



## CITY of NOVI CITY COUNCIL

Agenda Item 1  
November 9, 2015

**SUBJECT:** Consideration of a request from Michael and Rachael O'Sullivan to modify the conditions of a Design and Construction Standards variance that was approved by City Council on August 24, 2015.

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

*BTC RA*

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

### BACKGROUND INFORMATION:

The property owners at 21379 Equestrian Trail in Maybury Park Estates are requesting a modification of the conditions placed on the Design and Construction Standards variance that was approved by City Council at the August 24, 2015 meeting relating to the cross-slope of the sidewalk on the frontage of the property along a private street. As you may recall, the approved plot plan for the 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 ordinance. The variance was granted by City Council on August 24, 2015 (see excerpt of minutes, attached) with the 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."

Staff has been in contact with a representative of the Association. The Association has met and decided not to sign a Hold Harmless Agreement. As a consequence, in the attached letter the property owner is requesting a modification of the conditions in the motion granting the variance to remove the requirement for the Association to enter into a Hold Harmless Agreement with the City. The property owner states that the cost to remove and replace the sidewalk is \$17,144, and that an expenditure of this amount to replace the sidewalk "would result in a practical difficulty" for their household. The property is a corner lot, therefore there is frontage sidewalk on two streets in excess of 400 feet long. We have reviewed the property owner's estimate and it seems to reasonably represent the cost to remove and reconstruct the sidewalk.

It should be noted that the sidewalk area is outside of the Applicant's unit and is within the private road right-of-way. The City attorney has drafted the attached Hold Harmless Agreement for the property owners to sign that would instead make them responsible for all costs associated with the removal and replacement of the sidewalk if the Association is required to do so. It also requires the property owner to carry contractual liability coverage for the non-compliant sidewalk. Staff and the City Attorney recommend approval of the request now that the Association and the City are protected from any liability related to the sidewalk variance. The applicant has executed the agreement.

**RECOMMENDED ACTION:**

Approval of a request from Michael and Rachael O’Sullivan to modify the conditions of a Design and Construction Standards variance that was approved by City Council on August 24, 2015, to require Michael and Rachael O’Sullivan to sign the Hold Harmless Agreement indemnifying both the City and the Association, and to provide corresponding insurance.

	1	2	Y	N
Mayor Gatt				
Council Member Burke				
Council Member Casey				
Council Member Markham				

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

# Location Map for 21379 Equestrian Trl



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

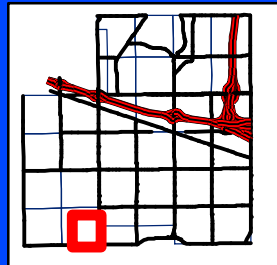
Amended By:  
 Date:  
 Department:

**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



21379 Equestrian Trail

Northville, MI 48167

September 18, 2015

City of Novi Council

45175 W. 10 Mile Road

Novi, MI 48375

Dear Council Members:

Last month we requested a variance from section 11-256(f) of the Design and Construction Standards to exceed a maximum sidewalk slope of 2% which was approved by all members with the condition that the Maybury Park Estates Association sign a hold harmless agreement with respect to liability for the slope.

To recap, our original builder went bankrupt and as a result, we were left with the responsibility of installing our sidewalk. Unaware that the city inspector did not inspect our sidewalk at the time of our temporary certificate of occupancy inspection, we assumed our sidewalk met code. Later, as we began to landscape, we found out that our cement inspection was completed by a third party as part of the final grade inspection.

Unfortunately, our association is not willing to sign the agreement and we have asked a contractor to give us a quote to replace our entire 267' X 191' sidewalk. His quote which is attached, came to the sum of \$17,144.00 which includes both the removal of existing and installation of new.

Keeping in mind that our site restoration bond held with the city is only \$2,500.00, paying this amount to replace our sidewalk would result in a practical difficulty for our household. Especially since the existing sidewalk is adequate for the intended use and is not substantially different from the slope of other pre-ADA sidewalks through the city or Maybury Park Estates. Also, our existing sidewalk does not substantially exceed the 2% slope required by the ordinance.

