



BOARD OF ZONING APPEALS

BOARD ORDER

MAY 26, 2011

**Land Use and
Long Range Planning**
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/ TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

The Board of Zoning Appeals took the following action at this meeting:

1. Crown Fiat – Parking and Setback Variances **5105 Post Road**
11-022V **Non-Use (Area) Variances**

Proposal: Non-use (area) variances to permit vehicular use areas to encroach the required 50-foot setback from Post Road by 40 feet and to permit 14 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership. The site is zoned CC, Community Commercial District, and is located on the south side of Post Road approximately 600 feet west of the intersection with Frantz Road.

Request: Review and approval of variances to Zoning Code Sections 153.072(E) and 153.212 under the provisions of Zoning Code Section 153.231.

Applicant: Crown Automotive Group, represented by Mike Close and Tom Hart, attorneys.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

MOTION #1: Victoria Newell made a motion, seconded by Brian Gunnoe, to approve this application for a non-use (area) variance to permit 14 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership because the applicants are bringing the site into compliance with lot coverage,

VOTE: 5 – 0.

RESULT: This non-use (area) variance was approved.

RECORDED VOTES:

Victoria Newell	Yes
Patrick Todoran	Yes
Brett Page	Yes
Kathy Ferguson	Yes
Brian Gunnoe	Yes

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1. Crown Fiat – Parking and Setback Variances
11-022V

5105 Post Road
Non-Use (Area) Variances

MOTION #2:

Victoria Newell made a motion, seconded by Patrick Todoran, to approve this application for a non-use (area) variance to permit a vehicular display area to encroach the required 50-foot setback from Post Road by 40 feet because the adjoining sites all are already violating that 30-foot setback and the applicants are improving many of the other Code violations on this site, with one condition:

- 1) That the vehicular display area be screened with landscaping to the same extent as parking spaces along Post Road.

* Tom Hart, attorney, on behalf of Crown Automotive Group, agreed to the condition.


VOTE: 5 – 0.

RESULT: This non-use (area) variance was approved.

RECORDED VOTES:

Victoria Newell	Yes
Patrick Todoran	Yes
Brett Page	Yes
Kathy Ferguson	Yes
Brian Gunnoe	Yes

STAFF CERTIFICATION


Claudia D. Husak, AICP
Planner II

1. Case 11-022V – Crown Fiat – Parking and Setback Variances – 5105 Post Road

Chairperson Newell introduced the case.

Claudia Husak presented this request for two non-use (area) variances, one to the 50-foot setback along Post Road, and one to the parking requirements for service bays and for vehicle display areas. The site is located on the south side of Post Road and also has frontage on US 33/State Route 161. It is zoned CC, Community Commercial District, and to the west is the Red Roof Inn hotel, and to the east is the Bob Evans Restaurant. This application was reviewed by the Board at their April meeting, where variances were sought to the parking requirement and the US 33/State Route 161 frontage for vehicle display area, and the applicant has since revised that site plan. This application was tabled after a long discussion and the applicant has tried to work out several different scenarios for decreasing the variance. Planning worked with the applicant to identify the best way to proceed and to come up with the site plan presented tonight.

Ms. Husak stated that one of the options that the applicant had proposed to staff was eliminating all setback variances, but also included eliminating the large landscape island in the center of the site that is used to meet landscape code requirements and lot coverage requirements and also for stormwater management. Since that proposal deviated so vastly from what the Planning and Zoning Commission approved as part of the conditional use process and also created issues with stormwater management, Planning suggested that the applicant not move forward with that plan and instead move forward with the plan that is before the Board tonight.

Ms. Husak described the proposed site plan. There are 18 parking spaces currently located along Post Road, and the applicant is proposing to use those for vehicle display, but removing the parking spaces previously located along the State Route 161/US 33 frontage. This site configuration allows the applicant to have the display that they need. However, there is also a 50-foot setback requirement along Post Road, and while the Zoning Code makes an allowance for parking to encroach into a building setback, the applicant is proposing to have display area, which we consider a use, within that setback; so Planning has determined that the 50-foot setback must be maintained, and with that, the applicant is requesting a variance of 40 feet for their vehicular use display.

