



## CITY of NOVI CITY COUNCIL

Agenda Item 6  
August 24, 2015

**SUBJECT:** Consideration of a request from Michael and Rachael O'Sullivan for a variance from Section 11-216(e)(8) and Section 11-256(f) of the Design and Construction Standards, which allows a maximum driveway slope of 10% and a maximum sidewalk cross slope of 2%, to allow the applicant to maintain the slopes as-constructed for the construction of a home at 21379 Equestrian Trail (parcel 22-32-401-074).

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *BTC RJA*

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

### BACKGROUND INFORMATION:

The property owners at 21379 Equestrian Trail in Maybury Park Estates are requesting a variance from two sections of the Design and Construction Standards related to the slope of a residential driveway and the cross-slope of the sidewalk along Equestrian Trail. The approved plot plan for construction of the single family home demonstrated compliance with the ordinance standards. When the City's consultant completed the final grade inspection, there were several deviations from the slopes allowed by the ordinance. The applicant is seeking relief from the standards for the as-constructed slopes.

The ordinance sets a maximum running slope for a driveway at 10%, whereas the as-constructed slope on the easterly driveway is 11-14%. The applicant said that they changed the slope in the field because of a manhole that was too low. However, the manhole could have been adjusted to better accommodate the slope shown on the approved plan. Since the driveway is located on private property and the property owner is willing to accept the condition, staff can support this part of the variance request.

The Engineering Design standards set the maximum cross-slope of a sidewalk at 2%, which is consistent with the Federal Americans with Disabilities Act (ADA) Standard, attached. The sidewalk cross slopes as constructed in the field exceed the 2% maximum in more than half the locations measured. Since Equestrian Trail is a private street, it would be the responsibility of the condominium owners to ultimately make the sidewalk cross slope compliant with ADA Standards, not the City. However, the review standard for the variance in Section 11-10 of the ordinance requires that "the granting of the variance will not be detrimental to public health, safety, or welfare..." The federal requirement for the sidewalk cross-slope is primarily intended to protect wheelchair users from becoming unstable. In this situation, the constructed cross slopes of 3-4% could pose a risk to sidewalk users in wheelchairs. The only remedy for the situation is to remove and replace several sections of sidewalk, which would be expensive for the applicant. However, the constructed sidewalk substantially deviates from the standard and poses safety concerns to a segment of the population. For these reasons, staff cannot recommend approval of this part of the variance request.

If the variance for the sidewalk were to be granted, a hold harmless should be provided to the City by the Homeowners Association accepting the liability associated with the sidewalk cross slopes.

**RECOMMENDED ACTIONS:**

Approval of the request from Michael and Rachael O’Sullivan for a variance from Section 11-216(e)(8), which allows a maximum driveway slope of 10% to allow the applicant to maintain the driveway slopes as-constructed for the construction of a home at 21379 Equestrian Trail (parcel 22-32-401-074).

**AND**

Denial of the request from Michael and Rachael O’Sullivan for a variance Section 11-256(f) of the Design and Construction Standards, which allows a maximum sidewalk cross slope of 2% for the following reasons:

- a) The alternative proposed by the applicant is not adequate for the intended use and substantially deviates from the performance that would be obtained by strict enforcement of the standards, because it does not meet the strict requirements in the Americans with Disabilities Act and City standards,
- b) The sidewalk as constructed may pose a safety concern to a segment of the public that may use the sidewalk in a wheelchair,
- c) The compliance with the ordinance would not result in an exceptional, practical difficulty to the applicant.

**OR**

Approval of the request from Michael and Rachael O’Sullivan for a variance from Section 11-256(f) of the Design and Construction Standards, to exceed a maximum sidewalk cross-slope of 2% for the following reasons:

- a) The alternative proposed by the applicant is adequate for the intended use and is not substantially different from the slope of other pre-ADA sidewalks throughout the City,
- b) That, although the sidewalk may not strictly comply with ADA standards, it is not substantially greater than the maximum slope required by the ordinance.
- c) That compliance with the requirement would result in practical difficulty to the applicant because the sidewalk has been constructed and would have to be removed.

This variance is subject to a condition that the Maybury Park Estates Association, as the entity responsible for maintaining the sidewalk as a general common element to the condominium, sign a hold harmless with respect to liability for the slope condition and confirm its obligation to replace the paving with a compliant slope if otherwise required pursuant to the ADA.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Markham				

	1	2	Y	N
Council Member Mutch				
Council Member Poupard				
Council Member Wrobel				

# Location Map for 21379 Equestrian Trl



Map Author: Bon Fitzgerald  
 Date: 8-14-2015  
 Project: Location 21379 Equestrian Trl  
 Version #: 1

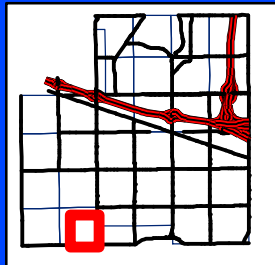
Amended By:  
 Date:  
 Department:

**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.

**Map Legend**

-  Freeway
-  Tax Parcels
-  Major Streets
-  Minor Streets



**City of Novi**

Engineering Division  
 Department of Public Services  
 26300 Lee BeGole Drive  
 Novi, MI 48375  
 cityofnovi.org



1 inch = 511 feet





JOHNSON ROSATI SCHULTZ JOPPICH PC

27555 Executive Drive Suite 250 ~ Farmington Hills, Michigan 48331  
Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela  
esaarela@jrsjlaw.com

www.johnsonrosati.com

August 18, 2015

Brian Coburn, Engineering Manager  
Department of Public Services  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, MI 48375

**Re: 21379 Equestrian Trail  
Variance from Design and Construction Standards**

Dear Mr. Coburn:

Our office has reviewed the proposed request for a variance from Sections 11-216 (e)(8) and 11-256 (f) of the City's Design and Construction Standards for the purpose of allowing the applicant to maintain maximum driveway slope in excess of 10% and a maximum sidewalk cross slope in excess of 2%, in accordance with the Engineering Design Manual.