In closing, we respectfully request that City Council remove the condition of the hold harmless execution from the motion so we may obtain our C of O without replacing our sidewalk.

Thank you so much for your time and consideration,

Michael & Rachael O'Sullivan

# Quality Homes & Improvements

125 Pearson St.  
Beaverton, MI 48612

## Cement Demo and Replacement

Date	Estimate
9/4/2015	<b>cement</b>

### NAME/ADDRESS

Michael and Rachael O'Sullivan 21379 Equestrian Trail Northville, MI rachaelfosullivan@yahoo.com
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<b>PROJECT DESCRIPTION</b>	<b>TOTAL</b>
- Labor to Remove existing 267' X 191' sidewalk	\$7,967.00
- Labor and Material to Install approx. 29 yards of cement	\$6,927.00
- Approx. 3 heavy duty dumpsters and haul away	\$2250.00
<b>TOTAL</b>	<b>\$17,144.00</b>

Note: Quality Homes and Improvements is not responsible for any sod or landscape repairs that may be necessary after work is complete.

Thank you,

Chris Quider  
989.424.8929

## Coburn, Brian

---

**From:** paul <paul@pawlusiak.com>  
**Sent:** Wednesday, September 02, 2015 10:23 AM  
**To:** megan Pawelski; craig\_r\_harris@ml.com; bcoburn@cityofnovi.org;  
cboulard@cityofnovi.org  
**Cc:** wsmith2g@hotmail.com; lora Wright  
**Subject:** FW: Variance Request for 21379 Equestrian  
  
**Importance:** High

Lora, Charles, Brian,

In regard to the sidewalk for O'Sullivan, the Board has reviewed this request and the answer is no for a variance for the sidewalk.

1. We represent the entire community at large and if these were not private sidewalks the city would require them replaced prior to a final C of O as well.
2. I spoke with the city engineer on the job and he states the if they were city owned sidewalks they would be replaced with no question to meet ADA compliance.
3. The city put the final determination on the Board and we cannot have this liability since we have been notified of the violation.

Thanks,  
Paul

,  
Delivered-To: [paul@applemail.local](mailto:paul@applemail.local)  
X-Virus-Scanned: amavisd-new at applemail.local  
X-Spam-Flag: NO  
X-Spam-Score: -0.699  
X-Spam-Level:  
X-Spam-Status: No, score=-0.699 tagged\_above=-9999 required=1  
tests=[FREEMAIL\_FROM=0.001, HTML\_MESSAGE=0.001,  
RCVD\_IN\_DNSWL\_LOW=-0.7, SPF\_PASS=-0.001] autolearn=unavailable  
X-TMN: [OYIQVNIIfqZJJqU68a8sTqLua69EpImzL]  
X-Originating-Email: [jollay@msn.com]  
From: Jeff JOLLAY <[jollay@msn.com](mailto:jollay@msn.com)>  
To: <[paul@charterwarranty.com](mailto:paul@charterwarranty.com)>  
Subject: FW: Variance Request for 21379 Equestrian  
Date: Wed, 26 Aug 2015 04:46:02 -0500  
X-OriginalArrivalTime: 26 Aug 2015 09:46:03.0456 (UTC) FILETIME=[05ADD400:01D0DFE4]

Paul,

FYI...,











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

November 2, 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  
Hold Harmless Agreement**

Dear Mr. Coburn:

We have prepared the enclosed revised Hold Harmless Agreement relating to the sidewalk slope adjacent to Unit 66 within Maybury Park. We have modified the Agreement to address the Applicant's request to modify the variance to eliminate the requirement that the Maybury Park Estates Association execute the Agreement. As an alternative to the Association's agreement to *accept liability* for the non-compliant sidewalk, the Applicant is required to hold harmless **both** the City and the Association for liability relating to installation and maintenance of the ADA noncompliant sidewalk slope. The Hold Harmless Agreement, once executed by the Applicant, would be recorded against the property and would apply to successor owners of the property until such time as the sidewalk is replaced with an ADA compliant sidewalk. The Applicant must provide Exhibit B describing the non-compliant sidewalk area.

