

**BOARD OF ZONING APPEALS
MEETING MINUTES
Mayfield Village
Sept 19, 2023**

The Board of Zoning Appeals met in regular meeting session on Tues, Sept 19, 2023 at 6:00 p.m. at the Mayfield Village Civic Center, Main Conference Room. Chairman Stivo DiFranco presided.

ROLL CALL

Present:

Mr. Stivo DiFranco	Chairman	Ms. Diane Calta	Law Director
Mr. Jim Kless	P & Z Rep to BZA	Ms. Kathryn Weber	Law Department
Mr. Bob Andrzejczyk	Alternate	Mr. Daniel Russell	Bldg Commissioner
Mr. Bob Haycox	Alternate	Ms. Deborah Garbo	Secretary

Absent:

Mr. John Michalko Chairman Pro Tem
Mr. Joseph Prcela
Ms. Alexandra Jeanblanc

CONSIDERATION OF MEETING MINUTES: June 20, 2023

Mr. Kless, seconded by Mr. DiFranco made a motion to approve the minutes of June 20, 2023 as written.

ROLL CALL

Ayes: Mr. DiFranco, Mr. Kless, Mr. Andrzejczyk, Mr. Haycox

Nays: None **Motion Carried**

Minutes Approved

CONSIDERATION OF CASE NUMBER 2023-04

Applicant: D.O. Summers / Wheely Clean Car Wash
6447 Wilson Mills Rd. - PP # 831-14-007 - North Coast Architects, Inc

1. A request for a 21' 8" and 12' 8" front yard parking setback variance from Section 1175.05 (a) to allow for parking expansion, adding five parking landbanked spaces.
(P & Z approved 8/7/23) (Council recommendation pending BZA decision)
2. A request for a 22' 10" ROW setback variance from Section 1185.11 (a)(3) to allow for placement of a new monument sign. **(ARB approved 8/24/23)**
3. A request for a 2' 10" front property line setback variance from Section 1185.11 (a)(3) to allow for placement of a new monument sign. **(ARB approved 8/24/23)**

Abutting Property Owners:

Wilson Mills Rd: 6449, 6439, 6450, 6458, 6466, 6444, 6440

CONSIDERATION OF CASE NUMBER 2023-05

Applicant: Robert LaRiche
6506 Wilson Mills Rd. - PP # 831-36-014

1. A request for a 1' height variance from Section 1157.08 (b)(i) to allow for a 5' high chain link fence.
2. A request for an 8' rear side property line setback variance from Section 1181.07 (a) to allow for shed placement 2' from the rear side property line. Code requires a 10' setback to the property line.

Abutting Property Owners:

Wilson Mills Rd: 6514, 6522, 6500, 6492
Derby Dr: 6499, 6507, 6491

OPEN PORTION

Chairman DiFranco called the meeting to order. This is a meeting of the Mayfield Village Board of Zoning Appeals Tues, Sept 19, 2023 at 6:00 p.m. We have two cases before us tonight.

CASE #2023-04

Our first case is consideration of Case #2023-04, the applicant is D.O. Summers/ Wheely Clean Car Wash, 6447 Wilson Mills Rd.

1. A request for a 21' 8" and 12' 8" front yard parking setback variance from Section 1175.05 (a) to allow for parking expansion, adding five parking landbanked spaces. **(P & Z approved 8/7/23) (Council recommendation pending BZA decision)**
2. A request for a 22' 10" ROW setback variance from Section 1185.11 (a)(3) to allow for placement of a new monument sign. **(ARB approved 8/24/23)**
3. A request for a 2' 10" front property line setback variance from Section 1185.11 (a)(3) to allow for placement of a new monument sign. **(ARB approved 8/24/23)**

Chairman DiFranco stated, abutting property owners on Wilson Mills Rd have been notified. Whoever is here to present this case, I'll need to swear you in.

OATH

Chairman DiFranco stated, because we are a Quasi-Judicial Body, anyone wishing to speak must be sworn in. Chairman DiFranco administered the Oath to Brett Goldberg and Marc Cohen.

Chairman DiFranco stated, please proceed with your presentation.

Presentation by Marc Cohen, North Coast Architects

Marc Cohen, President of North Coast Architects introduced himself. We're here this evening for a few variances, first related to the parking. Twice in the past, most recently in 2002 we had site plans approved by the Village with landbanked parking. We didn't need all the parking paved at that time, so we proposed landbanking parking, 6 spaces, 3 here and 3 here and that was approved at that time by your Planning Commission and the Village. Now we need the spaces paved. We were told even though those spaces were approved previously, that they would still require a variance and we would need to come back formally and have that done.

Parking Spaces

On this side we're looking at adding in 3 spaces, which is 13' 4" from the right-of-way. That's the larger of the variances required. On this side we're looking at adding 2 of the landbanked spaces, 22' 4" from the right-of-way. That's the smaller of the two variances for the parking setback.

Monument Sign

For the sign, originally we had the sign back here. As part of the project we wanted to relocate it and put a new sign in. It was actually recommended by Planning Commission that we think about putting the sign closer so it had more visibility instead of where it was set back. I went and looked along Wilson Mills Rd heading east on the north side, almost all of the signs that are existing are about 7' – 8' off of the property line and sidewalk. So we placed our sign at 8' from the sidewalk, which is about 7' 2" from the property line and therefore needing the requested variance.

Chairman DiFranco asked, is there anybody here to object?

There were no objections.

Seven factors listed by the Ohio Supreme Court to guide officials in evaluating practical difficulties.

Chairman DiFranco stated, as a Board of Zoning Appeals we have a duty here to look at applicants and consider certain conditions associated with granting a variance. There had to be a practical difficulty standard associated with granting a variance as a result of some peculiar condition associated with your application. The seven nonexclusive factors to consider are;

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) Whether the variance is substantial;
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

- (4) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage);
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Chairman DiFranco stated, these are seven nonexclusive factors, we can also of course consider other factors as well in granting a variance, but those are specifically out of our code. At this time I'd like to turn it over to our Law Director Diane Calta, she prepared a memorandum. Diane, if you wouldn't mind just summarizing that memo.