Section 11-216 (e)(8) states:

(8) The grade of residential and utility structure drive approaches and driveways shall not exceed ten (10) percent.

Section 11-256 (f) states:

(f) Non-motorized facilities shall be designed and constructed to meet the requirements of the Engineering Design Manual, unless otherwise approved by the City Engineer.

The owners of 21379 Equestrian Trail have requested to maintain the driveway and walkway installed in connection with the construction of their house within the Maybury Park site condominium development, which both exceed maximum slope requirements set forth in applicable City ordinances.

The City's Engineering Division has recommended approval of the driveway variance based on their conclusion that the deviation is minimal, the replacement of the driveway would be costly

in comparison to the minor deviation, and the risk to the public health, safety and welfare is not significant based on the fact that the driveway is generally private property.

Although the driveway and sidewalk improvements are physically connected and were installed together, Engineering cannot recommend approval of the sidewalk variance because it is accessible by the public, is not ADA compliant and could impact users of wheelchairs. Therefore, the applicant is seeking an appeal of the City Engineer's determination to reject the variance request from the sidewalk design standards.

Section 11-10 of the Ordinance Code permits the City Council to grant a variance from the Design and Construction Standards when a property owner shows all of the following:

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

A driveway slope variance would normally be considered by the Construction Board of Appeals, however, because the two improvements are physically tied together, are related to the same property, and are part of the same plan, both requests have been forwarded for City Council consideration.

With respect to practical difficulty, the applicants have requested to maintain the existing driveway and sidewalk which do not meet maximum slope requirements set forth in the City ordinance on the basis that removal of the paving would be cost-prohibitive. With respect to the sidewalk variance, although the slope does not meet current ADA because it is 3-4%, rather than the required 2%, many other sidewalks installed prior throughout the City are above the 2% slope requirement because they pre-existed the current standards.

We note that the Engineering Division has provided a draft motion granting the driveway variance but *denying* the requested sidewalk variance. In the event that City Council finds that the standards for a variance or waiver have been met for the sidewalk variance, an alternative motion may be proposed as follows:

I move to approve the request of Michael and Rachael O'Sullivan for a variance from Section 11-256(f) of the Design and Construction Standards, to allow a maximum sidewalk cross-slop of 2% for the following reasons:

- (a) The alternative proposed by the applicant is adequate for the intended use and is not substantially different from the slope of other pre-ADA sidewalks throughout the City,
- (b) That, although the sidewalk may not strictly comply with ADA standards, it is not substantially greater than the maximum slope required by the ordinance.
- (c) That compliance with the requirement would result in practical difficulty to the applicant because the sidewalk has been constructed and would have to be removed.

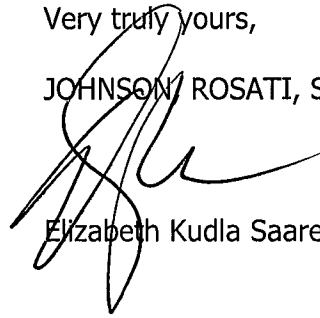
This variance is subject to a condition that the Maybury Park Estates Association, as the entity responsible for maintaining the sidewalk as a general common element to the condominium, sign a hold harmless with respect to liability for the slope condition and confirm its obligation to replace the paving with a compliant slope if otherwise required to pursuant to the ADA.

We have enclosed a draft, "Hold Harmless" Agreement which should be executed by the property owners and the Maybury Park Estates Association in the event that the sidewalk variance is granted. A standard Driveway Slope Variance hold harmless should also be provided by the property owners with respect to the driveway variance.

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

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



Elizabeth Kudla Saarela

EKS

Enclosures

- C: Maryanne Cornelius, Clerk (w/Enclosures)  
Rob Hayes, Public Services Director (w/Enclosures)  
Charles Boulard, Community Development Director (w/Enclosures)  
Matt Wiktorowski, Field Operations (w/Enclosures)  
Rick Meader, Landscape Architect (w/Enclosures)  
Jeff Johnson, Fire Department (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)

## **HOLD HARMLESS AGREEMENT**

This Agreement, between the City of Novi, a municipal corporation ("the City"), whose address is 45175 Ten Mile Road, Novi, Michigan 48375, Michael and Rachael O'Sullivan, husband and wife, ("Property Owners") whose address is 21379 Equestrian Way, Northville, Michigan 48167, and the Maybury Park Estates Association, a Michigan non-profit corporation ("Association"), whose address is 3 Cady Centre # 205 Northville, MI 48167.

### R E C I T A L S:

- A. Association is the entity charged with operation, maintenance, repair and replacement of the general common elements within the Maybury Park Estates Condominium, Oakland County Condominium Subdivision Plan 1609, in accordance with Article IV of the Master Deed thereto, recorded at Liber 32412, Pages 650 through 726, Oakland County Records.
- B. The property owners of Unit 66 of the Maybury Park Estates Condominium, as described in the attached and incorporated Exhibit A, requested and were granted a variance from the City of Novi, Design and Construction Standards related to the installation of a sidewalk along Equestrian Trail, at the location set forth in the attached and incorporated Exhibit B.
- C. The City of Novi, Engineering Design Standards, as incorporated in to the Design and Construction Standards, set the maximum cross-slope of a sidewalk at 2%, which is consistent with the Federal Americans with Disabilities Act (ADA) Standard, attached. The sidewalk cross slopes as constructed in the field exceed the 2% maximum, as shown in the attached and incorporated Exhibit B.
- D. Since Equestrian Trail is a private street, it is the responsibility of the Maybury Park Estates Association and/or the property owners of Unit 66, in accordance with the provisions of the Master Deed, to ultimately operate, maintain, replace and repair the sidewalk within Maybury Park Estates, and ultimately bring the sidewalk cross slope into compliance with ADA Standards, and/or accept any liability related to non-compliance.
- E. The City has agreed to authorize a variance to permit the non-compliant sidewalk to remain in place subject to the conditions set forth in this Agreement.