In conjunction with the Hold Harmless Agreement, the Applicant has provided the enclosed "Declarations" pages for the Applicant's homeowners insurance policy. The Declarations pages show that both the City and the Maybury Park Estates Association have been added to the policy as additional insureds. Although it is not clear from the Declarations page that the Hold Harmless Agreement is covered by the policy, we have received the enclosed correspondence from the Applicant's insurance agent confirming that the policy includes contractual liability coverage. The Applicant should update the Declarations page annually, providing a copy to the Maybury Park Estates Association directly.

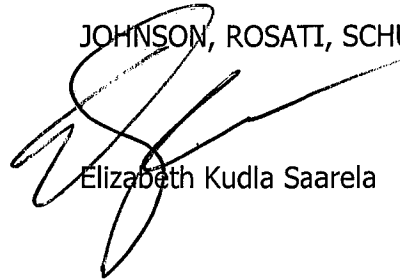
The Hold Harmless and insurance appear to be adequate to address any remaining concerns regarding liability to the City and/or Association for the Applicant's installation of the non-compliant sidewalk slope.

Brian Coburn, Engineering Manager  
November 2, 2015  
Page 2

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

Very truly yours,

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

A handwritten signature in black ink, appearing to read 'Elizabeth Kudla Saarela', written over the typed name.

Elizabeth Kudla Saarela

EKS  
Enclosures

C: Maryanne Cornelius, Clerk (w/Enclosures)  
Rob Hayes, Public Services Director (w/Enclosures)  
Adam Wayne, Construction Engineer (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)

**Beth Saarela**

**From:** Michael Pikora <michael.pikora.ralb@statefarm.com>  
**Sent:** Monday, October 05, 2015 12:02 PM  
**To:** Beth Saarela  
**Cc:** Rachael OSullivan  
**Subject:** State Farm Insurance Rachael O'Sullivan



**Michael E. Pikora, Agent**  
www.MichaelMyAgent.com



**Michael E. Pikora**  
Agent

Beth,

Good Afternoon.

Michael and Rachael O'Sullivan at 21379 Equestrian Trl. Northville, MI 48167-9604 are covered by their homeowners policy 82-B9-U841-8 for liability to the sidewalk adjacent to the property for the aforementioned address. It is also covered for contractual liability with respect to an indemnity agreement.

**Michael E. Pikora**  
Agent

[Life Calculator](#)  
[Car Loan Calculator](#)



248-968-3970



[Visit Michael's Home Page](#)



[Map & Directions](#)



[Access Your Account](#)

10841 W 10 Mile Road  
Oak Park, MI 48237

Providing Insurance and Financial Services

Stay Connected:



**DECLARATIONS**

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

Coverage afforded by this policy is provided by:

STATE FARM FIRE AND CASUALTY COMPANY  
2550 NORTHWESTERN AVENUE  
WEST LAFAYETTE IN 47906

82-B9-U841-8 Policy Number

A Stock Company with Home Offices in Bloomington, Illinois.

**Named Insured and Mailing Address**

O'SULLIVAN, RACHAEL & MICHAEL  
21379 EQUESTRIAN TRL  
NORTHVILLE, MI 48167-9604

The Policy Period begins and ends at 12:01 a.m. Standard Time at the residence premises.

**Automatic Renewal** - If the Policy Period is shown as 12 months, this policy will be renewed automatically subject to the premiums, rules and forms in effect each succeeding policy period. If this policy is terminated, we will give you and the Mortgagee/Lienholder written notice in compliance with the policy provisions or as required by law.

