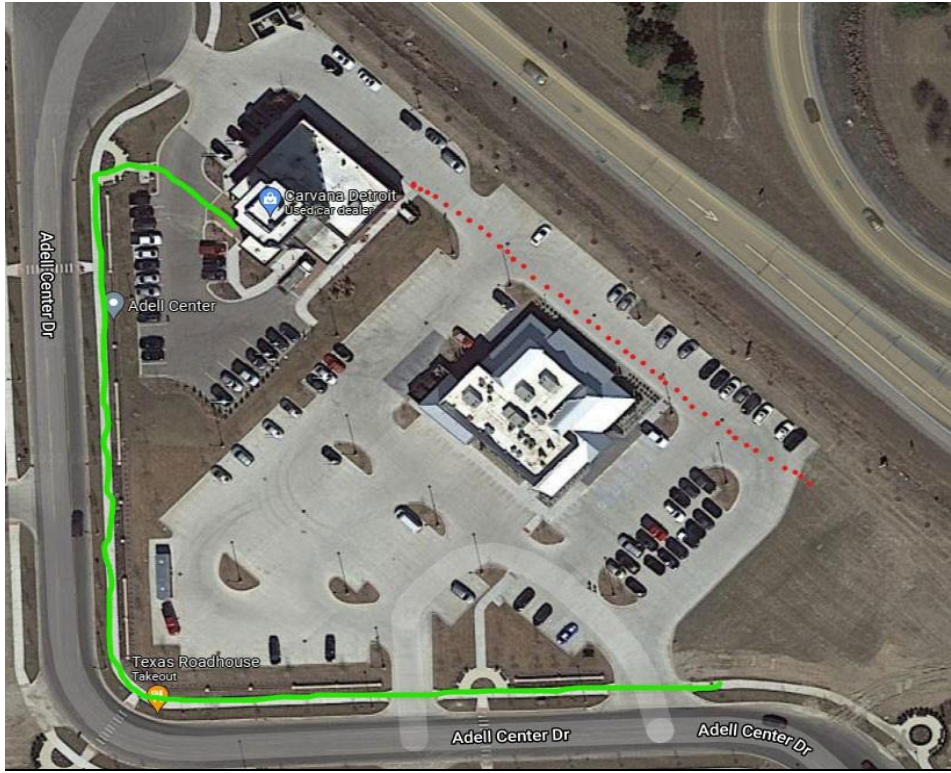
We leave the choice whether to seek a preliminary determination from the Planning Commission as to whether the use is permitted to the applicant. The remainder of this review on the PRO amendment, should it go forward, is for the applicant's information.

RESPONSE: Sixteen (16) of the proposed Off-street parking lot spaces will be used exclusively for Carvana employee parking. The remaining spaces will be used for temporary storage of pre-sold vehicles awaiting delivery to the customer. No merchandise (for-sale vehicles) will be stored on the site and no customers will be permitted on the site.

The Novi Zoning Ordinance defines "Open Storage, Motor Vehicle" as "The outdoor standing or placement of motor vehicles including truck trailers for more than three (3) days, including new or used motor vehicles on display for lease or sale." The "Outdoor Storage of Motor Vehicles" use is not being proposed here as no cars will be "stored" for more than 48 hours. Further, the "storage" of "merchandise" is not being proposed as none of the cars will be for sale. We contend that the prohibition of the "storage" of motor vehicles "for sale" in Off-street Parking Lots does not apply.

2. Off-Premises Parking (Section 5.2.3): The ordinance permits off-premises off-street parking lots under certain conditions, and requires Special Land Use approval from the Planning Commission. *Off-street parking for other than residential use shall be either on the same parcel of and or within three-hundred feet of the building it is intended to serve, measured along a pedestrian walkway from the nearest point of such building to the nearest point of the off-street parking lot.* The sidewalk route from the parking lot to the Carvana building is shown below in green, and measures over 700 feet, which would require a new deviation.

The ordinance goes on to say: *The pedestrian walkway shall be on the applicant's property or within a dedicated right-of-way, provided that a pedestrian walkway approved by the planning commission may cross intervening parcels of land under separate ownership where the applicant has secured necessary permanent easements from the owners of the intervening parcels and the walkway provides a reasonably safe method of pedestrian access between the parking area and the building served.* Adell Drive is a private street in a general condominium, with all owners sharing rights within the 60-foot access easement which includes the sidewalk. There is also shared access easements through the properties. There is a shorter route (dotted red line in the below image – measures approximately 320 feet) through the Texas Roadhouse property northeast of the building, however there is no sidewalk in this location. Staff anticipates dangerous conditions with Carvana employees frequently traversing between the building and the off-premises parking lot, both on foot and driving the inventory cars, through the Texas Roadhouse parking lot. During peak dining hours the safety hazards would be particularly high. Therefore, we do not support a deviation to permit an off-premises parking lot greater than 300 feet of the primary property in this case.