***IT IS AGREED between the parties to this Agreement as follows:***

1. In the event that the Property Owners and/or Association are otherwise required to remove, repair and/or replace the sidewalk paving in the locations shown in the attached and incorporated Exhibit B, the sidewalk slope shall be brought into compliance with the City's Design and Construction Standards. The Property Owners and/or Association shall be responsible for all costs associated with such removal, repair and/or replacement. The Property Owners and the Association, and each one's successors, and assigns, shall hold harmless and indemnify the City and the City's, elected officials, agents and employees from any and all costs, claims, suits, actions, losses, damages, or demands, including court costs and attorneys fees, relating to the sidewalk slope as described in depicted in the attached and incorporated Exhibit B.

2. The City shall not be liable for, and Association(s) shall hold harmless and indemnify the City and the City's agents and employees from any injuries, property damage, or loss of life or property caused by, arising out of, or occurring in connection with operation and maintenance of the non-compliant sidewalk.

3. This Agreement and the rights and responsibilities set forth herein are intended to bind the parties hereto, their heirs, successors and assigns, and shall run with the land and succeeding interests therein.

**THE CITY**

The City of Novi, a Michigan municipal corporation

\_\_\_\_\_  
By: Rob Hayes, Its Public Services  
Director

STATE OF MICHIGAN            )  
  ) ss.  
COUNTY OF OAKLAND        )

The foregoing instrument was acknowledged before me \_\_\_\_day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of a Michigan \_\_\_\_\_ on its behalf.

\_\_\_\_\_  
Notary Public  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_



**ASSOCIATION**

Maybury Park Estates Association, a Michigan non-profit Corporation

By: \_\_\_\_\_, Its \_\_\_\_\_

**PROPERTY OWNERS**

\_\_\_\_\_  
Michael O'Sullivan

\_\_\_\_\_  
Rachael O'Sullivan

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF OAKLAND     )

The foregoing instrument was acknowledged before me \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the \_\_\_\_\_ of the Maybury Park Estates Association, a Michigan non-profit corporation, on its behalf.

\_\_\_\_\_  
Notary Public  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF OAKLAND     )

The foregoing instrument was acknowledged before me \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by Michael O'Sullivan and Rachael O'Sullivan, husband and wife.

\_\_\_\_\_  
Notary Public  
Acting in \_\_\_\_\_ County, Michigan  
My commission expires: \_\_\_\_\_

Drafted By:  
Elizabeth K. Saarela  
27555 Executive Drive, Suite 250  
Farmington Hills, MI 48331

When recorded, return to:  
Maryanne Cornelius, Clerk  
CITY OF NOVI  
45175 West Ten Mile Road  
Novi, MI 48375-3024

EXHIBIT A  
OWNERS PROPERTY

EXHIBIT B  
SIDEWALK DESCRIPTION



## Request for Variance Design and Construction Standards

### Applicant Information

Name: \*ROCHAEL O'SULLIVAN  
Address: 21379 Equestrian Trail  
Northville, MI 48167  
Phone No: (248)946-1566

### Engineer Information

Name: Rich Hodsdon  
Address: 6303 26 Mile Road, Suite 110  
Washington, MI 48094  
Phone No: (586)677-4081

### Applicant Status (please check one):

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

Project Name Sidewalk and Driveway for Lot 66

Project Address/Location 21379 Equestrian Trail/Maybury Park Estates Lot66

Variance Request An increase in the maximum allowable slope.

### Justification (attach additional pages if necessary)

During the 2012-2014 construction of our home, our builder went bankrupt. As a result, we ended up taking on some unfamiliar construction tasks on our own; such as the sidewalk and driveway. As our circular driveway was half way poured, our contractor pointed out that the man hole cover would be located 6" below the surface of the center of our circular drive. This seemed to be a great safety concern for anyone walking, driving or riding a bike on our driveway. So, I asked them to relocate the driveway just past the man hole cover. This area of the yard takes on a steeper pitch than the original area as planned.

We made the assumption that our cement passed inspection after the building department inspected our home for our temporary occupancy and the cement was not included in the list of necessary corrections for permanent occupancy. As we began to landscape and had our final grade completed, the city sent a third party to our home to inspect the grade, Spalding DeDecker. During this inspection, I was told that our cement was part of our final grade inspection and it did not pass. Now very late in the cement season, we were unable to get our cement redone. This year, after discussing our cement with a couple of contractors, I have been told that the entire circular drive would need to come out and possibly relocated to correct the slope. So, we are asking for a variance from the allowable slope to keep our cement as is.