08/30/2015 Effective Date  
12months-Policy Period  
08/30/2016 Expiration of Policy Period

**Limit of Liability - Section 1**  
\$ 735,800 Dwelling (Coverage A)

**Deductibles - Section 1** 0.5%/\$3679 ALL LOSSES In case of loss under this policy, the deductible will be applied per occurrence and will be deducted from the amount of the loss. Other deductibles may apply - refer to your policy.

**Policy Type**  
Homeowners Policy  
Dwell Repl Cost - Similar Construction  
Increase Dwlg Up to \$147,160 - Option ID

**Location of Premises**  
21379 EQUESTRIAN TRL  
NORTHVILLE, MI 48167-9604

**Policy Premium** \$1,311.00

**Forms, Options, & Endorsements**

FP-7955.MI	HOMEOWNERS POL	LSP A1	SMLR CONST-A
LSP B1	LMT RPLC COST-B	OPT ID	COV A-INCR DWLG
OPT OL	BLD ORD/LAW-10%	FE-3473	HO-W POL END
FE-2344	AMENDATORY END	FE-2317.1	BACK-UP

**Additional Insured**

CITY OF NOVI  
45175 10 MILE ROAD  
NOVI, MI 48375

**Agent Name & Address**

PIKORA, MICHAEL EDWARD  
10841 W 10 Mile Rd  
OAK PARK, MI  
48237-6701 (248) 968-3970

Loan Number:

Prepared: September 24, 2015

7318

Agent's Code

559-916.5

MORTGAGEE COPY

**PREMIUM NOTICE  
STATE FARM INSURANCE COMPANIES  
AGENT ISSUED DECLARATIONS**

<b>POLICY NUMBER</b>	<b>BILLING PERIOD</b>	<b>AGENT CODE</b>
82-B9-U841-8	FROM 08/30/2015   TO 08/30/2016	7318

**LOCATION**

21379 EQUESTRIAN TRL  
NORTHVILLE, MI 48167-9604

**INSURED**

O'SULLIVAN, RACHAEL & MICHAEL  
21379 EQUESTRIAN TRL  
NORTHVILLE, MI 48167-9604

**PREMIUM \$ 1,311.00**

**AMOUNT PAID SFPP**

**AMOUNT DUE SFPP**

**DATE DUE**

**ADDITIONAL INSURED**

CITY OF NOVI  
45175 10 MILE ROAD  
NOVI, MI 48375  
Loan Number:

**AGENT NAME & ADDRESS**

PIKORA, MICHAEL EDWARD  
10841 W 10 Mile Rd  
OAK PARK, MI  
48237-6701 (248)968-3970

This is the only notice you will receive. Please make check payable to **STATE FARM** and return it with this notice to the address shown below. Your canceled check is your receipt. Thanks for letting us serve you.

**STATE FARM INSURANCE COMPANIES  
2550 NORTHWESTERN AVENUE  
WEST LAFAYETTE IN 47906**

**DECLARATIONS**

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

Coverage afforded by this policy is provided by:

STATE FARM FIRE AND CASUALTY COMPANY  
2550 NORTHWESTERN AVENUE  
WEST LAFAYETTE IN 47906

82-B9-U841-8 Policy Number

A Stock Company with Home Offices in Bloomington, Illinois.

**Named Insured and Mailing Address**

O'SULLIVAN, RACHAEL & MICHAEL  
21379 EQUESTRIAN TRL  
NORTHVILLE, MI 48167-9604

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08/30/2015 Effective Date  
12months-Policy Period  
08/30/2016 Expiration of Policy Period

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\$ 735,800 Dwelling (Coverage A)

**Deductibles - Section 1** 0.5%/\$3679 ALL LOSSES In case of loss under this policy, the deductible will be applied per occurrence and will be deducted from the amount of the loss. Other deductibles may apply - refer to your policy.