RESPONSE: Off-Street Parking is a permitted use in the TC District, which use is intended to serve patrons of the building it is intended to serve. In this case, there will be no public access to the proposed Expansion Lot; the Expansion Lot will only be accessed by Carvana employees. The number of trips (walking or driving) between the parcels (Vending Machine and Expansion Lot) would be limited to 4 per hour, which is minor in comparison to the vehicle and pedestrian trips associated with the Texas Roadhouse.

Carvana employees currently can patronize the Texas Roadhouse by walking or driving within the shared access easement. Likewise, Texas Roadhouse patrons and employees currently can ingress and egress through the Carvana Vending Machine site due to the shared access that exists on these parcels.

Because there will be no Carvana patrons driving or walking between the Vending Machine and Expansion Lot parcels, and Carvana employee trips would be limited to 4 per hour:

- (a) the potential risk of a “dangerous condition” as referenced above has been mitigated;
- (b) the maximum 300-ft travel length is not applicable, and;
- (c) a deviation would not be necessary.

3. Special Land Use (Section 6.1.2.C): Off-premises parking lots are subject to Special Land Use approval from the Planning Commission. The Planning Commission shall consider the following in the review of the Special Land Use Permit request (staff comment in bold):

i. Whether, relative to other feasible uses of the site, the proposed use will cause any detrimental impact on existing thoroughfares in terms of overall volumes, capacity, safety, vehicular turning patterns, intersections, view obstructions, line of sight, ingress and egress, accel/decel lanes, off-street parking, off-street loading/unloading, travel times and thoroughfare level of service.

Impacts on existing City thoroughfares are not anticipated.

ii. Whether, relative to other feasible uses of the site, the proposed use will cause any detrimental impact on the capabilities of public services and facilities, including water service, sanitary sewer

service, storm water disposal, and police and fire protection to serve existing and planned uses in the area.

Impacts on existing public services are not expected.

iii. Whether, relative to other feasible uses of the site, the proposed use is compatible with the natural features and characteristics of the land, including existing woodlands, wetlands, watercourses and wildlife habitats.

There are no existing natural features on the site.

iv. Whether, relative to other feasible uses of the site, the proposed use is compatible with adjacent uses of land in terms of location, size, character, and impact on adjacent property or the surrounding neighborhood.

The storage of inventory vehicles is not a permitted use in the Town Center District. The ordinance states that in the Town Center District “uses which have as their principal function the sale or servicing of motor vehicles, such as automobile service establishments, car washes, or new and used motor vehicle sales or service establishments... have a disruptive effect on the intended pedestrian orientation of the districts.” Therefore, other feasible uses of the site would be more compatible with the adjacent uses of land, including restaurants, retail, personal service, and office uses.

RESPONSE: This proposal is for an ancillary use to support the primary use of the Carvana Vending Machine. Because the Vending Machine was approved as an “Unlisted Use”, it stands to reason that ancillary uses to support this primary use are not present in Code.

The “disruptive” automotive uses listed above do not apply here. There will be no vehicle sales (only delivery/fulfillment of an online purchase), no vehicle servicing, and no car wash. Because the site will not be open to the public, pedestrian orientation to the proposed Expansion Lot is a non-issue.

Any other use on Unit 6 as listed above would increase pedestrian movement between the sites and generate additional vehicle trips associated with that new use.

Additionally, the relatively small size of this parcel has precluded another user’s interest. We believe our proposed use would be compatible with the adjacent and surrounding uses while supporting an existing business within the Adell Center.

v. Whether, relative to other feasible uses of the site, the proposed use is consistent with the goals, objectives and recommendations of the City’s Master Plan for Land Use.

The Master Plan recommended this area be utilized for office uses to help support nearby retail and restaurant uses. One goal in the Master Plan also states for the I-96/Novi Road area: “Gradually phase out outdoor storage uses over time as redevelopment occurs....”

RESPONSE: An office user has not come forward to develop this ~1 acre site. The proposed use would support an existing successful business within the Adell Center.

vi. Whether, relative to other feasible uses of the site, the proposed use will promote the use of land in a socially and economically desirable manner.

The site is currently vacant. However, in the longer term there could be uses proposed that would be of greater social and economic value.

RESPONSE: Again, the site’s small size and configuration precludes many other viable development opportunities here.

vii. Whether, relative to other feasible uses of the site, the proposed use is:

- a. Listed among the provision of uses requiring special land use review as set forth in the various zoning districts of this Ordinance, and
- b. Is in harmony with the purposes and conforms to the applicable site design regulations of the zoning district in which it is located.

