



Sundance Grille & Cantina (fka Ole Ole) JSP12-73

Sundance Grille & Cantina (fka Ole Ole) JSP12-73

Consideration of the request of Theodore Andris for Preliminary Site Plan and Section 9 Façade Waiver. The subject property is located in Section 2 at 1103 East Lake Drive in the B-3, General Business District. The applicant has altered the building colors and is now seeking a waiver for non-compliance with the Façade Ordinance.

REQUIRED ACTION

Approval/denial of the Preliminary Site Plan and Section 9 Façade Waiver

REVIEW	RESULT	DATE	COMMENTS
Facade	Approval not recommended	09-26-13	<ul style="list-style-type: none">• Section 9 façade required to allow the use of intense colored façade materials and to allow colors that are not harmonious with those of adjacent buildings• Applicant should consider repainting cedar shingles to a subdued color (i.e. weathered gray, etc.)

Motion sheet

Approval:

In the matter of Sundance Grille & Cantina (fka Ole Ole), JSP 12-73, motion to approve the Preliminary Site Plan and Section 9 façade waiver on the basis that the colors proposed to be used on the exterior walls:

1. Are in keeping with the intent and purpose of Section 2520 because _____, and
2. Will be consistent with or enhance the building design concept because _____, and
3. Properly relate to the buildings and other restaurants in the surrounding area because _____.

-OR-

Conditional Approval:

In the matter of Sundance Grille & Cantina (fka Ole Ole), JSP 12-73, motion to approve the Preliminary Site Plan and Section 9 façade waiver on the condition that:

1. The use of the amount of dark blue be reduced by repainting the cedar shingles located on the mansard roof to a color consistent with the material, such as weathered grey or a color consistent with the asphalt shingles, and
2. Repainting the wood fence enclosure and door panels to a less intense color.

Subject to the reduction of overuse of blue, the colors proposed to be used on the exterior walls are found by the Planning Commission to be in keeping with the intent and purpose of Section 2520 of the Zoning Ordinance and will be consistent with and will enhance the building design concept and properly relate to the residential buildings and other restaurants in the surrounding area, which are painted predominantly in subdued earth-tone colors.

-OR-

Denial:

In the matter of Sundance Grille & Cantina (fka Ole Ole), JSP 12-73, motion to deny the Preliminary Site Plan and Section 9 façade waiver on the basis that the colors proposed to be used on the exterior walls:

1. Are not in keeping with the intent and purpose of Zoning Ordinance Section 2520, and
2. Will not be consistent with or enhance the building design concept because the dark blue painted on the cedar shingle roof area represents an overuse of a color that is architecturally out of context with the building, and
3. Fail to properly relate to the buildings and other restaurants in the surrounding area because the overuse of the light and dark blue together results in a visual intensity of the building relative to the surrounding buildings which are painted in predominantly earth-toned colors.

FACADE REVIEW



September 24 2012

City of Novi Planning Department
 45175 W. 10 Mile Rd.
 Novi, MI 48375-3024

Re: **FACADE ORDINANCE - Facade Review – Preliminary S.P.**
Sundance Grille & Cantina (FKA Ole-Ole), 1103 East Lake Dr., PSP12-0052
 Façade Region: 1, Zoning District: B-3, Building Area: 3,500 S.F., 1-Story

Dear Ms. McBeth;

The following is the Facade Review for Preliminary and Final Site Plan Approval of the above referenced project. The percentages of materials proposed for each façade are as shown on the table below. The maximum percentages allowed by the Schedule Regulating Façade Materials (AKA Façade Chart) of Ordinance Section 2520 are shown in the right hand column. Materials in non-compliance with the Façade Chart, if any, are highlighted in bold. Please note that material percentages shown below are approximate as scaled drawings were not provided.

	West (Front)	North	South	East	Ordinance Maximum (Minimum)
Brick	0%	0%	0%	0%	100% (30%)
Wood Siding (Painted)	60%	65%	65%	75%	0%
Cedar Shingles (Painted)	30%	10%	25%	0%	Not Listed
Asphalt Shingles	10%	25%	10%	25%	25%

As shown above the percentage of wood siding and asphalt shingles exceed the maximum amounts allowed by the Ordinance and the percentage of brick is below the minimum percentage required by the Ordinance. Roof appurtenances are not screened as required by the Façade Ordinance. The above are existing conditions that predate the Façade Ordinance and are therefore not part of this review. This review addresses only the recently completed painting of façade materials.