Ms. Husak explained the second variance with a slide that showed the areas designated for vehicle display and parking spaces. The applicant is requesting a variance to the display parking, where they want to park at 1 space per 2,000 square feet, which is 7 spaces, and they want to provide 2 parking spaces per service bay, which is 16 spaces; so that the total variance is 14 parking spaces from what Code requires.

Chairperson Newell asked why the solution that Planning preferred, after working with the applicant, still required a variance.

Ms. Husak said that the problem is that the other plan did not meet other Zoning Code requirements, with the removal of a lot of the landscaping. It didn't meet the stormwater requirements, and it was very different from what the Planning and Zoning Commission approved. While this plan still requires variances, and we, as a staff, have a hard time finding that it meets the standards, it still works better than the plan presented in April and the other plan that the applicant presented to Planning.

Tom Hart, the applicant, introduced himself. Mr. Hart said that they had tried after the last meeting to listen to the Board's feedback and listen to what staff told us. We do have a plan for that landscape island that is a significant upgrade. This proposal keeps the existing display parking, and that's our variance request, in the Post Road setback. As staff stated in their report, it's a more desirable option for display than the previous proposal, given the fact that we have those conditions today on our site and along various places on Post Road.

Mr. Hart said that the requested variance is more appropriate along Post Road than would have been along US 33. He mentioned that they are losing two more display spaces, and that they are going from over 200 existing parking spaces down to 116 overall because of all the compliance necessary for landscaping, lot coverage, stormwater, the new building footprint, and then the effect of the right-of-way changes from when the site was originally developed. Twenty display parking spaces are still requested, but this time along the Post Road setback. These spaces weren't always display spaces for cars, they have been customer parking for various uses. We don't think this is a special privilege under the factors that the City uses now, because other sites in the area and this existing site have those kinds of parking spaces in the setback. We don't think it will be a special privilege in the future because of the Bridge Street plan and because setbacks in this area under that plan and Code are likely to be used more than they've been used as development patterns change.

Mr. Hart said that since the last meeting, he had provided additional information about Ohio law on variances. Probably the best example is the Albert versus Bexley case, which was all about setback regulations and parking regulations. There was no unique shape to the property or topographical issue that drove that case. It was the regulation itself that created the need for a variance, where an otherwise approved use of the Code is affected by a regulation in another part of the Code that's not really intended.

He said the variances are requested because the regulatory impact on this site has changed since it was initially developed. That change is rather dramatic in terms of the impact on the use of the site and parking, and in fact many uses would be challenged by all of the new regulations.

Ms. Ferguson asked the applicant to clarify.

Mr. Hart said that one reason was the fact that the right-of-way itself changed from that time from Route US 33, taking away a number of spaces, since 1984. The second change is the setback line where it is on Post.

Ms. Ferguson thanked Mr. Hart.

Chairperson Newell had a question in terms of landscaping along the parking spaces or the display spaces that the applicant is proposing along Post Road. She requested additional information about the landscaping proposed along Post Road.

Brad Parish, Architectural Alliance, 165 North Fifth Street, explained that where they would have either a six-foot mound with trees required along US 33.

Ms. Husak clarified that along Post Road, the landscaping would be required to be three and a half feet tall. The applicant would, if the variance would be approved, be allowed to only have one-foot tall shrubs there because they are using the area for vehicle display.

Chairperson Newell asked specifically what the applicant was planning to provide. In other words, whether the landscaping requirements would be different if the spaces were used for parking rather than vehicle display.

Mr. Parish said that they are showing a hedge treatment with taxus, an evergreen shrub.