The site design of the use requires additional deviations to be granted including the distance of the off-street lot to the building it serves, parking setbacks distances less than the other units in Adell Center, and absence of a loading zone.

RESPONSE: Carvana is requesting deviations not too dissimilar from what was granted to the Texas Roadhouse. Supporting statements are provided above regarding the distance of this parcel from the Carvana Vending Machine, where loading and unloading of vehicles would continue to occur. Hence, the Expansion Lot will not require a loading zone.

4. Amendment to existing PRO Plan: The subject property is part of a Planned Rezoning Overlay Agreement for the Adell Center Development, which was approved by City Council at its October 22, 2018 meeting. The proposed use and development do not conform to the approved PRO plan for Unit 6, which is indicated to be a restaurant in the PRO Agreement.

An amendment to the PRO Concept plan and the agreement are required to develop this property for the proposed use. However, as noted above, no deviations may be granted for uses not permitted in the underlying district (TC). If the use were permitted in the TC District, new dimensional deviations and conditions would be required based on the layout provided, as well as amendment of previous deviations and conditions.

RESPONSE: Carvana may request a second "Unlisted Use" to permit an ancillary use to serve an existing and approved "Unlisted Use". Whatever process is agreed to, we understand an amendment to the PRO may be necessary to approve the limited number of deviations being requested.

5. PRO Agreement Conditions/Deviations: If for some reason the use was permitted, the PRO Agreement contains the following general and specific conditions and deviations related to Unit 6, with staff comments in bold related to the submitted PRO Plan amendment:

A. When either Unit 6 or Unit 7 is proposed for development, the developer or its successor shall incorporate enhanced pedestrian flow elements with pedestrian crossings, to be approved by the City at the time of preliminary site plan review;

Proposed plan does not incorporate enhanced pedestrian flow or amenities. This condition would need to be amended. As only Carvana employees would access Unit 6, and there is an existing sidewalk and amenity seating area along Adell Drive, this amendment would be supported.

B. Deviation from section 5.12 to allow lack of required frontage on a public road for units 1-8. Frontage for such units shall be on the private drive as shown in the PRO Plan, which shall be built to City standards.

Complies with deviation.

C. Deviation from minimum required exterior side yard building setback (50 feet) to allow a 32.5 foot setback.

No building proposed – complies with deviation.

D. Deviation to allow 18-foot front parking setback from the proposed access easement (along Adell Drive);

Proposed plan proposes a 6.7-foot parking setback from the access easement – additional

deviation required. All other units have an 18-foot front setback. Staff does not support additional parking setback reduction as it interrupts the consistency in streetscape design achieved by having a consistent setback throughout the development.

RESPONSE: The proposed reduced parking setback is located behind the screen wall along Adell Drive. No vehicles will overhang into the pedestrian way. The site constraints (size and configuration) do not facilitate vehicle movement through the site without the need for relief from strict application of setbacks. This deviation is necessary to maximize parking / vehicle storage on this site to provide parking relief for the Carvana Vending Machine site.

E. Deviation allows minimum parking setback of 0 feet on the west side for Unit 6;

Additional setback shown – complies with deviation.

F. Two ground signs are permitted on Unit 6;

No signage proposed besides existing monument sign previously approved.

G. All site plans for the individual units within the Development shall comply with the maximum 15 bay parking requirement;

All bays meet condition.

H. Deviation allows alternate location for dumpsters, provided proposed location does not impact traffic circulation and appropriate screening is provided;

No dumpster proposed. The ordinance does not require a dumpster for similar uses, such as a used car sales or storage lot.

I. Deviation granted to allow loading area within the interior side yard and partly the exterior side yard of Unit 6 (as shown on 1st Amendment PRO Plan);

No loading area proposed. A new deviation is required for absence of loading zone.

RESPONSE: Loading and unloading will occur on the Vending Machine site (Unit 8). No loading zone is necessary for the Expansion Lot.

J. Deviation to allow applicant to provide supporting data to justify proposed loading area square footages at the time of site plan review, to be determined by Planning Commission;

Planning Commission may approve no loading zone, or request deviation in PRO Amendment. The applicant requests a deviation to not provide a loading zone, as they state all truck deliveries would take place on Unit 8.

K. Deviation from the maximum 1 foot candle spillover in section 5.7.3.K., along the interior side property lines internal to the development, provided the applicant submits a photometric plan that demonstrates that the average to minimum light level ratio is kept to the maximum allowable 4:1.

Photometric plan provided shows site average to minimum ratio is 3.1:1. Complies.