### INTERNAL USE

Date Submitted: \_\_\_\_\_  
Code Section from which variance is sought: \_\_\_\_\_  
Submittal Checklist:     One (1) copy of plan on 8.5 x 11 size paper  
                                   \$100 Filing Fee (No fee for driveway width variance requests)  
Request Status:         APPROVED     DENIED  
Authorized By:         \_\_\_\_\_  
Authorization Date:    \_\_\_\_\_

3

**Record Information**

Building Residential Permit: PBR13-0457  
Status: ISSUED

**Property Information**

Property: 21379 EQUESTRIAN TRL Parcel: 50-22-32-401-074  
City: NORTHVILLE Sub: MAYBURY PARK ESTATES PH 2  
Const. Type: 5B Use Group(s): R3 Lot: 66

**Name Information**

		Phone Number	Mobile Number
Contractor:	QUALITY HOMES & IMPROVEMENT	(989) 424 8929	(989) 424 8929
Licensee:	QUALITY HOMES & IMPROVEMENT	(989) 424 8929	(989) 424 8929
Owner:	O'SULLIVAN, MICHAEL & RACHAEL		
Occupant:			
Applicant:	QUALITY HOMES & IMPROVEMENT	(989) 424 8929	(989) 424 8929

**Fees:**

Standard Item	Application Fee	1.00	Standard Item	Inspection - Final	1.00	Standard It
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**Description:**

New builder taking over permit from Insulation to finish.  
OLD PERMIT PB12-0473

**Comments:**

to SDA for approval. Attached is the review letter for the plot plan submitted for Lot 66 Maybury Park. At this time the lot is rejected by SDA. Please review the letter, make the necessary revisions and resubmit to the City. Please contact me with any questions or concerns.

Heather Gendron, EIT  
Construction Technician  
to SDA for approval of work. Temp CO was never signed for and picked up and has now expired. No final CO.

**Inspection Information:**

**Final Grade (Consultant) Inspection | Building Inspector**

Type: Final Grade (Consultant)  
Status: Scheduled  
Scheduled: 09/12/2014

Inspector: Building Inspector  
Result: Rejected  
Completed: 9/16/14

Heather Gendron, SDA

**Inspection History**

Type: Final  
Status: Completed  
Scheduled:

Inspector: Chris Weber  
Result: Partially Approved  
Completed: 06/19/2014

- Multiple areas of sidewalk + drive are > max allowed slopes (2% for walks; 10% for drives)

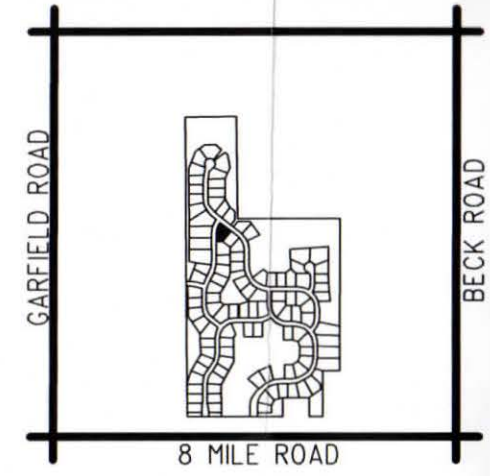
- recommend a t.c.o
- 1) final grade
- 2) install permanent gaurdrall on front bay roof
- 3) complete main stair railing ( blocked off back stair access only)

Type: Final  
Status: Completed  
Scheduled: 09/11/2014

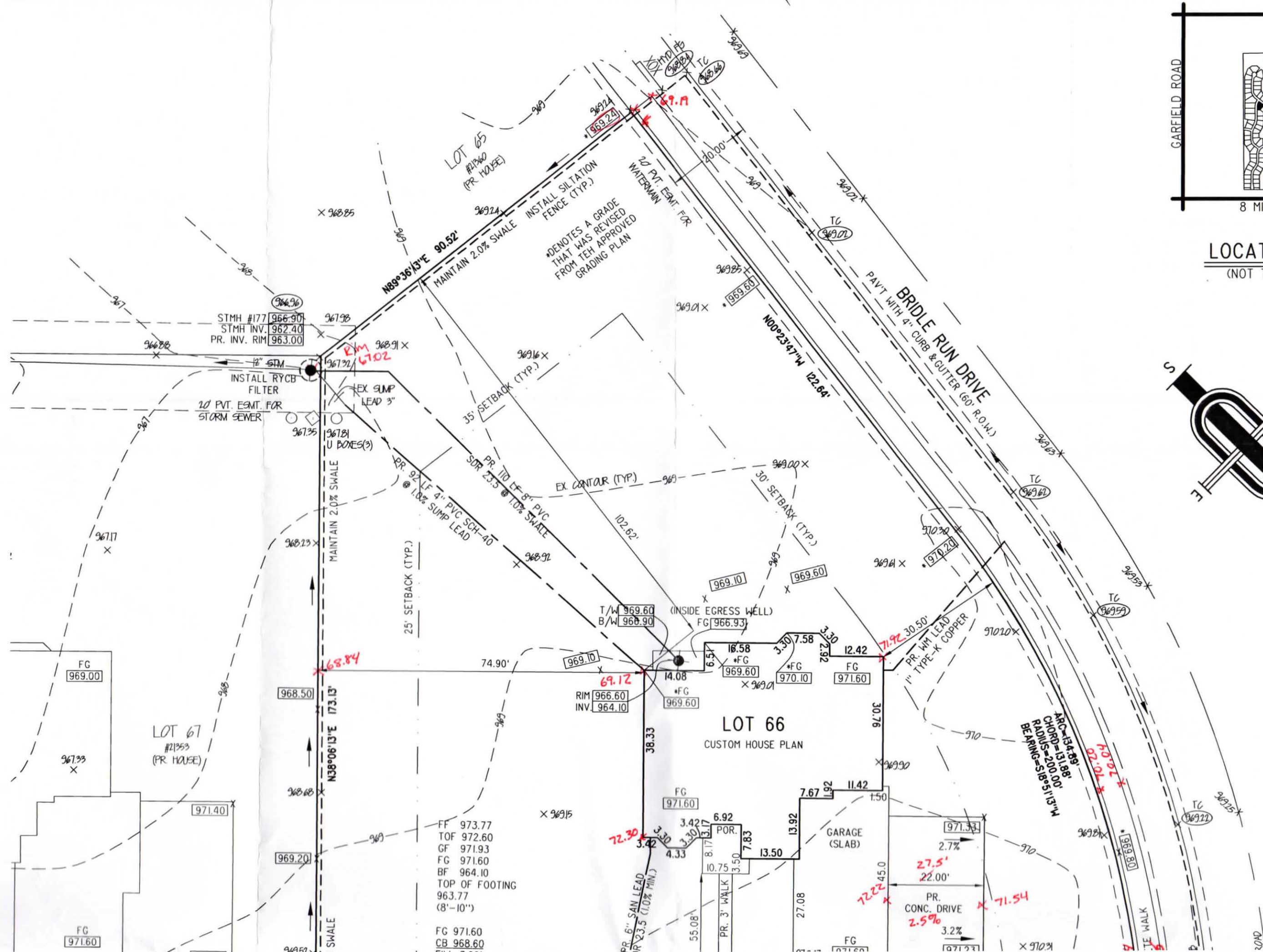
Inspector: Chris Weber  
Result: Partially Approved  
Completed: 09/11/2014