This letter is written pursuant to a violation of the Façade Ordinance Section 2520. Section 2520.2 requires that colors be harmonious with other colors used on the subject building as well as adjacent buildings, and states that the use of intense colored façade materials to increase the visual presence of the building for the purpose of advertising is considered inconsistent with the Ordinance.

EXISTING BUILDING



WEST FAÇADE (12/4/12)



WEST FAÇADE (9/24/13)



NORTH FAÇADE (12/4/13) (9/24/13 UNCHANGED)



SOUTH & WEST FACADES (9/24/13)



EAST & NORTH FACADES (9/24/13)



SOUTH FAÇADE (9/24/13)



DUMPSTER (12/4/12)



DUMPSTER (9/24/13)



GUARD RAIL (12/4/12) (9/24/13 – GUARDRAIL HAS BEEN ELIMINATED)

ADJACENT BUILDINGS



ADJACENT BUILDINGS



ADJACENT BUILDINGS



ADJACENT BUILDINGS



10th, RIGHT



11th, RIGHT



12th, RIGHT



13th, RIGHT



14th, RIGHT

Since our prior inspection of the subject property several improvements have been made with respect to the Ordinance violation; 1 -the formerly blue-colored dumpster enclosure has been re-painted “battleship” grey color, and 2 - the formerly blue-colored guard rails have been removed altogether. Other minor alterations to the west (front) façade have been made that do not affect the status with respect to the Façade Ordinance violation.

As evidenced by the above photographs adjacent buildings exhibit the consistent use of subdued earth-tone colors. With the possible exception of blue shutters on one building (4th RIGHT), no intense colors can be found on the adjacent buildings. As stated in our prior review dated 12/4/12, it is our observation that the colors used on the subject building are significantly more intense and are not harmonious with the colors found on the adjacent buildings. This is in direct violation of Section 2520.2 of the Façade Ordinance which requires that colors be harmonious with other colors used on the subject building as well as adjacent buildings.

The applicant has requested a Waiver under Section 2520.9 (AKA a Section 9 Waiver) for the use of the chosen colors as currently exists on the building. This Section requires that the applicant provide a “definitive description of the building design consisting of a written design statement which shall describe how the selected façade materials and/or colors ... will be consistent with and enhance the building design concept and how the materials and/or colors properly relate to the buildings in the surrounding area. In his letter dated 9/4/13 the applicant states that the chosen colors “are coordinated with the sky and water that surrounds the restaurant”, and are intended to “have a resort feel which is consistent with the restaurants along Walled Lake.” During several visits to the subject property and surrounding area, evidence of said coordination between the color of the sky and water (which is ever changing depending on weather conditions) was not observed, nor were any other restaurants that achieved a “resort feel” via the use of unique paint colors evident. In fact only two other restaurants exist both of which exhibit subdued earth-toned colors consistent with the nearby residences.


We would like to emphasize that we do not believe that the chosen colors (light and dark blue) themselves represent a violation of the Façade Ordinance. Rather, we believe the violation stems from the overuse of these colors and the resulting visual intensity of the building relative to surrounding buildings. Certainly, re-painting of the dumpster and removal of the guard rails, both of which were painted dark blue at the time of the violation, represents a significant improvement. Similarly, we believe the dark-blue painted on the cedar shingle roof area represents an overuse of color that is architecturally out of context with the building. This area represents a large percentage of the overall façade and, whether intended or not, has the overall visual effect of excessively disguising the building from its surroundings and in effect advertising the presence of the building. This is specifically prohibited by the Façade Ordinance and we believe is the principle basis for the violation.

We repeat our suggestion that the amount of dark blue color be reduced. This could be accomplished for example by re-painting the cedar shingles located on the mansard roof areas of the north, west and east facades a color that is consistent with that material, for example weathered grey or a color matching the adjacent asphalt shingles. Likewise, other areas of dark blue such as the wood fence enclosure on the north façade and door panels should be re-painted a harmonious, less intense color. This approach was generally discussed during a meeting between DRN and the applicant at the project site on approximately 3/8/13. At that time the applicant indicated that he would consider repainting the mansard roof areas as part of a larger renovation project to be completed within one year. DRN indicated that that seemed to be acceptable subject to acceptance by the City of Novi. It was recommended that the applicant submit drawings (or photographs) and a sample board indicating the proposed color(s) and written assurances as to the timing for completion of the project.

Recommendation – For the reason stated above it is our recommendation that the paint colors currently existing on the subject building are inconsistent with Section 2520.2 of the Ordinance. We are unable to recommend a Section 9 Waiver at this time.

If you have any questions regarding this project please do not hesitate to call.