Memorandum by Diane Calta, Director of Law

Diane Calta stated, I'd like to ask that the memo be put into the record (memorandum enclosed).

What I tried to do for the Board was go through the history since this property's gone through a lot of changes over the years dating back to the early 1990's. We went through with everyone here, with Debbie's, Dan's and Katie's help and maybe a few others, dug into our archives to see what was approved and when it was approved.

1991 - The first thing the memo does is talk about there was an application that came in in 1991 and I'll go through this just briefly. That was not approved, it was initially for a car wash and I think Mr. Meyers will tell you that this was a Gas Station back in the day and had some contamination issues, I think some ownership issues. It's had some challenges through the years. I think there was a discussion in the early 90's about paving over that stream and whether that was an option to get the lot see more area to be developed. You could see on that site plan this existing drainage swale. That cannot from my understanding without a great deal of expense and probably numerous approvals, it can't be used.

1993 - In 1993 we had the first approval for DO Summers, it was an original building.

1997 - In 1997 they appeared again for some approvals that were given actually in 1998. And there was an addition onto that building.

2002 - Then in 2002 is when they came in for the addition of the Car Wash as a separate building. What you've got on the site right now is the DO Summers and the Car Wash.

Land banked parking spaces -

Through the years there were some different requests for the land banked parking spaces, some different configurations on the site plan, things have changed over the years. But what I went back to was the approvals from 2002 where we have the site plan that shows those 6 land banked parking spaces in the front, and what I'll say is when we say land banked, they were approved to be maintained as green space. They weren't approved as parking, they were approved as green space and they weren't counted in the total for the parking spaces on the site. So in 2002 is when you had the 6 spaces. If you look back in all of these minutes you'll see sometimes there was reference to 8 spaces or 7 spaces.

In the historical data there was a link, I don't know if everybody was able to access that because it was pretty large, but you'll see the site plan that was stamped as approved showing the 6 spaces.

In Industrial Districts -

Interestingly enough just sort of as a side note, the code at the time didn't address land banked parking other than in industrial districts. This wasn't an industrial district but nonetheless the land banked parking spaces and the car wash were approved.

2023 - Flash forward from 2002 to 2023. Dan, Debbie, Katie, in my time I've never seen a request to flip flop this. Often times the request is to maintain areas as green space, it's good for the development, it helps with stormwater management, it's less expensive and things like that. I haven't seen the reverse which is the request here, which is to take the green space and turn it into parking, so I don't think we have any context for references to draw from.

Ms. Calta stated, what Planning did is they looked at the site plan and the site has changed obviously over those 20 years from what was approved in 2002. The site plan brought it up to existing conditions and was approved contingent upon BZA granting the variances. And there was some discussion about the sign, I would not say that the Planning Commission recommended the sign being moved, that's not whether they have authority to make recommendations like that. However, there was discussion that if this parking were put in you would not be able to see the sign which then necessitated the discussion for Planning to say hey, what about moving the sign and if the sign is moved, that also causes a request for another variance. I think we could talk a little better and answer any other questions about how the other signs along Wilson Mills are situated. But I do think one goes with the other. If you have the parking and keep your sign ordinance right now, you're probably not going to be able to see it.

The memo goes on to set out the current land bank requirements which essentially say that if you were going to be land banking parking it needs to comply with all required yards, setbacks and all the requirements of the code.

Review of Variance Process -

The rest of the memo goes into the review of the variance process. That's where Mr. DiFranco has already talked about the seven nonexclusive factors and those come from the Ohio Supreme Court back in the 80's. That's just to put in the record for everyone to consider. Many of those are on the application and this applicant has answered some of those questions, actually he's answered all of them, some are just no or yes. It's not uncommon for some of these factors not to apply and they're not meant to, it's not meant to be that all of these apply. These are all things that you kind of go through and analyze in a way and determine whether or not the factors weigh in favor of determining that you have encountered practical difficulties on the site to weigh in favor of granting of a variance.

Conclusion of memorandum by Diane Calta.

OPEN DISCUSSION

Parking Space Variance

Ms. Calta asked if anyone had any questions. I don't know if the applicant wants to discuss the practical difficulties.

Marc Cohen replied, sure. The bottom line is that we have a site plan and this is where as you have said, those seven factors don't always all apply to the situation. Our situation is that we have a site plan approved with 6 land banked parking spaces in the location shown and the only way to utilize those 6 spaces is to get variances. It was approved with the idea that at someday these could become paved parking spaces. You may have never seen any flip from grass to paving but that's the purpose of why you do land banking, it's because at the time you don't need them paved but the code requires you to have those spaces. Now we need those spaces and the only way to get them is to un land bank them. If you want to talk about practical difficulties, we have all this piece of land that can't be utilized without a great expense and approvals that we don't even know if we can get.

Brett Goldberg, Owner D.O. Summers stated, we had blueprints made up where we were going to make that into a strip center and we were able to box culvert that. And this was the compromise in coming to where we are now. So, we could have boxed over that and enlarged the whole site. Again, in compromising we did not do that. There's a major water flow from those houses and it could cause problems because it's a boxed culvert, so we gave in. Again, not everyone was there in the beginning. It certainly would have helped us to see this stuff before tonight.

Ms. Calta replied, and I did give it to your Architect, it's the same information that I provided, the whole history.

Brett Goldberg stated, no, this information would have been nice to hear before now.

Ms. Calta replied, I'm sorry, what information is that?

Brett Goldberg replied, you mentioned something before, but go ahead.

Ms. Calta stated, I prepared a memo for the Board. All of the historical documents were provided to you I think even before the Planning Commission meeting.

Marc Cohen replied yes, and there's nothing in there that you sent that I wasn't aware of as far as previous approvals and such. I just think we're in a situation where we have land banked parking on an approved site plan, now we need to utilize those spaces. In order to do so, we need a variance. It was approved that those could be utilized at some point and now is that time.

Ms. Calta stated, here is the question, when I say practical difficulties, the reasons. Why do you need to use the parking now?

Brett Goldberg replied, there are too many vehicles on the property.

Ms. Calta stated, we're putting this in the record and this is for the Board and you already talked to me a lot about this and you talked to Mr. Russell, but this is a different Board, I think if you could explain what has changed over the last 20 years as to why you need to use that parking now and over the last 20 years it hasn't been necessary.