- Reference the copy of the red lined plan at the City

recommend a full c.o when final grade is approved



LOCATION MAP:  
(NOT TO SCALE)



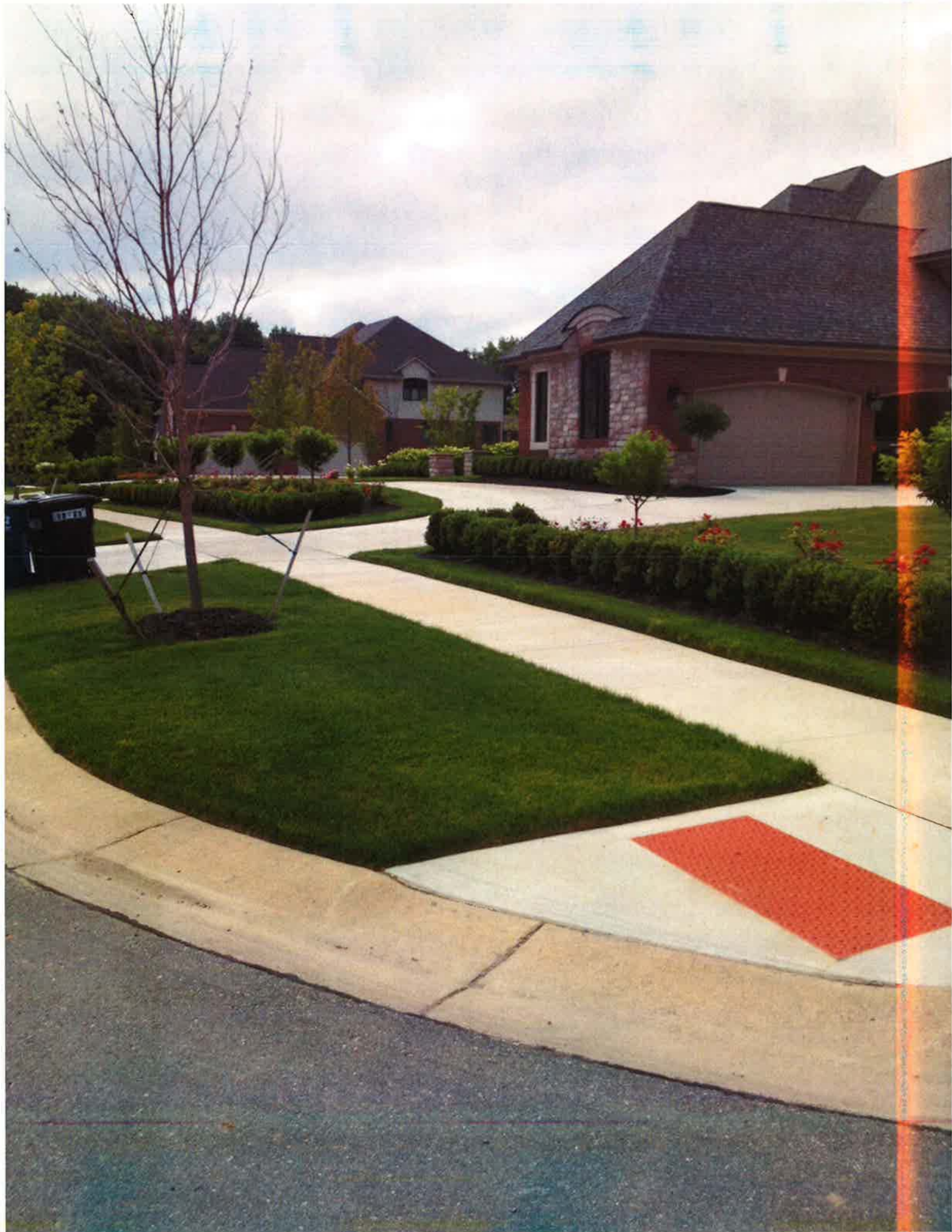
FF	973.77
TOF	972.60
GF	971.93
FG	971.60
BF	964.10
TOP OF FOOTING	963.77 (8'-10")
FG	971.60
CB	968.60