Sincerely,
DRN & Architects PC



Douglas R. Necci, AIA

APPLICANT LETTER REQUESTING WAIVER

THEODORE S. ANDRIS, P.C.
ATTORNEY AND COUNSELOR AT LAW
24901 NORTHWESTERN HIGHWAY
SUITE 411
SOUTHFIELD, MICHIGAN 48075
(248) 354-2460

FAX: (248) 354-1518

September 4, 2013

Novi Community Development Department
Attn: Kristen Kapelanski (kkapelanski@cityofnovi.org)
45175 West Ten Mile Road
Novi, MI 48375

Re: 1103 East Lake Drive, Novi, MI (Sundance Grille & Cantina)

Dear Ms. Kapelanski:

As discussed with you, we are writing to request a façade waiver (paint color) relative to our restaurant located at 1103 East Lake Drive, Novi, Michigan. In relevant part, the Novi Zoning Ordinance Section 2520(9) provides that a façade waiver may be granted when the property owner shows that:

“... the selected façade materials and/or colors and material combinations will be **consistent** with and will **enhance** the building design concept and how the materials and/or colors properly relate to the buildings in the surrounding area”.

We have attached to this request three color photographs. The first two photographs depict the current color of the building while the third photograph depicts the color of the building as it existed when we purchased the restaurant in October 2012.

As is evident from these photographs, the restaurant was previously primarily painted yellowish orange, with red along the roof and trim and the framing around the windows was painted green. When we purchased the building and after consulting with many customers and neighbors, we painted the building in a light blue color with darker blue around the roof and window frames. The dumpster and railings are painted battleship gray pursuant to discussions with your consultant, Mr. Doug Necci.

**THE CHOSEN COLORS ARE CONSISTENT WITH AND
ENHANCE THE BUILDING DESIGN CONCEPT**

Here, the chosen blue colors we used are coordinated with the sky and the water that surrounds the restaurant. We ask that the Planning Commission be mindful of the fact that the restaurant is not located in the central downtown district of Novi, but instead on a

waterfront beach which should in common sense terms allow a different overall appearance as compared to other areas in Novi. The chosen colors have a resort feel which is consistent with the restaurants location along Walled Lake.

The colors themselves were chosen after a vote by the employees and some of the regular customers who agreed that the colors are consistent with and would enhance the overall design of the building, especially when compared to the previous uncoordinated color scheme that apparently met the City's approval.

Again, the restaurant was previously painted a yellowish orange, red and green. It would border on absurdity for us to think that the blue color we painted the restaurant that matches the surrounding area of the lake and sky would be more inconsistent than the yellowish orange and red that previously existed. Seemingly, nobody would think that if the prior scheme was permitted, that the current sky blue and contrasting blue would not be permitted.

THE CHOSEN COLORS PROPERLY RELATE TO THE SURROUNDING ENVIRONS

Significantly, the two closest neighbors to the restaurant are accepting and approve of the color. In addition, none of the customers, many of whom live and/or work in the immediate area, have complained about or objected to the current color of the building.

Furthermore, in addition to painting the exterior of the restaurant, we are also in the process of going through the approval process relative to the expansion of the building itself along with the development of the parking lot. Doug Necci took this into consideration and agreed to allow the mansard roof color for a period of one year while waiting for the entire project to formalize.

In addition to the above waiver request, we also submit that the subject Ordinance that pertains to paint color is unconstitutional. The relevant section of the Novi Zoning Ordinance Section 2520(2) that pertains to the color of the exterior of a commercial building provides as follows:

2. Color: Colors of all facades and roof materials proposed for a building reviewed under this Ordinance shall be established by the applicant as an integral part of the building design, and shall exhibit evidence of **coordination** and selection with respect to the overall visual effect of the building. The color of each façade material shall be **harmonious** with the color of all other façade materials used on the same building, as well as the color of façade materials used on adjacent buildings. For the purpose of this Ordinance, **harmonious** shall be defined as colors which are **complementary in hue, tone and intensity**. The use of **dissonant** and/or **intense** colored façade materials shall be deemed inconsistent with this section. The use of façade materials to form a background or component

in a sign, or to increase the **visual presence of the building for the purpose of advertising shall be deemed inconsistent with this Section.**

A statute may be declared void for vagueness if (1) it does not provide fair notice of the conduct it regulates; (2) it gives the trier of fact unstructured and unlimited discretion in concluding whether the statute has been violated; or (3) it is overbroad and infringes on First Amendment freedoms. English v. Blue Cross Blue Shield of Michigan, 263 Mich. App. 449, 469; 688 N.W.2d 523 (2004).