L. Deviation to allow light levels to exceed 1 foot-candle along interior property lines and adjacent to Adell drive;

Photometric plan provided shows interior property lines do not exceed 1.0 fc. Complies.

M. Deviation from the required minimum of 15% of the total site area to be designed as permanently landscaped open areas and pedestrian plazas in Section 3.27.1.F(A), to allow the minimum required open space for each Unit to be part of the common element spread within the development boundaries as shown in the Open Space Plan.

The open space requirement is provided by the larger development.

N. The PRO Concept Plan and Roads & Utilities plans show a decorative wall/fence matching the other units in the development along the Adell Drive frontage;

A wall/fence is now shown.

O. Deviation to allow placement of transformers in alternate locations instead of the rear yard, subject to review and approval by the Planning Commission;

Existing transformers/other utility boxes shown.

P. Deviation to allow reduction of the minimum required exterior side parking setback to 13 feet along the northeast property boundary indentation for approximately 50 feet.

14 foot setback shown on plan would be consistent with deviation.

6. Parking Setbacks:

The Plan proposes a 16-foot parking setback along the south lot line where 20-feet is required. A new deviation would be required for reduction in parking setback.

RESPONSE: There will be no impact from reducing the side parking setback from 20 feet to 16 feet because it is adjacent to a loading and unloading zone and trash enclosure on the adjoining parcel.

7. Screening:

Applicant indicates existing berm on I-96 frontage will be maintained. Decorative fence, new trees and existing hedges around pedestrian area will all provide screening along Adell Drive.

NEXT STEPS:

It is the opinion of staff that Amendment of the PRO Agreement cannot be approved by the Planning Commission or City Council because the proposed use is not permitted in the Town Center District. The applicant would like to pursue the amendment further as they believe a different conclusion may be reached by the Planning Commission and City Council. The applicant may seek the Planning Commission's determination on the issue whether the use is permitted. If that is how the applicant wants to proceed, please let staff know no later than seven days prior to the scheduled Planning Commission meeting at which you would like to appear.

Alternatively, the applicant could apply to amend the Town Center District in order to include the use described as a permitted use. However, it is staff's opinion that this use would represent a significant change to the overall intent of both the PRO Agreement for Adell Center as well as the Town Center District. The ordinance states the Town Center District intent in Section 3.1.25.A, including: "Furthermore, it is recognized that uses which have as their principal function the sale or servicing of motor vehicles, such as automobile service establishments, car washes, or new and used motor vehicle sales or service establishments, and drive-in restaurants and restaurants with drive-through facilities, have a disruptive effect on the intended pedestrian orientation of the districts."

RESPONSE: As stated above, there will be no for-sale vehicles, no servicing of vehicles, and no car wash. Further, traffic will be far less than any other use contemplated as this lot will be utilized for employee parking and vehicle storage, rather than serving a new end user (restaurant, retail, office, etc.).

The Carvana Vending Machine Fulfillment Center use is a use not contemplated in the zoning ordinances, i.e. PRO Agreement or Town Center District. Hence the City of Novi City Council approved this use as an "Unlisted Use". Carvana is requesting a similar process here to allow an ancillary use to support the existing Vending Machine for the reasons stated above.

JUSTIFICATION FOR APPEAL:

The Carvana Vending Machine was approved by City Council in 2018 as an “Unlisted Use” as the Carvana Vending Machine Fulfillment Center is not “expressly authorized or contemplated” in the Code. Further, City Council determined that this “use is an appropriate use in the TC District”.

As there is no traditional parking calculation for our specific format, the site plan was approved with 30 total on-site parking spaces. The Carvana Vending Machine in this location has been very successful and has outgrown the current on-site parking for the uses that support its functional operations, i.e. customer parking, employee parking, and vehicle storage spaces for inventory of pre-sold vehicles queuing up to be loaded into the tower as well as trade-in vehicles.

The tower holds 27 vehicles that are stored and displayed until the customer “vends” their vehicle from the Vending Machine. On average, the tower is emptied of vehicles at least once each day, which requires a minimum of 27 vehicle storage spaces be provided, plus additional spaces as inventory arrives on the site for the following sequential days.

Carvana currently operates 30 Car Vending Machines across the country, with several more under construction. These Vending Machines are so efficient at achieving maximum sales that additional staging on the ground is needed ahead of loading the vehicles into the tower. The math suggests that if we empty a tower at least once each day, we need at least that many spaces available on the ground for staging/storing. With most sales including a trade-in, we need almost as many spaces per sale for those cars as well.