Chairperson Newell asked about the lot coverage shown on the proposed plan.

Mr. Parish answered that it would be about 70 percent lot coverage.

Chairperson Newell questioned whether the existing site is over lot coverage.

Ms. Husak said that it is at 78 percent lot coverage currently, where they are permitted 70 percent.

Mr. Page appreciated the removal of parking along US 33.

Chairperson Newell agreed and asked whether the spaces shown along Post Road would violate the Zoning Code if they were parking spaces rather than display spaces.

Ms. Husak said that they are violating the Code even if they were parking spaces.

Kathy Ferguson found the applicant's arguments compelling specifically because it seems as though by granting the variance they would be allowed to move into a direction that the City is going with development in the area anyway.

Brian Gunnoe agreed with Ms. Ferguson.

Chairperson Newell asked if any of the surrounding properties have a similar location for where they have parking laid out on their site.

Ms. Husak answered that Bob Evans has a drive aisle in the setback, but not parking. Across the street, MAG has display spaces also on Post Road, again not in compliance with Code, developed a long time ago. So that is display, not parking, so those cars are there all the time.

Ms. Husak said that one of the areas in which the Bridge Street Code would help this applicant is the parking requirements. The proposed parking requirements are vastly reduced from what the current Code requires, so that variance would likely go away.

Chairperson Newell asked when the zoning regulations changed in terms of parking setbacks on both sides of this site.

Ms. Husak said that Planning disagreed with the applicant's argument. The plat as it was platted in 1980 took the rights-of-way into account as they are today, so there have been no changes made to the right-of-way from that time.

Chairperson Newell appreciated that the applicant is bringing this site into compliance with lot coverage, even with the addition that they're putting on the building. She didn't see a strong argument for extending into the setback except for the fact that they are bringing the site into compliance, and she is curious to know from the applicant if they would be willing to accept

landscaping for the display spaces to conform to the landscape provision as if they were parking spaces.

Mr. Hart agreed with that condition.

Chairperson Newell made a motion for approval of the variance request for a parking reduction to provide 14 fewer parking spaces because they are bringing the site into compliance with lot coverage. Mr. Gunnoe seconded the motion. (Vote taken; motion passed unanimously.)

Mr. Page said that regarding the second variance request, the standard that discusses whether the variance is not necessitated because of an action or inaction of the applicant, he asked if the applicant could address this point.

Mr. Hart said that in the Bexley case, the effect of the regulation itself can be a special condition, when you have one part of the Code that allows you to do something, but then you have other parts that make it impossible or impractical, that's where this test comes in. He believed that there is some evidence from one of the last thoroughfare plans that the right-of-way along US 33 did change.

Ms. Husak said that the plat the applicant submitted shows the property line as coincidental to the right-of-way line of US 33 and SR161, and, therefore, Staff does not believe that anything changed with the right-of-way because that property is what it is today, and the Code said then, as it does now, that there is a 50-foot setback required.

Mr. Hart said he looked at the 2007 Thoroughfare Plan and believes that there was a change.

Ms. Husak said that the setback is from the property line and the property line doesn't change, and it's 50 feet from the property line. That's the same property line as it was in 1980 as it is today. The setback requirement was in the 1982 Code, and it was in the 1990 Code.

Chairperson Newell thanked staff for their research.

Mr. Gunnoe asked if the Board members agreed that the first and third required standards had been met, and if the other Board members were struggling with the second standard regarding application action or inaction.

Chairperson Newell said she was struggling more with the first standard more than the standard regarding action or inaction of the applicant.

Mr. Gunnoe asked whether "special conditions" only related to the geography of the site.

Ms. Husak said that if the Board found something else, it would be up to their interpretation regarding what would be considered a special circumstance.

Tammy Noble-Flading said if Planning were to enforce the setback and they were to be 30 feet farther back than they're requesting and the other adjacent sites are currently at their locations, their visibility is going to be considerably hindered. If other parking areas are closer to the road and they're 30 feet back and the purpose of that parking is the display spaces, they're going to be hindered because of the other parking on both sides of them.