**THE ORDINANCE DOES NOT PROVIDE FAIR NOTICE OF
THE CONDUCT IT REGULATES**

A statute provides fair notice:

“if it gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required“. Id.

A statute **cannot** use terms that require persons of ordinary intelligence to **guess its meaning and differ about its application.** People v. Noble, 238 Mich. App. 647, 652; 608 N.W.2d 123 (1999).

Here, the portion of the Novi Zoning Ordinance cited above is entirely vague as to what is permitted and or required in terms of the color of a commercial building. The Ordinance is lacking in that it provides no clear cut answer as to what color is permitted. Furthermore, the “guidelines” established by the Novi legislature are entirely subjective in nature and incorporate absolutely no objective standards relative to paint color. As a result, property owners are left to guess when it comes time to paint their building. Obviously, and ordinance that would **allow** a façade to be red, yellow and green in the present setting would hardly be giving fair notice that two varying shades of blue would be prohibited.

**THE ORDINANCE GIVES THE TRIER OF FACT UNSTRUCTURED
AND UNLIMITED DISCRETION IN CONCLUDING WHETHER THE
STATUTE HAS BEEN VIOLATED**

When determining whether a statute inappropriately delegates unstructured and unlimited discretion to a decision maker, the court examines whether the statute:

“provides standards for enforcing and administering the laws in order to ensure that enforcement is not arbitrary or discriminatory“. Id.

In Novi, the property owner cedes all control of the appearance of their building to somebody in the Zoning Department who acts as the judge, the jury and the designer.

The Ordinance uses words and concepts such as “coordination and selection with respect to the overall visual effect of the building“; “harmonious“; “complementary in hue, tone and intensity” and “dissonant” and “intense“ but it fails to provide any guidelines in terms of what these phrases mean.

By using such vague concepts, the Ordinance allows for arbitrary enforcement. What one person may consider to be “harmonious”, “complementary” or “coordinated“, another person may consider to be “dissonant” or “intense”.

**THE ORDINANCE IS OVERBROAD AND INFRINGES ON FIRST
AMENDMENT FREEDOMS**

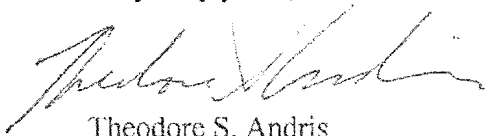
The color of a commercial building is a form of expression that is unconstitutionally being infringed by the Novi Zoning Ordinance.

In summary, my wife and I and our partners have been property owners in the City of Novi for approximately 35 years and have paid significant sums of money (between one quarter to one half million dollars) in property taxes without much need to use the police, fire or other special municipal services all to the good of the City. We currently employ several workers at our restaurant and service the community by providing quality food at affordable prices in a safe and friendly environment, all of which lends to the overall prosperity of the community. To the best of our knowledge, the person who decided to accuse us of poor taste in selecting paint colors doesn’t even live in Novi, doesn’t pay taxes in Novi and doesn’t even work for Novi any longer.

We trust that based on all of the above, you will grant the requested façade waiver which will allow us to focus all of our attention and efforts on developing and improving our restaurant and continue to be productive for ourselves, our workers, and the community.

Thank you for your consideration of the above. I remain

Very truly yours,



Theodore S. Andris
TSA/nf
Enclosures

MAPS
Location
Zoning

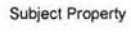

JSP12-73 Sundance Grille & Cantina (fka Ole Ole)

Location



Map Author: Kristen Kapelanski
 Date: 10-01-13
 Project: Sundance Grille JSP12-73
 Version #: 1.0

Map Legend

-  Subject Property
-  City Incorporated Boundary



City of Novi
 Planning Division
 Community Development
 45175 W Ten Mile Rd
 Novi, MI 48375
cityofnovi.org



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 available sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be considered as survey measurements performed by a licensed Michigan Surveyor as defined as Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

JSP12-73 Sundance Grille & Cantina (fka Ole Ole)





Zoning



Map Author: Kristen Kapelanski
 Date: 10-01-13
 Project: Sundance Grille JSP12-73
 Version #: 1.0

MAP INTERPRETATION NOTICE
 Map information depicted is not intended to replace or substitute for any official or primary source. This map was prepared to meet National Map Accuracy Standards and use the most recent available sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be considered 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 obtain source and accuracy information related to this map.

Map Legend

-  Subject Property
-  City Incorporated Boundary
-  R-4: One-Family Residential District
-  B-3: General Business District



City of Novi

Planning Division
 Community Development
 45175 W Ten Mile Rd
 Novi, MI 48375
cityofnovi.org



1 inch = 61 feet