Parking Needed:

- 6 – 10 Employee Parking Spaces
 - 2 – 4 Customer Parking Spaces
 - 27 – 54 Vehicle Inventory Spaces
- = 35 – 68 Total Spaces Needed**

Parking Proposed:

- 30 Parking Spaces on Existing Unit 8
 - 47 Parking Spaces Proposed on Unit 6
- = 77 Total Spaces Proposed**

Because the Carvana Vending Machine site lacks an appropriate number of on-site parking spaces, Carvana respectfully requests the ability to provide for employee parking and temporary (less than 48 hours) outdoor vehicle storage of inventory on the nearest available parcel – Unit 6.

Carvana is open to pursuing a second “Unlisted Use” for the proposed ancillary use to support our ongoing operations if that is amenable to City of Novi Planning Staff and Planning Commission.

The proposal complies with many or most of the PRO Agreement Conditions/Deviations as noted above as “complies”. The few deviations that are being requested are not dissimilar from those granted the Texas Roadhouse. A shared access exists across both Unit 8 and Unit 7 to facilitate cross access and parking, as well as crosspollination by patrons.

Carvana intends to continue being a good neighbor to the adjacent businesses by adhering to parking regulations. Though on-site parking is severely constrained, Carvana has not received any code violations for illegal parking of our vehicle inventory.

In an effort to meet customer demands, while adhering to parking regulations, it is imperative that Carvana secures an off-site lot for our parking needs for the reasons stated above.

We look forward to ongoing coordination with staff to make our appeal to the Planning Commission. Please reach out to me at jo.ryan@carvana.com or 503.515.7861 with questions or to discuss further.

Respectfully,

A handwritten signature in black ink that reads "Jo Ryan". The signature is written in a cursive, flowing style.

Jo M. Ryan, AICP
Manager, Real Estate, Carvana



CARVANA

Jo M. Ryan, AICP
Manager, Real Estate
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503.515.7861

January 19, 2022

Novi Planning Commission
45175 Ten Mile Road
Novi, Michigan 48375

RE: JZ21-39 Carvana Expansion Lot
Adell Center Unit 6

Dear Planning Commissioners:

On December 1, 2021, Carvana filed a response to the Staff Report issued by the City of Novi on the above referenced project dated October 26, 2021. We are currently scheduled to present our proposal to the Planning Commission on January 26, 2022.

Carvana has engaged the services of Dennis G. Cowan with Plunkett Cooney, who will represent Carvana's request at the upcoming meeting. This letter is submitted to summarize our proposal.

Proposal

Carvana has been operating a Carvana Vending Machine / Fulfillment Center on Unit 8 at the Adell Center since October 2020. Due to Carvana's success in the on-line used car sales industry, we have outgrown the parking provided on our site.

Therefore, Carvana is seeking approval for a "pathway" to utilize Unit 6 for an expansion lot to accommodate employee parking and temporary outdoor storage of pre-sold vehicles.

Option No. 1 – Unlisted Use

The Carvana Vending Machine / Fulfillment Center use is a use not contemplated in the zoning ordinances, i.e. PRO Agreement or Town Center District. Hence, the City of Novi's City Council approved our current use on Unit 8 as an "Unlisted Use" in 2018 pursuant to Section 4.87 of the Zoning Code (1st Unlisted Use).

Carvana is requesting a similar process here to allow the proposed off-site parking lot use as an "Unlisted Use" to support Carvana's ongoing operations and success (2nd Unlisted Use).

Because the Vending Machine/Fulfillment Center was approved as an "Unlisted Use", it stands to reason that ancillary uses to support this primary use should be granted through the same process.

Option No. 2 – Add Accessory Use as a Permitted Use in the PRO

We understand that the Planning Commission may make a determination as to the proposed accessory use pursuant to Section 4.19 of the Zoning Code in the following manner:

- Determine whether the proposed use meets the definition of an accessory use for "accessory off street parking spaces" currently permitted in the PRO and Sections 2.2 (Accessory Use) and 4.19 of the Zoning Code;
- Recommend approval of the proposed use as a 2nd Unlisted Use;
- Require an amendment to the PRO to permit the proposed accessory use as a permitted use; and/or
- Require an amendment to the Town Center District to include the use described as a permitted use.

Parking Lot Usage

Key features of Carvana's proposed off-site parking lot are as follows:

- The lot will only be used for employees and temporary storage of vehicles (less than 48 hours) to be delivered to the Vending Machine;
- No "sale or servicing of motor vehicles" at the parking lot;
- No Carvana patrons will be allowed at the parking lot nor will there be any outside merchandise or other storage;
- No buildings or structures will be erected on the parking lot;
- A security gate will be installed to facilitate authorized ingress and egress; and
- The adjacent Texas Roadhouse access easement will not be utilized by Carvana to reach the parking lot.