Brett Goldberg replied, first of all the intent was, I was at the meeting I don't know if you were, that land bank was set as a reserve. We compromised for now making it green space, there were compromises along the way. Honestly, we have a lot more employees, we have a lot more business and I would say we're paying more taxes.

Ms. Calta asked, and the number of employees that you have now on any shift?

Brett Goldberg replied, originally it probably went from 2 or 3 to 15.

Ms. Calta asked, but the building was enlarged in 98, right?

Brett Goldberg replied yes, somewhere around then.

Ms. Calta stated, I was going from 2002, what's changed from 2002?

Marc Cohen replied, it's still the idea that there's more employees, more customers sub utilizing the drive-thru that this same parking count isn't adequate to handle. The staff that they now have has grown, therefore needs more parking, it's pretty straight forward. I can't tell you the numbers, I can't say we went from 2 to 8 or 10 to 20.

Ms. Calta stated, how about this, how many employee parking spaces do you need on any given day?

Brett Goldberg replied, I don't know.

Mr. Haycox asked, do you have any delivery vehicles that are taking up parking spaces?

Brett Goldberg replied no. The drivers that use those vehicles pick up their clothes from that store to deliver.

Marc Cohen stated, so they could be driving their personal vehicle, parking it there and then taking the work delivery vehicle out.

Brett Goldberg stated, you have people in the front waiting on customers, you have pressers, you have management, it was a much smaller operation that used to be.

Chairman DiFranco asked, Dan do you have anything to add?

Mr. Russell replied, I really don't have anything to add.

Chairman DiFranco asked, do any of the Board Members have any questions?

Mr. Haycox asked, is that the only place that you could add parking on the property?

Marc Cohen replied, I guess if you were talking about practical difficulty, that would probably address that. We have an open area but it's an existing detention pond and we can't put it there. We do have this part of the property here but it has the drainage ditch, we can't put it there. There's really no other spot to put it other than that area that was originally designated for land bank parking.

Ms. Calta stated, you could put it on the west side though, you had 2 spots on the west side of the building, there was just an issue with blocking for ingress and egress, right?

Marc Cohen replied, correct. There are emergency exit doors from the space along there where we had vehicles parked originally. It was brought up by the Fire Dept that if we could keep that access open, so we eliminated both spots along that side of the building in order to keep it open for that reason.

Ms. Calta stated, you had 2 spaces that were not in front of the door. If you look at the last page of the aerial, you'll see one of those cars parked on the west side of the building. You had a bar there.

Marc Cohen replied, the intent based on the discussions at the Planning Commission meeting was to eliminate what was all on that side and that's what we did. There's a storage shed there that's being removed, there was a spot where a van was parked but it was blocking the door-

Ms. Calta asked, where's the page that you say the door is, I don't think I see it. And is there any way to park the vans on the side, again, not blocking the door.

Brett Goldberg replied, there's a telephone pole.

Marc Cohen replied, actually you might be able to but that would still be after hours and at that point the parking isn't needed, it's needed during the day. Yes, could you potentially fit 1 or 2 vans there after hours, yes but at that point you have the rest of the spaces available because the businesses are closed.

Ms. Calta stated, the vacuum stations, originally you had 2 spaces back there and then they've been converted over the years to vacuum stations, correct?

Brett Goldberg replied, yes.

Ms. Calta asked, is that a possibility to put any parking there?

Marc Cohen replied, right now that's part of the business and operation, it's offering that service to the clients who utilize it.

Chairman DiFranco asked, there's two vacuum stations there and they've been approved, right?

Ms. Calta replied, they exist. If you go back to the 2002 site plan I think you'll see one vacuum station and 2 parking spaces back there.

Brett Goldberg stated, there are 3 vacuum stations.

Ms. Calta stated, my last question since I'm full of questions today is you have one space that you're not asking to convert.

Brett Goldberg replied, correct.

Ms. Calta asked, is that something that you would consider in the future or is it something that because of I think there's a water meter and a pole.

Marc Cohen replied, there's a telephone pole, existing conditions, it would be very cost prohibitive to convert the 6th space, which is why we're just doing the 5 spaces.

Brett Goldberg stated, originally when the blueprints were drawn, the building was approved without having a separate 6" waterline for fire. We went over that figure by 100 ft or something, so it cost us another \$50,000. Thank God we never used it. It's dug up now because the gasket blew out.

Ms. Calta asked, so that's going to stay there?

Brett Goldberg replied, it has to. It was approved with 6 spaces but then it came back to oh, now you have to sprinkle the building.

Marc Cohen stated, so the vault is staying, the pole is staying.

Ms. Calta stated, you're still showing that as a land banked space, yes or no. I don't know if you are or you aren't.

Marc Cohen replied, we show it but if that was an issue we would be willing to say that it is no longer going to be considered to be converted in the future.

Ms. Calta stated, having gone back to 1991 and looking at all the history, this is forward. So in another 20 years if something like this comes up which it doesn't sound like it will, the question would be is this land banked or isn't it land banked.

Brett Goldberg replied, whichever you like.

Ms. Calta stated, this is something you have to tell us to be quite frank.

Marc Cohen replied we could eliminate that space and not consider it as likely parking and consider that we pretty much have parked out the site.

Ms. Calta replied, okay.

Brett Goldberg asked in jest, is this a trick question?

Ms. Calta replied, it's not meant to be a trick question but Dan, your parking requirements get to 19, right? We need 19 spaces. Do we have enough spaces without that one? Are we at 18 or 19?

Marc Cohen replied, that makes our 19th space so we're going to maintain that land banked parking space in order to meet the requirements of the parking so we don't need a variance for number of spaces.

Ms. Calta stated, just for the record, if you ever want to use that space, you're going to have to come back and go through the usual process. I would just encourage the Board based on what you've heard to weigh these factors, we need three affirmative votes out of the four that are present to approve. This is the parking variance, we'll get to the sign.

Chairman DiFranco asked, does anyone have any further questions or comments about the parking?

There was none.