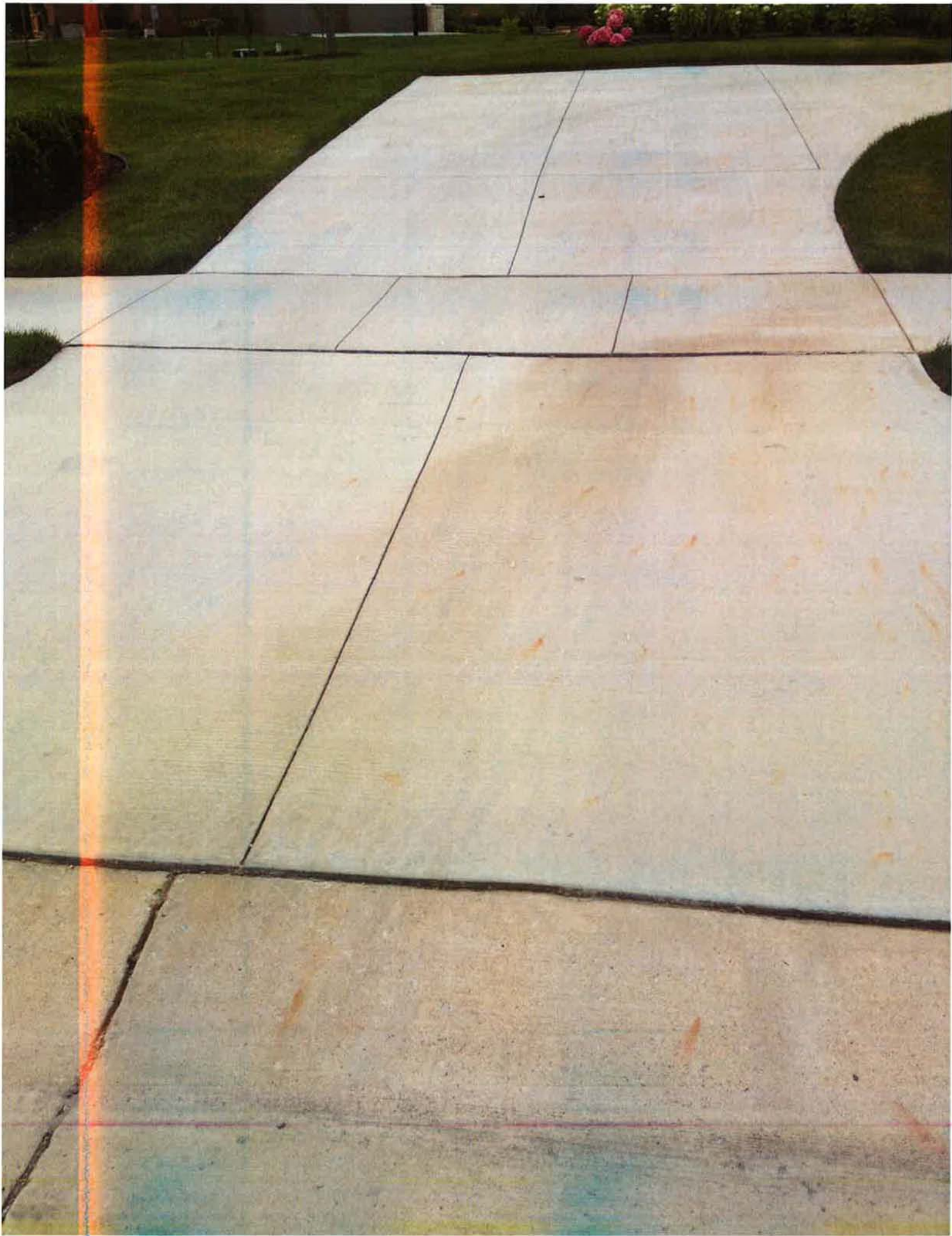


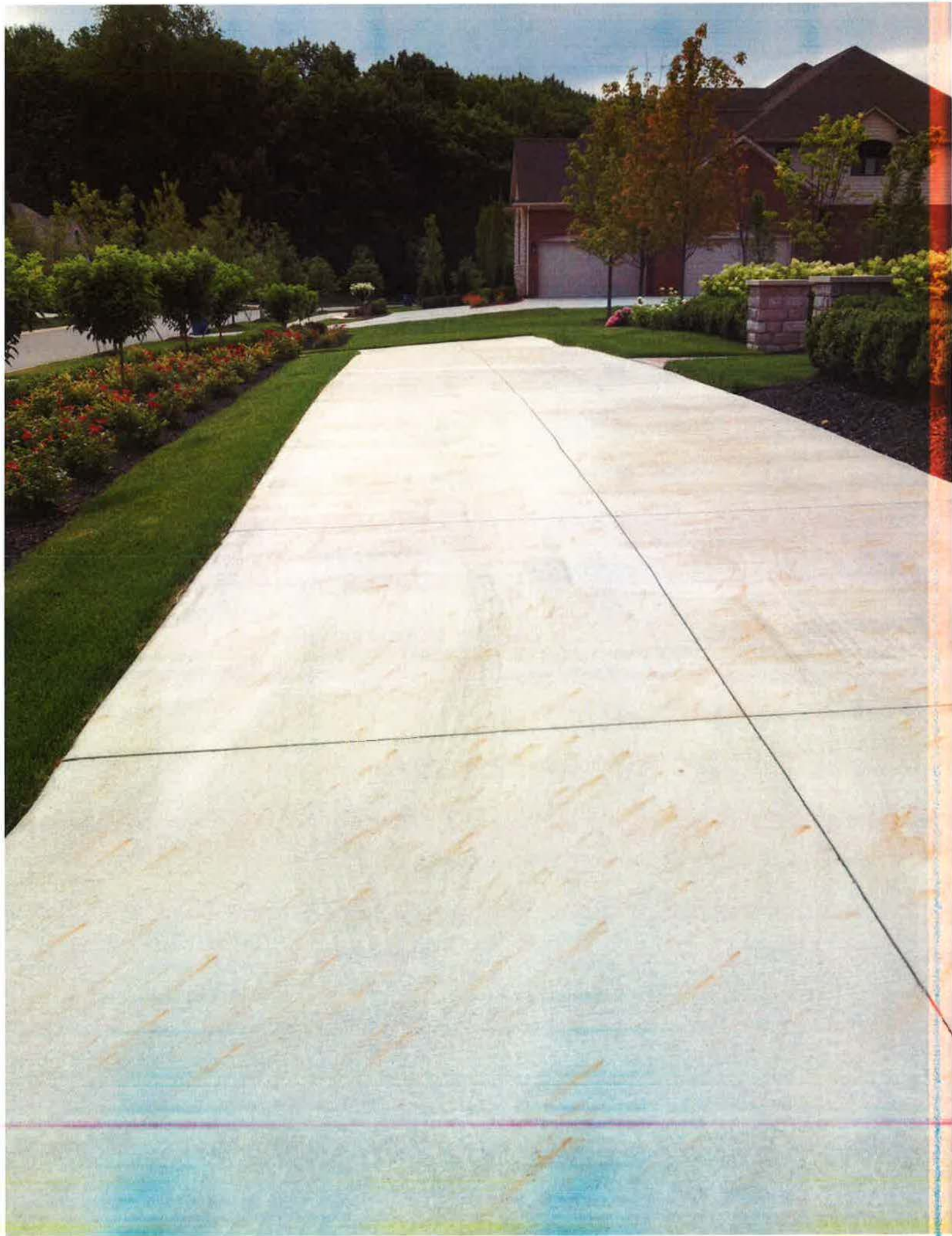