**Policy Type**  
Homeowners Policy  
Dwell Repl Cost - Similar Construction  
Increase Dwlg Up to \$147,160 - Option ID

**Location of Premises**  
21379 EQUESTRIAN TRL  
NORTHVILLE, MI 48167-9604

**Policy Premium** \$1,311.00

**Forms, Options, & Endorsements**

FP-7955.MI	HOMEOWNERS POL	LSP A1	SMLR CONST-A
LSP B1	LMT RPLC COST-B	OPT ID	COV A-INCR DWLG
OPT OL	BLD ORD/LAW-10%	FE-3473	HO-W POL END
FE-2344	AMENDATORY END	FE-2317.1	BACK-UP

**Additional Insured**  
MAYBURY PARK ASSOCIATION  
ASSOCIATION MANAGEMENT  
PROFESSIONALS, INC  
143 CADYCENTRE # 205  
NORTHVILLE, MI 48167-1119

**Agent Name & Address**  
PIKORA, MICHAEL EDWARD  
10841 W 10 Mile Rd  
OAK PARK, MI  
48237-6701 (248)968-3970

Loan Number:

Prepared: September 24, 2015

7318

Agent's Code

559-916.5

**MORTGAGEE COPY**

## **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.

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

- A. 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.
- B. 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.
- C. The Maybury Park Estates Association ("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.
- 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 shall be responsible for all costs associated with such removal, repair and/or replacement. The Property Owners and their successors, assigns, and transferees be responsible to the City and the Association for any and all liabilities incurred by the City and/or Association, arising out of, or incident to, the actions of Property Owners, including but not limited to, activities arising out of construction, installation and maintenance of the Sidewalk Area described and depicted in the attached and incorporated Exhibit B. The Property Owners shall hold harmless and indemnify the City and the City's, elected officials, agents and employees, and the Association and its Board, members, and designees, from any and all costs, claims, suits, actions, losses, damages, or demands, including court costs and attorneys' fees, relating in any way to the sidewalk slope, including, but not limited to damages and injuries relating to application of the ADA standards, with respect to the Sidewalk Area.

2. Property Owners shall maintain insurance, including contractual liability coverage, at their sole cost and expense, with respect to injuries and damages arising out of the construction, operation and maintenance of the Sidewalk Area in a form acceptable to the City an Association. Such policies shall name the City, its elected officials, agents and employees, and the Association as an additional insured and shall provide the City and Association with a certificate of insurance or other written evidence of its coverage, including an endorsement which states that such insurance may not be cancelled except upon ten (10) days prior written notice to the City and Association.

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, and shall be recorded with the Oakland County Register of Deeds. This Agreement may be terminated by the City at the time the Sidewalk Area is replaced with a sidewalk that is compliant with all applicable City Ordinances.

**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: \_\_\_\_\_

**PROPERTY OWNERS**

*Michael O'Sullivan*  
Michael O'Sullivan

*Rachael O'Sullivan*  
Rachael O'Sullivan

STATE OF MICHIGAN        )  
  ) ss.  
COUNTY OF OAKLAND    )

The foregoing instrument was acknowledged before me 4 day of Nov, 2015 by Michael O'Sullivan and Rachael O'Sullivan, husband and wife.

*Karen R. Crilly*  
Notary Public  
Acting in Wayne County, Michigan  
My commission expires: 2-15-20

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

KAREN R CRILLY  
Notary Public, State of Michigan  
County of Oakland  
My Commission Expires Feb. 15, 2020  
Acting in the County of Wayne

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

EXHIBIT A  
OWNERS PROPERTY

T1N, R8E, SEC 32 OAKLAND COUNTY CONDOMINIUM PLAN NO 1609 MAYBURY PARK ESTATES  
UNIT 66 L 36631 P 127

EXHIBIT B  
SIDEWALK DESCRIPTION

A part of Section 32, T. 1 N., R. 8 E., City of Novi, Oakland County, Michigan more particularly described as a six foot wide portion of the general common element of Equestrian Trail and Stony Creek Drive (now known as Richmond Drive) that is parallel to and directly adjacent to Unit 66, Maybury Park Estates,