Summary


The subject lots (Unit 6 & Unit 8) are separated by Unit 7, the Texas Roadhouse restaurant. Carvana has been in communication with Texas Roadhouse executives to discuss our proposal, and we understand that they are not opposed to our proposal.

Carvana intends to continue being a good neighbor to the adjacent and surrounding businesses by adhering to parking regulations. Though on-site parking is severely constrained, Carvana has not received any code violations for illegal parking of our vehicle inventory.

In an effort to meet customer demands while adhering to parking regulations, it is imperative that Carvana secure an off-site lot within the Adell Center for our parking needs.

We look forward to presenting to the Planning Commission on January 26th. Please reach out to me at jo.ryan@carvana.com or 503.515.7861 with questions or to discuss further.

Respectfully,



Jo M. Ryan, AICP

Manager, Real Estate

MEMO FROM CITY ATTORNEY

MEMORANDUM

TO: Chair Pehrson
Novi Planning Commission Members

FROM: Thomas R. Schultz, Esq.

RE: Carvana Parking/Storage Lot - Adell Planned Rezoning Overlay (PRO)

DATE: January 21, 2022

Carvana wants to develop the currently vacant Unit 6 of the Adell PRO—approved under the PRO Plan and PRO Agreement for restaurant use—as a vehicle parking/storage area with 47 parking spaces to be used in connection with the Carvana building located on Unit 8. (The existing Texas Roadhouse Restaurant is located between Units 6 and 8, on Unit 7.)

The Planning Department has informed Carvana that the proposed use of Unit 6 for parking/storing unlicensed used vehicles in the process of being sold is not a permitted use in the TC Town Center District; rather, it falls within the new/used car lot provision of the City's Ordinance, which allows the use in the B-3, General Business District (as a special land use). Alternatively, according to the Planning Department, the use could also theoretically fall under the P-1 Parking District provisions related to "parking for sale of new, unlicensed motor vehicles and parking of licensed rental and loaner motor vehicles." In any event, the parking of vehicles for sale is specifically precluded in the TC District.

Carvana disputes the Planning Department's interpretation for a host of reasons. Normally, the Department's decision could be appealed to the Zoning Board of Appeals. This property, however, is subject to a Planned Rezoning Overlay (PRO), as to which the ZBA has no jurisdiction. Rather than require Carvana to go directly to the Oakland County Circuit Court to challenge the Department's determination, the matter has been placed on the Planning Commission's agenda to allow Carvana to state its position and allow the Planning Commission to make a determination to resolve the issue at the City level. (This procedure can be found under Section 6.1 of the Zoning Ordinance relating to preliminary site plans.)

The Planning Department's initial review letter (dated October 26, 2021) lays out the Department's position on the issue, including discussion of outdoor storage and off-street parking regulations in the TC District and how the proposed use might fit in some other district. Carvana has responded with a couple of different letters stating its position, which primarily address the City's options under the Unlisted Use Determination provisions of the Zoning Ordinance. Our office was asked to provide additional insight or information from the City Attorney's perspective, since we were consulted by the Planning Department before the Department made its determination on the issue and the relatively little-used Unlisted Use Determination provision are at issue (which this memo will focus on).

Overview

Imagine if Carvana (a used car dealer licensed to operate in the State of Michigan) had originally approached the City and said that it wanted to have a use in the Adell PRO, in the TC District that had:

- A tall glass tower-like building that would hold (indoors) up to 28 unlicensed used cars waiting to be transferred to buyers; and
- An adjacent parking area with 77 spots for more unlicensed used cars waiting to be transferred to buyers, as well as employees and customer parking.

Without question, the City would have said that was a used car lot under the City's Zoning Ordinance. The use is actually described more ambitiously in Section 4.36 of the Ordinance as "Outdoor spaces for exclusive sale of new or used automobiles, campers, recreation vehicles, mobile homes, rental trailers or automobiles," which is a use only permitted in the B-3 District. The City would have also pointed out at the time that the TC District not only doesn't list new and used car lots as permitted uses, it actually goes out of its way to specifically say that the district *discourages* "uses which have as their principal function the sale or servicing of motor vehicles."

It wouldn't have mattered that the cars sitting in the lot might "turn over frequently" because they have theoretically been sold "on-line" and are just awaiting pick up/delivery to customers. There is no way for the City to know how long any particular vehicle would be located on one of those outdoor parking spaces. And it wouldn't have mattered if the preliminary actions toward the sale were conducted online, either. That actually happens at other car dealerships, as well, in 2022. From a land use perspective, any vehicle parked there would still be an unlicensed vehicle in a lot full of other unlicensed vehicles awaiting transfer to customers.