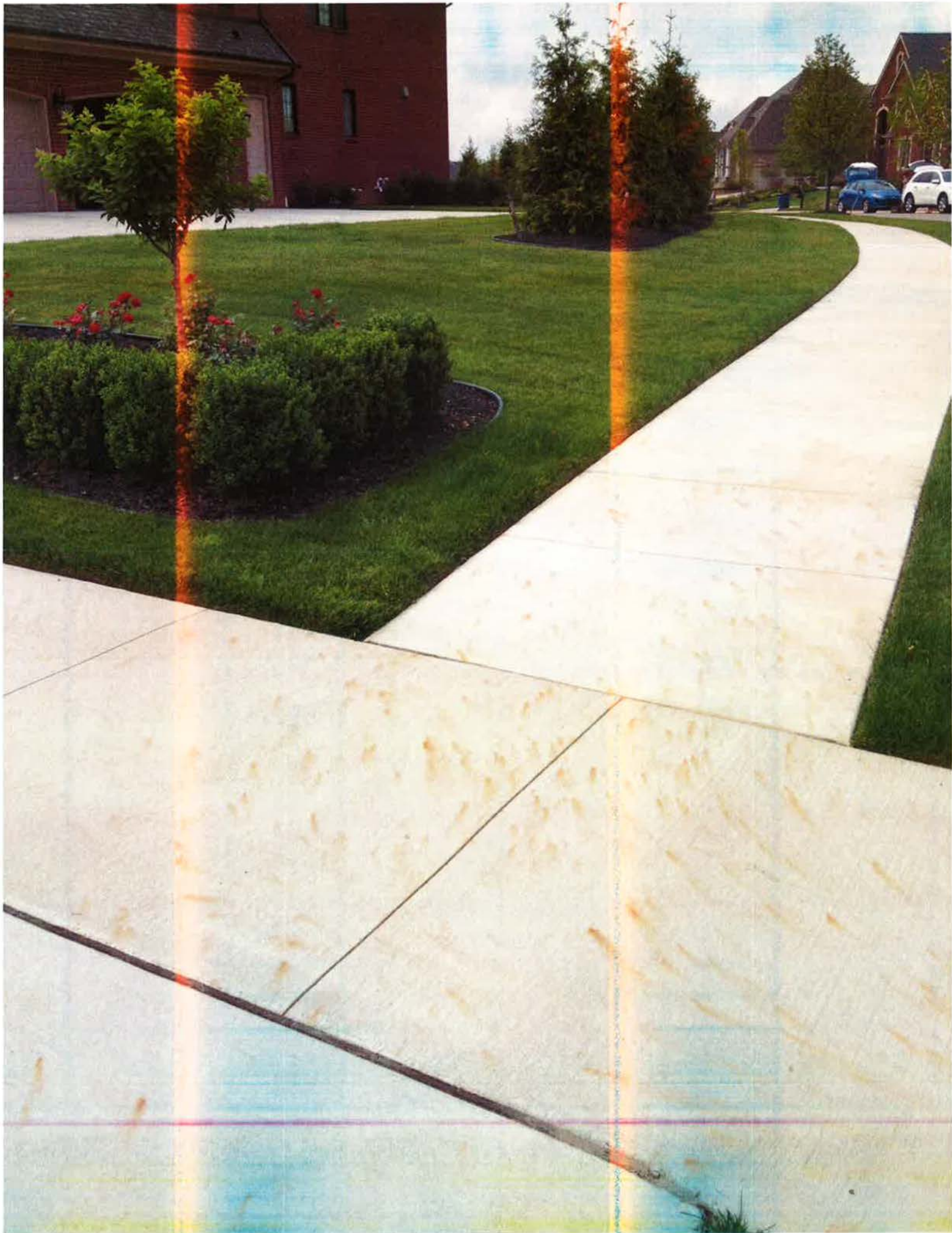












Sec. 11-216. - Design considerations.