Monument Sign Variance

Chairman DiFranco stated, with the sign side of things, it's the same kind of questions relative to practical difficulty of why you have to move it.

Marc Cohen stated, it's being relocated for visibility of the sign so that it serves its purpose staying where it is. Even moving it and still leaving it at the required 30' setback it makes the sign fairly worthless with the additional parking spaces added. Moving it forward solves that and in doing so it doesn't affect any government services and as previously stated, the majority of the signs up and down Wilson Mills Rd are within that 30' setback requirement, that would even include the signage here for the Village City Hall. I've taken pictures and made notes of all the other signs on at least the north side of the street that are all within that 8' or less setback. Austin's is 7' 6" back, Howard Hanna 8' back. The closest one is the Orthodontist office at 7' 2".

Chairman DiFranco asked, and yours will be?

Marc Cohen replied, 7' 2" from the property line, 8' from the sidewalk.

Chairman DiFranco asked, any questions or comments on the sign?

There was none.

Chairman DiFranco stated, I read the practical difficulty criteria that we should consider as a Board. A couple of things just to note relative to the parking;

- There's been an increase in employees over time requiring additional parking spaces and customers and delivery vehicles.
- They are limited in space by the characteristics of their particular lot size.
- They do have land banked parking in the history record here that can be utilized for this particular purpose.
- As far as the sign goes, it sounds like there's a practical difficulty associated with the visibility of the sign, should it stay within code requirements because of the parking consideration and the sign would be in line within no closer than any of the other signs along Wilson Mills Rd.

Ms. Calta stated, just one thing about the practical difficulties. The sign and the parking obviously are connected here. But the idea is that you're not supposed to create your own practical difficulties. It may be a practical difficulty to see the sign because of the parking, but he's putting in the parking which is creating the sign. That's not something that he's finding unique to the property, that's actually something that he's created.

Chairman DiFranco stated, so what we could do is take the parking variance first.

Ms. Calta replied yes. You want to take that vote first. But also Dan, we know where those signs are located, do we know if there are other variances that were granted for those signs?

Mr. Russell replied no, but I would assume.

Ms. Calta asked, are any of them illuminated?

Marc Cohen replied, it's a newer technology, it has time & temperature on it.

Ms. Calta asked, is it going to be any brighter because there's a residential zoning district right across the street.

Brett Goldberg replied, no brighter than the sign you guys have.

Ms. Calta replied, we don't have residential across the street and we're also a municipality.

Marc Cohen stated, you have 4 or 5 lanes of heavy traffic separating our property from that residential. It's newer technology so it'll be better but it's not going to be as bright.

Ms. Calta stated, when you say newer technology, everyone thinks it to be LED and seems to be brighter.

Ms. Weber stated, I think Ms. Calta is bringing this up because previously when you originally came in for a setback variance for the sign I believe in 1998, that was denied, I think based on some feedback that had come from the residential neighbors across the street.

Marc Cohen stated, I did not do a photometric study so I can't give you a precise brightness. But, it is also perpendicular to the street, not parallel so the sides that do look illuminated aren't facing the residential properties.

Ms. Calta stated, the only other thing, are we going to be removing all the landscaping?

Marc Cohen replied, the landscaping's being reworked, that was part of the submission and approved by Planning Commission. This area here, we're doing very low landscaping around the sign itself so we don't block the readability of the sign.

Chairman DiFranco asked, Ms. Calta any other considerations?

Ms. Calta replied, no.

Councilman Al Meyers asked, is it going to be lit 24 / 7?

Marc Cohen replied, yes.

Chairman DiFranco asked, any further questions or comments?

There was none.

Chairman DiFranco stated, again, practical difficulty of this property should be considered by this Board when making your decision.

DECISION

Variance request #1 – Parking

Mr. Kless, seconded by Mr. Haycox made a motion to approve the request for a 21’ 8” and 12’ 8” front yard parking setback variance from Section 1175.05 (a) to allow for parking expansion, adding five parking land banked spaces for D.O. Summers / Wheely Clean Car Wash, 6447 Wilson Mills Rd as proposed.

ROLL CALL

Ayes: Mr. DiFranco, Mr. Kless, Mr. Andrzejczyk, Mr. Haycox

Nays: None

Motion Carried

Variance Approved

Variance request #2 – Monument Sign

Mr. Andrzejczyk, seconded by Mr. Kless made a motion to approve the request for a 22’ 10” ROW setback variance from Section 1185.11 (a)(3) to allow for placement of a new monument sign for D.O. Summers / Wheely Clean Car Wash, 6447 Wilson Mills Rd as proposed.

ROLL CALL

Ayes: Mr. DiFranco, Mr. Kless, Mr. Andrzejczyk, Mr. Haycox

Nays: None

Motion Carried

Variance Approved

Variance request #3 – Monument Sign

Mr. Haycox, seconded by Mr. Kless made a motion to approve the request for a 2’ 10” front property line setback variance from Section 1185.11 (a)(3) to allow for placement of a new monument sign for D.O. Summers / Wheely Clean Car Wash, 6447 Wilson Mills Rd as proposed.

ROLL CALL

Ayes: Mr. DiFranco, Mr. Kless, Mr. Andrzejczyk, Mr. Haycox

Nays: None

Motion Carried

Variance Approved

Right to Appeal

Chairman DiFranco stated, you or any interested party has the right to appeal the decision within ten (10) days to Council.

CASE #2023-05

Chairman DiFranco stated, our second case is consideration of Case #2023-05, the applicant is Robert LaRiche, 6506 Wilson Mills Rd.

1. A request for a 1' height variance from Section 1157.08 (b)(i) to allow for a 5' high chain link fence.
2. A request for an 8' rear side property line setback variance from Section 1181.07 (a) to allow for shed placement 2' from the rear side property line. Code requires a 10' setback to the property line.

The abutting property owners on Wilson Mills Rd. and Derby Dr. have been notified.

OATH

Chairman DiFranco stated, because we are a Quasi-Judicial Body, anyone wishing to speak must be sworn in. Chairman DiFranco administered the Oath to Robert LaRiche.

Chain Link Fence

Mr. Russell stated, if I could just do a little back story on the fence issue.

Chairman DiFranco replied, sure.