Because the use described would clearly have been a used car lot, it never would have been part of the Adell PRO development. PROs cannot change uses. They can vary what are known as "area and bulk" requirements in the ordinance—height, setback, area, landscaping, etc., requirements—but not the underlying uses. So that's not what Carvana presented to the City. It presented its use as a totally different concept from a used car lot—limited parking on the ground, mostly for employees and customers, with a few spaces to temporarily store vehicles, but with the primary use being a unique tall glass building that it called a "vending machine," where most of the vehicles would actually be stored and where buyers would simply come to pick up vehicles.

The City reviewed Carvana's lengthy submissions, reviewed the narratives submitted and the representations made, and agreed that, based upon that information, the Carvana building as the predominant use on Unit 8 was not a typical new or used car dealership that would otherwise be limited to the B-3 District.

City Council's Approval of Carvana on Unit 8

More specifically, on October 22, 2018, following the Planning Commission's recommendation of August 22, 2018, the City Council granted Carvana's request for an Unlisted Use Determination as a "Vending Machine Fulfillment Center," in the TC District subject to certain conditions and based upon the following reasons:

- (a) Carvana is not expressly authorized or contemplated in the City of Novi's Zoning Ordinance as a principal permitted use or a principal permitted use subject to special conditions;
- (b) The proposed use is an appropriate use in the TC District, but only in the location and as part of the development proposed at 43700 Expo Center Drive, and not in other locations in the TC District, and therefore this determination is subject to and contingent upon the City Council's approval of the proposed PRO rezoning for the property as a whole and the recording of the PRO Agreement and the terms thereof; and
- (c) A trip generation report or any additional information as required by the City's traffic consultant will be submitted at the time of special land use consideration.

Attached as part of the packet of information available to and relied upon by the City Council (and before that the Planning Commission) was the "Proposed Development Project Narrative" submitted by Carvana, which made a number of representations, including:

- "Carvana's proposed use differs significantly from the traditional automobile sales facility. Rather than utilizing large surface parking areas to store and display vehicle inventory onsite, Carvana facilitates the sale of used vehicles online at Carvana.com. The cars are then transported to the Carvana fulfillment center nearest the customer and are then made available for a customer pick up via a state-of-the-art vending machine structure." (Page 4)
- "Carvana packs a lot of excitement into a small site. While most traditional car dealers require 10-20 acres to house their showrooms and inventory, Carvana requires on average only 1-3 acres for their vending machine store locations and only 1.3 acres specifically for Novi, MI. Carvana is able to comfortably place the tower, welcome center, customer parking, landscaping and stormwater retention on the site. This is in large part because there are no vehicles on display for direct sale, all sales occur online." (Page 6)
- "The proposed development uses a smaller footprint than a traditional car dealership, and by reducing the amount of parking on the site, more green area is provided. Additionally, the overall traffic impact to the site will be reduced. The proposed development will have a positive aesthetic impact on the surrounding area." (Page 10)
- "In order to reduce the number of deviations requested pursuant to the request of the Planning Commission at the July 11, 2018, meeting, Carvana has reduced its request for parking to the 30 spaces allowed by the "TC" District. By doing so, Carvana will be able to better meet the Planning Commission's desire for more open space and more walkable overall development." (Page 15)
- "The vending machine fulfillment center is a limited-scope facility, designed to facilitate customer pick-up of vehicles because any other tasks are undertaken at centralized facilities, prior to distribution to Carvana's cell phone call haulers." (Page 18)

The City Council was also given a copy of the August 17, 2018, letter from Carvana to the Planning Commission. With regard to parking, Carvana states this:

"There are a number of references to whether Carvana meets the City's parking requirements and *whether 30 spaces are sufficient for Carvana's use*. Carvana has withdrawn its earlier deviation request seeking additional parking and is

confident that having 30 parking spaces onsite is sufficient for the proposed use, six of which will be for our employees. *The 30 parking spaces that will be allocated during the site plan review process are sufficient to accommodate the parking needs of our employees, visitors, and cars that have been delivered to the site but have not yet been loaded into the vending machine.*

Carvana goes on to do an analysis of the way it facilitates signing of the final paperwork after a customer comes to pick up a vehicle:

"Appointments are generally spaced 30 to 60 minutes apart. Based upon our experience at our 13 other Carvana Vending Machine Fulfillment Centers, they experience between 6 and 15 customer pick-ups per day. Based on this information, even if Carvana had a full staff of 6 employees, 2 customers per hour, 9 cars placed temporarily in available parking spaces (which will be loaded into the tower immediately) and at least 2 single car haulers parked in the allocated parking spaces that would still only amount to a total of 19 spaces being utilized, leaving us with 11 available parking spaces. Those extra parking spaces could be used for customers who arrive early or any returned vehicles awaiting pick-up for relocation. *Carvana is not a traditional car dealership, therefore the need for excess parking should not be required.*"

Bottom line, Carvana argued that the cars it was selling were almost entirely stored inside, and that more parking/storage would not be needed in the future, making it more of a retail use than a traditional car lot—and therefore appropriate to put in the City's TC District, in a retail setting proposed to be "high end." The Council accepted those representations.