(e) *Residential drive approaches and driveways, utility drive approaches and field entrances.*

- (1) The number of residential drive approaches that may be permitted shall be determined as follows:
  - a. One (1) residential drive approach shall be permitted for each platted lot or for unplatted residential property with less than one hundred (100) feet of frontage.
  - b. Additional residential drive approaches may be permitted for residential property with more than one hundred (100) feet of frontage, provided that the sum of the drive approach widths of these additional drive approaches does not exceed fifteen (15) percent of the frontage in excess of the first one hundred (100) feet.
  - c. Two (2) residential drive approaches may be permitted on the same property, in lieu of the above, to serve a circle drive approach if the frontage of the property is eighty (80) feet or more.
  - d. Residential drive approaches on the same property shall be at least forty (40) feet apart, center-to-center.
- (2) The dimensions of a residential drive approach shall conform to those given in Figure IX.5.
- (3) Where a side entrance garage is proposed there shall be provided a minimum driveway approach to said garage entrance of twenty-two (22) feet, as measured perpendicular to the garage entrance.
- (4) Residential driveways shall be located at least three (3) feet from the side lot line.
- (5) Field entrances may be permitted for cultivated land, timber land, or undeveloped land. The dimensions of a field entrance and a utility structure drive approach shall conform to those given in Table IX.6.
- (6) On paved roads, residential drive approaches shall be paved. Concrete driveways shall be 6" thick concrete on compacted subgrade, asphalt driveways shall be 3" thick bituminous over an 8" thick 21-AA aggregate base.
- (7) When the road is unpaved, residential drive approaches may be surfaced with stabilized gravel. If the drive approaches are paved, the paving shall extend no closer to the street than five (5) feet from the edge of pavement.
- (8) The grade of residential and utility structure drive approaches and driveways shall not exceed ten (10) percent.**
- (9) Field entrances and utility structure drive approaches may be surfaced with stabilized gravel unless the city requires their paving in a given location.

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Sec. 11-256. – Requirement.

**(f) Non-Motorized facilities shall be designed and constructed to meet the requirements of the Engineering Design Manual, unless otherwise approved by the City Engineer.**

## Chapter 4: Accessible Routes

### 401 General

401.1 Scope. The provisions of Chapter 4 shall apply where required by Chapter 2 or where referenced by a requirement in this document.

### 402 Accessible Routes

402.1 General. Accessible routes shall comply with 402.

402.2 Components. Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

Advisory 402.2 Components. Walking surfaces must have running slopes not steeper than 1:20, see 403.3. Other components of accessible routes, such as ramps (405) and curb ramps (406), are permitted to be more steeply sloped.

### 403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an accessible route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

403.3 Slope. The running slope of walking surfaces shall not be steeper than 1:20. **The cross slope of walking surfaces shall not be steeper than 1:48.**

403.4 Changes in Level. Changes in level shall comply with 303.

403.5 Clearances. Walking surfaces shall provide clearances complying with 403.5.

EXCEPTION: Within employee work areas, clearances on common use circulation paths shall be permitted to be decreased by work area equipment provided that the decrease is essential to the function of the work being performed.

403.5.1 Clear Width. Except as provided in 403.5.2 and 403.5.3, the clear width of walking surfaces shall be 36 inches (915 mm) minimum.

EXCEPTION: The clear width shall be permitted to be reduced to 32 inches (815 mm) minimum for a length of 24 inches (610 mm) maximum provided that reduced width segments are separated by segments that are 48 inches (1220 mm) long minimum and 36 inches (915 mm) wide minimum.

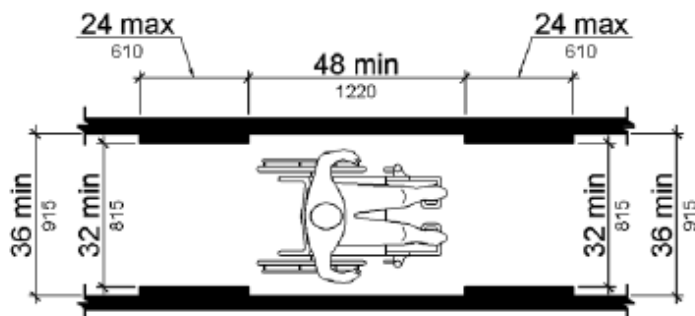


Figure 403.5.1 Clear Width of an Accessible Route

403.5.2 Clear Width at Turn. Where the accessible route makes a 180 degree turn around an element which is less than 48 inches (1220 mm) wide, clear width shall be 42 inches (1065 mm) minimum approaching the turn, 48

Sec. 11-10. - Variances.

- (a) Upon application, a specific variance to a substantive requirement of these standards may be granted, subject to the following criteria. Where the proposed activity requires site plan or plat approval, or otherwise involves the design or construction of a facility intended to be public, the variance application shall be to the city council. Where the proposed activity does not otherwise require site plan or plat approval, the variance application shall be to the construction board of appeals.
- (b) A variance may be granted when all of the following conditions are satisfied:
  - (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
  - (2) The alternative proposed by the applicant shall be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and
  - (3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property.
- (c) The city council may, by resolution, establish an application fee for requests for variances from these standards.

(Ord. No. 86-124, § 16.01, 4-21-86; Ord. No. 87-124.01, Pt. I (16.01), 4-13-87; Ord. No. 91-124.05, Pt. I, 6-3-91; Ord. No. 93-124.06, Pt. V, 2-1-93; Ord. No. 99-124.11, Pt. III, 7-26-99)