Mr. Russell stated, that's an existing fence he's moving. I looked through his file and couldn't find any variance granted for a 5' high chain link fence, we only allow a 4' high chain link and I think that's been from day one of the code. That's why I had him come forward to make it legal that it's a 5' high chain link fence that he's moving.

Ms. Calta asked, where's the fence now?

Mr. Russell replied, side of the property.

Chairman DiFranco stated, you just heard what we did with the previous applicant. The same criteria apply in determining practical difficulty. There are 7 characteristics that I mentioned. If you could tell us why a 1' high variance should be granted and what the practical difficulty associated with that might be.

Robert LaRiche stated, the 5' high fence has been there almost 30 years. This was done back when I first purchased the house. Gus was our Building Commissioner at the time.

Chairman DiFranco asked, the fence was in place when you purchased your home?

Robert LaRiche replied, it was not. When we did it Gus was aware of what was going on. I had a dog so he asked me to bring the fence in off the property line so I could maintain it and if

anybody was on the property line and stuck their hands in the fence and if the dog would have bit them, that they would have been trespassing at that point.

Chairman DiFranco stated, so at that time what I'm hearing, I just want to make sure that I understand, is that you put in a 5' high fence in violation of the code but you're saying Gus, the Building Commissioner at the time said it was okay. Do you have anything in writing relative to that?

Robert LaRiche replied no, I do not.

Chairman DiFranco asked Dan, he's coming in at this time because of why?

Mr. Russell replied, he didn't have anything in his records stating that the variance was ever granted for the 5' high fence. He's just moving it, but I want it to be known that it's been approved as a 5' high fence.

Robert LaRiche stated, the other variance on the property, I didn't want to put a shed there and with the setbacks that we have I'd basically be sticking it into more of my yard. Even though I have 25' beyond the fence line, that's all wooded so I can't really utilize all of my property to put the shed back further in the yard than what I'm asking for.

Chairman DiFranco stated, let's go back to the 1' variance of the fence. I just want to make sure I understand the practical difficulty associated with that. Aside from it having been there over 30 years and some conversation with the previous Building Official, what characteristics of your property make it such that the 1' variance should be acceptable?

Robert LaRiche replied, I would have a 5' fence dropped down to 4' and then back up to 5'. I'm trying to keep this all aesthetically level.

Chairman DiFranco asked, can you explain that?

Robert LaRiche stated, if you look at the drawing, the x'ing is where the fence is. I want to bring it out and clip this corner. I can only leave so much of my existing fence to do this. I'm going to have to get some new fencing to do the balance of it. It would start at 5', drop at 4' and back up to 5'. I want to keep it all on the same plane.

Mr. Russell asked, your whole backyard is a 5' fence?

Robert LaRiche replied, yes.

Chairman DiFranco asked, your x'ing is where the existing chain link fence is and that's going away?

Robert LaRiche replied, I'm altering it.

Ms. Calta pointing out on drawing asked, you're going to take this out and move it back?

Robert LaRiche replied, correct.

Ms. Calta asked, so your corner of your existing fence, you want to push it back to what would be the SW corner?

Robert LaRiche replied, yes.

Ms. Calta stated, so the existing fence along the southern property line is already 5', then the one that's already along the western side which is already 5' will stay.

Robert LaRiche added, then the one on the eastern side is also 5'.

Ms. Calta asked, there's another one on the eastern side?

Robert LaRiche replied yes, I just didn't put it on there.

Ms. Calta stated, I don't know if that makes more sense for the minutes, but you're keeping part of your existing fence?

Robert LaRiche replied, I'm keeping roughly 80% of my existing fence.

Chairman DiFranco asked Diane, can you describe anything relative to grandfathering with what he's describing, that the fence has been there for 30 years.

Ms. Calta replied, it wasn't approved, that's the hiccup.

Mr. Russell stated, I don't know if it would be grandfathered since it was never approved. Grandfathering I think is more if it was approved back then.

Ms. Calta replied, right and then the code would change. For example, if our code back then said that you could have 5' and now our code says 4', you would be grandfathered at your 5' height.

Robert LaRiche stated, I don't know how many of you were here in that period of time, but the way Gus did things was a little different.

Chairman DiFranco stated, part of what we're trying to do here and I think it's important is that we have some consistency associated with granting a variance. From my perspective and I think from the Board's perspective is and in our code too, is if you could demonstrate some practical difficulty associated with this or some uniqueness to your property that would make sense that a variance should be granted then we could objectively see that.

Robert LaRiche stated, I do have which is the Village's property on one side of me that has small children, dogs, kids climbing the fence to get into my yard. The other side I have a crazy pit bull that wonders around as she pleases.

Chairman DiFranco asked, do you have a dog?

Robert LaRiche replied, not anymore.

Chairman DiFranco stated, so you have neighbors that have dogs and you'd feel more protection? I'm not trying to put words in your mouth.

Robert LaRiche replied yes. The Village property, hers are a little smaller but her dogs come over, I think she's got a couple pit bulls too.

Chairman DiFranco asked, any questions on the fence variance?

Ms. Calta asked, does the shed relate to the fence at all?

Robert LaRiche replied, a bit.

Shed

Chairman DiFranco stated, tell us about the shed and why should there be a variance of 8' from the rear side property setback line.

Robert LaRiche replied, that back part is somewhat wooded all the way across so I don't have full use of my yard for the fact of having a shed and still having a yard. In that area I've kind of cleared it out, the trees start back right in here just beyond where the fence would be.

Mr. Haycox asked, are you trying to squeeze the shed in to minimize taking down the trees?

Robert LaRiche replied, right.

Chairman DiFranco asked, are you bringing power or water in?

Robert LaRiche replied, at this point I don't know, I haven't thought about that. If anything maybe some power but nothing else.

Chairman DiFranco asked, are you going to use it for storage?

Robert LaRiche replied yes, storage.

Chairman DiFranco asked, do we have any of the abutting neighbors here tonight?

From the audience, I am.

Chairman DiFranco stated, we'd love to hear what you have to say. But before that, does anybody have anything else on the shed part?

There was none.