The New Request

Carvana's new request is not to expand the parking on its site, but to use the entirety of Unit 6 for an additional 47 parking spaces that would be available for storage of unlicensed vehicles for sale. The spaces are not part of the Carvana site itself, but are located some 700 feet away (by sidewalk) on an entirely different parcel of property. That sort of stand-alone parking for vehicles being sold is not, in the Planning Department's opinion, some new or innovative use that had not been seen before (like the "original" Carvana request on Unit 8). It's just a storage lot for used vehicles being sold. It's permitted in the B-3 or P-1 Districts. Because the Unlisted Use Determination provision is only available for uses that are not otherwise authorized in the City or were not contemplated in the City by the ordinance due to their uniqueness, Section 4.87, then according to the Planning Department (and we agree), it is not available for use here because the parking/storage use described is authorized elsewhere and has been contemplated by the City.

Carvana's response makes a handful of different arguments, none of which, in our view, fundamentally respond to the Department's determination that the use as proposed is a used car lot for purposes of the ordinance:

- *"It's an off-street parking lot."* It is not an off-street parking lot, since the vehicles that will be stored there will be unlicensed and not "parked" during use so much as simply stored the way they would be at a used car lot. As the Staff Report indicates, "off-street

parking” is a term of art in the Zoning Ordinance. It relates to required parking for a principal use of a property. To be considered required off-street parking under the Zoning Ordinance, the area needs to be either on the site to which it relates or it needs to be within a certain distance of the site—300 feet by sidewalk. The lot in question is nowhere near that as the Staff Report makes clear.

- “*There will be parking for Carvana employees.*” Most new and used car lots also have some parking for the employees who work there.
- “*No vehicle would remain on the off-street parking lot for more than 48 hours.*” The City actually has no way of knowing if this is true, and no way of enforcing it even if it were made a condition. Even more importantly, if the visual effect is still up to 47 unlicensed used cars parked there awaiting transfer, why would it matter that the cars turn over every 48 hours? It’s still the same use, with the same land use character and impact.
- “*There will be no sale or servicing of motor vehicles on the lot.*” Not all new and used car lots (particularly used car lots) include the servicing of motor vehicles. It also is not clear what Carvana means when it says the vehicles are not for sale, because they’re already sold. In fact, these unlicensed vehicles are still in the process of being sold, and their status as far as title is not really what matters from a *land use* perspective. They appear and function just like any other unlicensed used car looking to be transferred to an owner at some point.
- “*It’s an accessory use to a permitted use (the existing Carvana building).*” In its most recent submission (January 19, 2022), this appears to be a new assertion: that the parking/storage on Unit 6 can just be considered accessory to the principal Carvana use on Unit 8. As the Commission knows, accessory uses also have to be on the same parcel as a principal use. The parking being proposed would be the actual, principal use of Unit 6, not an accessory use to the use 700 feet away on Unit 8.

Carvana makes a number of other points and arguments that can be best characterized as explaining why they need the additional parking on Unit 6 for their Unit 8 use, and why the use would be appropriate and aesthetically acceptable. Not to put too fine a point on it, however, that’s not the question before the Planning Commission. The question before the Planning Commission is whether the proposed use is a use not otherwise provided for or contemplated in the City’s Zoning Ordinance.

The Planning Department’s answer is that it’s a use that is provided for, but in the B-3 District as a used car lot or in the P-1 District as a storage lot for new and used vehicles for sale. We agree with the Planning Department that the Planning Commission and City Council aren’t faced with the same question they were when the original Carvana proposal was made for Unit 8—something unique in the sense that it was essentially a used car sales facility that takes place primarily indoors, in a unique structure as more of a retail transaction. What Carvana is proposing on Unit 6 is parking or storage for unlicensed used vehicles that are being sold to customers. That use, standing alone on a parcel of property, is recognizable in other parts of the City’s Zoning Ordinance.

LINKS TO ORIGINAL MATERIALS

[Planning Commission Packet](#), August 22, 2018, regarding Unlisted Use Determination for Carvana

[Planning Commission minutes](#), August 22, 2018, regarding Unlisted Use Determination for Carvana

[City Council Minutes](#), September 24, 2018 – Initial consideration of Unlisted Use Determination for Carvana

[City Council Packet](#), October 22, 2018 – Final approval of Unlisted Use Determination for Carvana

[City Council Minutes](#), October 22, 2018