Chairperson Newell said that all of that pavement that's along Post Road is already violating that setback requirement. She questioned how the setback could be enforced on this site, since by not allowing them to encroach the setback, the Board would be denying them a special condition that the other property owners are currently afforded.

Mr. Page said that for him it was also an issue of what is across Post Road and those conditions are similar maybe even the same as for this site.

Chairperson Newell made a motion for approval of the applicant's variance request to permit display parking within the required setback from Post Road with the condition that the display parking be treated and screened consistent with the screening for typical parking spaces, because the adjoining sites all are already violating that 30-foot setback and the applicant is improving many of the other Code violations on this site. Mr. Todoran seconded the motion. (Vote taken; motion passed unanimously.)

Mr. Hart thanked the Board.



CITY OF DUBLIN

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BOARD OF ZONING APPEALS

BOARD ORDER

APRIL 28, 2011

The Board of Zoning Appeals took the following action at this meeting:

MOTION: Brett Page made a motion, seconded by Victoria Newell, to approve the January 27, 2011 Meeting Minutes as presented.

VOTE: 5 – 0.

RESULT: The January 27, 2011 Meeting Minutes were approved.

RECORDED VOTES:

Victoria Newell	Yes
Patrick Todoran	Yes
Brett Page	Yes
Kathy Ferguson	Yes
Brian Gunnoe	Yes

STAFF CERTIFICATION

Rachel S. Ray, AICP
Planner I

11-022V
Non Use (Area) Variances
Crown Fiat-Parking and Setback Variance
5105 Post Road

Board members to make a motion to select either Monday May 16 or Wednesday, May 18. I think I'm hearing some consensus for May 16, 2011.

MR. PAIGE: I make a motion for a special meeting of the Board of Zoning Appeals for May 16, 2011.

MR. TODORAN: I'll second. (Vote taken; motion passed unanimously.)

MS. NEWELL: We will move on to case presentations. Anyone who is planning to speak this evening before the Board needs to stand to be sworn in. (Witnesses sworn.)

Case 11-022V - Crown Fiat - Setback and Parking Variances...

(Ms. Newell introduced the case)

MS. HUSAK: Good evening. This is a request for two variances for a parking requirement and for a setback requirement. The site is located on the south side of Post Road just north of US 33. The Bob Evans restaurant is located to the east and to the west is the Red Roof Inn hotel. The site is currently vacant and contains a 10,000 square foot building that was originally developed as the Chi-Chi's restaurant with ample parking around the site.

The applicant is proposing to develop the site with a car dealership for the Fiat brand with eight service bays and a service write-up area included as part of the dealership. The car dealership is a permitted use in the Community Commercial District, and the Planning and Zoning Commission recently approved a conditional use for vehicle service bays. The Commission also approved two deviations from the zoning requirements to allow the service drive to encroach into the 50-foot required building and pavement setback from State Route 33. The Commission also allowed the parking for the service bays to be provided at three spaces per service bay.

The first request is for a variance to the setback requirement from State Route 33. In the mid 1980s this site was included on a plat for Post Road, and the plat included a 10-foot setback for parking along the southern property line. The Zoning Code was amended in 1991 to require a 50-foot setback for building and pavement, and because the applicant is making significant improvements to this property, they are required to bring the site into compliance. They are requesting a variance of 40 feet into the required setback.

The second request is for parking. The Zoning Code does not have a requirement for display area, where auto dealers typically store their inventory vehicles. The current requirement is one space per 1,000 square feet of display area. The total requested variance is for 15 parking spaces based on the parking requirements for the sales facility, service bays, and display spaces.