OATH

Chairman DiFranco stated, because we are a Quasi-Judicial Body, anyone wishing to speak must be sworn in. Chairman DiFranco administered the Oath to Patricia Czaplicki.

Patricia Czaplicki, 6499 Derby Dr. introduced herself. Our back yard abuts the homeowner. I did come today just to say that I have no problem with the fencing and I have no problem with the shed. I would just like to note that the fencing is not encroached on my portion. And I would like to know that perhaps you could use a land survey plan for that to decide where the fence is going. You are correct about the dogs and things on either side of you because they come in my yard too, so far no problem. We do abut and I do enjoy my portion, it's wooded, I like the deer and I like the birds. The 5' does not bother me at all. The shed, it's going to be within your property so that's not going to be a problem for me. Many people have sheds in and around our properties, I do not but many folks do. So we understand if there is an encroachment and something is discovered down the road the fence has to be moved again. I'm just interested in making sure that I'm paying attention to what was sent to me. Again, I have no problem with the fence if you need 5', then 5'. If you can guarantee that the placement will be on your property, that's fine. I don't know if there's an easement back there through our wooded area or not. I don't know if there's like a utility easement or anything, I don't really remember on my property ever.

Robert LaRiche stated, I think they did have swales in the back. To address your concern about the property survey, the Village did come out and they surveyed the house next door which belongs to the Village.

Patricia Czaplicki replied really, Village's property?

Robert LaRiche replied yes, the gray one.

Robert LaRiche stated, so that property line located in the back is where I'm going to line up. So you'll know that that back there is the corner points of my yard and also the back of yours.

Patricia Czaplicki stated, and our pegs probably are very close to each other because I've been there 32 years. As to the existing fence you have now, yes it's been there of my understanding. So that's really why I came this evening, I just wanted to express my concerns. Do you have an idea when your work will begin?

Robert LaRiche replied, that depends on what happens here tonight.

Patricia Czaplicki replied, understood. Again, I have no problem with the shed, I have no problem with 5', 4' whatever you need. The wooded area will obscure much of that. It's still very pretty back there, I don't think the fence is going to disturb that.

Chairman DiFranco asked, what was your address again?

Patricia Czaplicki replied, 6499 Derby Dr. If you don't need anything else from me, I will depart. Thanks for letting me be part of the process.

Ms. Calta stated, thanks for your patience.

Chairman DiFranco asked, Diane, Dan, any other details to know?

Ms. Calta replied, on the property line we require that you make sure that the fence is within your property line but we do not require a survey. If there's any dispute where that line is, that's on you and your neighbor.

Robert LaRiche stated, regarding her concern, there's plenty of room behind where our properties meet. I'm going pretty much off of the pin in the back for my side line and what the surveyor Hovancsek's did when they came out to survey the house next door when they put their markers up and previously what I know what my side lines are.

Mr. Russell stated, I don't think it would be a bad idea if you get a hold of her and put a string back there and say this is where it's going to be placed and for her to say it's okay or not. I just think she's very concerned about that.

Robert LaRiche replied, to be honest with you when they first moved in she was very concerned. When I did move in and put the fence in, I did have the property surveyed that I paid for myself.

Ms. Calta asked, are you putting in the fence yourself or a fence company?

Robert LaRiche replied, myself and a friend.

Ms. Calta stated, I can't help but bring up this situation. We had a situation recently, a fence was put in, it was the fence company that encountered a tree, they couldn't obviously go through the tree so they went around the tree which was fine. But when they went around the tree they then kept going around the tree and they missed the property line by a lot, not inches, feet. And it grew, originally it might have been 4' and then it grew and it was later discovered. So it created some issues, just keep that in mind too. I would take Mr. Russell's advise to make sure you're all on the same page.

Chairman DiFranco stated, I'd like to ask a little more on the shed in terms of the 2' rear side setback. Why can't you meet the code requirement of the 10'? What's holding you back?

Robert LaRiche replied, it would then be pushing it more into the yard. I wanted to try and save more of my yard.

Chairman DiFranco stated, I understand you're trying to utilize the majority of your yard. Of course those setback requirements are there for a reason. Here's what I struggle with, at 2' off the property line, the next person comes in and says you gave him a variance to be that close to the property line. Then everyone will be here for a variance for sheds up against the property lines, which we want to avoid. Now if you said there was something that stands out that's unique or particular to that property. For example, there's a gas main running over here and if I move it further in, I'm going to be on top of the gas main. I'm not hearing anything that says 10' is unreasonable. I don't know if anybody has similar concerns or not but those are my concerns.

Robert LaRiche replied, I understand where you're coming from. I know that most communities from work that I've done in the past are 3' from property lines for the building.

Chairman DiFranco stated, the Board's role here is to when there's a practical difficulty or a unique condition that we can identify then we say that makes sense based on some of these criteria here or other criteria. I just haven't heard any unique criteria associated with the shed other than you'd like to utilize as much yard space as possible.

Robert LaRiche stated, I probably have other options, but it would mean reconfiguring my fence in a total different manner.

Ms. Weber stated, maybe you could elaborate on how wooded it is back there and explain why it is that you have it angled catty-corner.

Robert LaRiche stated, I have some very old pines, oaks and maples back there that are very large. I was looking to put it into that area because it's also the same on the other side with the large trees and trees on the property lines. It would be more hidden and blending in more with the property. My fence is green to blend in with everything.

Ms. Calta asked, what's on the 6500 Wilson Mills property right next to the shed? Is there anything there or is it all wooded?

Robert LaRiche replied, there are some large trees there.

Ms. Calta asked, but the garage is not up against that property line, is it?

Robert LaRiche replied, no. The garage is on the other side.

Mr. Haycox asked, if you moved the shed onto this location, would you have to take out the rest of the large trees?

Robert LaRiche replied, no. This is scrub stuff in here and ground cover and some plants in there that I have to move. I guess the trees that are close to the fence line here were getting close to

some over here. As far as the trunk lines, I'm a good distance away as far as overhanging branches. Since those trees are so large they do come out to my existing fence line in a lot of spaces.

Chairman DiFranco asked, any other questions or comments?

There was none.

Chairman DiFranco stated, just so that we have this for this case also, I want to read the practical difficulty standards that we're to evaluate here, some peculiar or unique condition for this property. Seven nonexclusive factors we should consider when evaluating practical difficulty.

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) Whether the variance is substantial;
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage);
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Robert LaRiche stated, obviously you've given variances for different things. I'm sure other people in the community have asked for variances for sheds.

Chairman DiFranco replied, we actually had a variance request from someone to build a shed on SOM, we did not grant that particular variance. I can't remember the exact reason we denied it. Again, this is why we give you this application to fill out, because these are the practical difficulty standards that we're going to be looking at too. Again, if there was something unique about your property.

Robert LaRiche stated, I'm looking at it that it's keeping the property maintained at a higher value for resale purposes. If it's moved in, the yard shortens up and it becomes less desirable on a resale market.

Ms. Weber stated, Stivo if I recall correctly, I think the shed on SOM was an area variance for the size of the shed.

Mr. Meyers added, he would have had two, he already had a shed on his property and he wanted to add another building and make it a workshop.

Ms. Weber replied, there you go. It was something about the use because that was prior to us changing and revising the code to make the area requirements clearer. I don't believe that had to do with the setbacks per say, it was more of the size of the shed under our previous code.

Robert LaRiche stated, I do have a future question for you. I'd like to increase my garage. I did get a variance at one point but things didn't work out for me to do it at that point. I think it was within 2' of my property line. Are these things more of an issue now than they've been in the past?

Chairman DiFranco replied, we'd have to go back to the code at the time and what were the practical difficulties associated with that.

Robert LaRiche stated, at that time, I don't think this was part of the process. I asked a few questions because I have a breezeway and I wanted to keep it. I'm just curious because that's one of the next things I would be coming to you about in the future.

Chairman DiFranco stated, I would certainly look at the code and what was the practical difficulty associated with granting that variance, is there something unique about that property that you would want that variance for that garage coming up 2' against the property line. When you come in as an applicant you should be clear that you're making a very solid argument as to why a variance should be granted. Some of this stuff we're trying to pull out of you.

Robert LaRiche replied, it's just hard because I'm looking at it from a totally different aspect. I'm looking at the aesthetics of the yard, how it's going to look. You guys are looking at it more on the legality side of it.

Ms. Calta stated, Mr. LaRiche if I could make a suggestion. Could we stick with what we've got on this agenda and if you've got another variance you'd like to talk about we'll do that through the process.

Robert LaRiche replied, with this, I'm looking at what it's going to look like, how is it going to affect the property value, how's it going to affect the resale of the property in the future. I've looked to see how it affects my neighbors. You heard from the neighbor behind me, she's okay with it because there's still a lot of growth back there, a lot of trees. It'll keep a nice barrier for the two of us.

Chairman DiFranco asked, any further questions or comments? There was none.

DECISION

Variance request #1 – Fence

Mr. Kless, seconded by Mr. DiFranco made a motion to approve the request for a 1’ height variance from Section 1157.08 (b)(i) to allow for a 5’ high chain link fence as proposed.

ROLL CALL

Ayes: Mr. DiFranco, Mr. Kless, Mr. Andrzejczyk, Mr. Haycox

Nays: None

Motion Carried

Variance Approved

Variance request #2 – Shed

Mr. DiFranco, seconded by Mr. Haycox made a motion to approve the request for an 8’ rear side property line setback variance from Section 1181.07 (a) to allow for shed placement 2’ from the rear side property line as proposed.

ROLL CALL

Ayes: None

Nays: Mr. DiFranco, Mr. Kless, Mr. Andrzejczyk, Mr. Haycox

Motion Carried

Variance Denied

Right to Appeal

Chairman DiFranco stated, you or any interested party has the right to appeal the decision within ten (10) days to Council.

Chairman DiFranco asked, any other business for the Board this evening?

There was none.

ADJOURNMENT

Mr. Haycox, seconded by Mr. Kless made a motion to adjourn the meeting.

ROLL CALL

Ayes: All

Nays: None

Motion Carried

Meeting adjourned at 7:20 p.m.

Chairman

Secretary

Enclosure: Memorandum by Diane A. Calta dated Sept 15, 2023

MEMORANDUM

TO: Stivo DiFranco, Chair of Board of Zoning Appeals
and Members of the Board of Zoning Appeals

FROM: Diane A. Calta, Director of Law

DATE: September 15, 2023

RE: Summary of Prior Approvals for 6447 Wilson Mills Road (DO Summers) and
Review of Variance Process Necessary to use Land Banked Parking
BZA CASE NO. 2023-04

Summary of Prior Approvals:

1991- P&Z discussed an application for the construction of a car wash on the subject site. The discussion included contamination on the site and its ownership. The applicant did not move forward with this plan.

1993- DO Summers appeared before P&Z and ARB for approval to build a 990.64 square foot building to be used as a dry cleaner. The building was approved contingent on a sign variance of 10 feet from the requirement that the sign be setback 30 feet from the right of way and for a variance of 11.5 square feet for the size of the sign. The size variance was granted. The setback variance was not granted. See Council Resolution No. 93-17, July 19, 1993.

1997- DO Summers appeared before P&Z for preliminary approval of an addition to the existing building. There was discussion of land banking 8 parking spaces to preserve the green space in the front of the site. There is no specific reference to an approval of these land banked spaces in the minutes.

1998- DO Summers appeared before P&Z for final site plan approval for the addition to the building. The minutes reflect that the final site plan was approved which added 1,681 square feet to the building, bringing the total building square footage to 3,096. There is no specific reference to approval of the land banked spaces in the minutes.

2002- DO Summers appeared before P&Z for approval of an additional 1,451 square foot car wash to be built on the site. **The plans, stamped as approved, show 6 land banked spaces.**



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2023- DO Summers appeared before P&Z on July 20, 2023, for approval of a site plan reconfiguring the parking on the site and proposing the use of 5 of the 6 land banked parking spaces. The site plan was approved on August 7, 2023, CONTINGENT on approval from the BZA of two setback variances for the land banked parking spaces.

[The revised final site plan submitted to the P&Z includes 13 existing parking spaces and 6 land banked spaces, for a total of 19 parking spaces. The Village's parking code was amended in 2010. The current parking requirements are 1 space for every 250 square feet of building area. Based upon the total building square footage of 4616 square feet (3096 + 1520) 18.5 or 19 spaces are required. If approved, there will be 18 existing spaces and 1 remaining land banked space. If the applicant wishes to use the 1 remaining land banked parking spot in the future, P&Z and BZA approval will again be required. Given the number of spaces, there is, however, no longer a need for a parking variance. These facts should be put into the minutes of the upcoming BZA meeting.]

Land banked parking spaces-

In 2002, the Village approved a final site plan which added the car wash to the site with 6 land banked parking spaces. At that time, the Village's codified ordinance addressed parking requirements at 1183.06 (Ordinance 75-16. Passed 9-8-1975) and stated as follows regarding land banked parking:

"In industrial districts wherever the application of the standards as set forth in Section 1183.05(22) as to "number of employees" results in a lesser number of parking spaces than required by the application of such standard as to "square feet of building", the Planning and Zoning Commission may permit the construction of a lesser number of spaces, provided, however, the additional area required to provide the number of spaces under the "square feet of building" standard shall be reserved and held as open area along with all required yard areas, for future construction of parking spaces until the use of the building is changed to a classification having a greater number of employees in relation to the building area."

This is the only codified ordinance at the time that addressed land banked parking. This provision was amended in 2010 per Ordinance 2010-41. It should be noted that the subject property was not zoned industrial in 2002.

MVCO 1183.06 was amended in 2010, and now reads as follows:

1183.06 LAND BANKING OF REQUIRED PARKING.

(a) The Planning and Zoning Commission shall determine the number of parking spaces to be constructed, as may be appropriate, based on the evidence submitted. Reduction in the number of parking spaces to actually be constructed may be authorized by the Planning and Zoning Commission when the applicant shows that the required number of parking spaces set forth in Section 1183.05 is substantially

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in excess of the parking needed to reasonably serve the employees, patrons, and other persons frequenting the subject property.

(b) The site plan shall indicate how the additional number of spaces otherwise required could subsequently be provided on the site, and in all cases, with review and approval by the Village Engineer, the storm water management systems must be designed and constructed to accommodate all land banked spaces as detailed in Chapter 1128 Comprehensive Storm Water Management.

The additional parking area shall be designed to comply with all required yards, setbacks, and driveways for subject property and shall meet all requirements of this Code. The additional parking area's design may be a surface lot or parking garage, as determined in the site plan.

Landscaping of the land banked area must be in full compliance with the zoning regulations and at a minimum, vegetation approved by the Planning and Zoning Commission shall substantially cover the land banked area. The Planning and Zoning Commission may require additional landscaping of the land banked area.

(c) The land banked area shall not be used for any other purpose and must be part of the same zoning lot and all under the same ownership.

(d) The Planning and Zoning Commission, on the basis of increased parking demand, may require the conversion of all or part of the land banked area to off-street parking spaces.

(e) The reservation of said spaces and the purpose, therefore, shall be shown upon the approved plans as "Land Banked Future Parking" and shall be a component of any future submittal involving the subject property. (Ord. 2010-41. Passed 1-18-11.)

Review of Variance Process:

First, because the applicant sought to change the site plan, to use the land banked parking (and over the course of 20+ years had already made other changes to the site without Village approval), P&Z approval was required. (MVCO 1183.12). Secondly, because the land banked parking spaces at this site do not meet the setback requirements from the right-of-way and/or the property line, the applicant is required to obtain two variances from these setback requirements.

In this instance, P&Z approved the applicant's revised and updated site plan on August 7, 2023. However, the P&Z approval was CONTINGENT on subsequent BZA approval of the required parking setback variances. What this means is that the use of the land banked parking spaces is subject to a showing of practical difficulties by the applicant and a similar finding by the BZA as grounds to approve of the parking setback variances. (MVCO 1105.02(e)).

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Because the Village's Code does not enumerate the specific standard for the consideration of practical difficulties, we look to the historic precedent of Ohio case law dating back to two Supreme Court cases whose purpose was to assist boards and commission in this regard:

First, *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30 drew the distinction between use and area variances.

“A property owner encounters ‘practical difficulties’ whenever an area zoning requirement (e.g., frontage, setback, height) unreasonably deprives him of a permitted use of his property. The key to this standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable. The practical difficulty standard differs from the unnecessary hardship standard normally applied in use variance cases, because no single factor controls in a determination of practical difficulties. A property owner is not denied the opportunity to establish practical difficulties, for example, simply because he purchased the property with the knowledge of the zoning restrictions.”

In effect, the considerations for area variances focus upon compatibility with the zoning district in which the property is located. In this instance, the DO Summers property is located in a MVCO Chapter 1173 Motor Services District and is part of the MVCO Chapter 1175 Beta Overlay District.

About two years after the *Kisil* decision, the Ohio Supreme Court listed seven factors that it believed would more objectively guide officials in evaluating such practical difficulties. From *Duncan v. Middlefield* (1986), 23 Ohio St.3d 83, the list of seven factors is as follows:

- “(1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
- (2) Whether the variance is substantial;
- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- (4) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage);
- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.”

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Duncan v. Middlefield, supra, syllabus.

It is important to point out that the Court did not rank these factors and noted that maybe only one or a few might apply, depending on individual cases. No single factor controls the determination of "practical difficulties." Overall, the Supreme Court has held that a property owner encounters "practical difficulties" whenever the area zoning requirement unreasonably deprives the property owner of a permitted use of the property.

The Board of Zoning Appeals can bring up any other factors which they determine relevant to the request for the variance. For example, if the factors weigh in favor of the variance and the variance would result in an improvement of the property that is more appropriate and more beneficial to the community than would be the case without the granting of the variance.

As standard protocol, at least an analysis of the factors outlined herein should be used to determine whether practical difficulties exist. Only if the factors weigh in favor of a finding of practical difficulties should the variances be granted.

cc: Daniel Russell- Building Commissioner
Brenda T. Bodnar- Mayor
Diane Wolgamuth- Director of Administration
Katie Weber- Assistant Law Director











EXISTING CONDITIONS



6447 WILSON MILLS

PROPOSED