For the setback variance, in Planning's opinion, the need for the variance stems from the applicant's action requiring additional vehicle display versus customer parking for this site. Display parking is something that the code does not require, but is something that the applicant wants to have. Planning has made similar findings on the review criteria for the parking variance, that adequate parking would be available if more spaces would be used for display. Planning therefore recommends disapproval of both variance requests.

KATHY FERGUSON: You said if the variance is approved, it would mean more space for display and less for parking, correct? (Ms. Husak affirmed). What is the purpose of the parking requirements?

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Crown Fiat-Parking and Setback Variance

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MS. HUSAK: The Zoning Code requires a minimum number of parking spaces for each use that are fairly typically for many cities. If a site were not to provide enough parking spaces, it would force customers to park in drive aisles, which could potentially prove a hazard for Fire to get around the building if there were an emergency. It may also cause people to park on the road and then impeding travel through the city. The applicant is essentially proposing to use spaces that would typically be available for a customer to come to the site and park and walk around and look at cars for vehicle display. The display spaces would take away from spaces available for customers because they would be occupied by cars for sale.

MS. NEWELL: Will the applicant please come forward.

TOM HART: Tom Hart, 300 Spruce Street, Columbus, Ohio. With me tonight is Mark Wigler, the president and general manager of the Crown Auto Group. As Claudia said, we have been approved for a conditional use by the Planning and Zoning Commission. We are planning major improvements and upgrades to the architecture of the building on this site. We're remodeling the inside of the building with the addition of the service bays that we requested. There will be significant landscaping additions and new jobs and auto product sales on what is now a vacant site. Along with the requested variances, if Crown purchases the property, we will also bring it up to all Dublin Zoning Code standards.

In summary, this case is about two changes to the rights-of-way on Post Road and State Route 33 since the site has been developed that impact the use of the site. That's the reason for the variance requests. Regarding the first variance, the code changes and the changes to the Thoroughfare Plan has resulted in a significant change resulting in a loss of parking. In addition to the setback constraints, we have an issue in terms of the second variance for non-display parking.

A car dealership of this size in today's world doesn't need that much general parking. We think it's an unreasonable requirement to only leave 47 spaces for display for a dealership of this type. Without the setback variance, we would only have 25 spaces left for vehicle display. The reality is that we're not going to get a national contract from Fiat USA to have a dealership here with that number of display spaces for this business. Crown Fiat is a low impact dealership in terms of sales, traffic, and employee size. Our service function simply does not need 24 parking spaces - we believe 16 is adequate. The dealership will probably have 15 total employees, and under the proposed variances what we're asking for would result in 15 employee spaces, 16 spaces allocated to the service bays for the public, and then 62 inventory display spaces. There would be 25 remaining spaces for customers. There are 200 spaces on this site today. Our request would result in taking a lot of those spaces away to address landscape issues, screening, and the addition of service bays.

MARK WIGLER: I've been running the Mercedes-Benz, Chrysler, and Kia dealerships on Perimeter Loop Road for six years. We track all of our customers that come in through phone, internet, and regular traffic. Looking at a three-year average for the other three stores that we currently run, at our Mercedes store, we get an average of 6.2 clients per day over nine to ten hours. Our Chrysler store does 4.5 customers per day, and our Kia dealership actually has 5.2 customers per day. When we start talking about 25 parking spaces for customers, unless there is some sort of an event which would create that kind of traffic, we may have three or four customers per day. Looking at the volume that Fiat is looking for, the full planning volume is 493 vehicle sales per year. The industry has changed - we don't get as many visits as we used to get in the mid '80s. People do their research on the internet, and we look at 3.5 visits per every sale that we do. So we're looking at if we sell everything that they say we could sell, 1,725 customers would be the projected number to visit over an entire year. About five customers a day would actually visit the

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Non Use (Area) Variances

Crown Fiat-Parking and Setback Variance

5105 Post Road

store from the sales side. And I think that's what a lot of these parking spaces are actually allocated for, is for the sales side, so it looks like too many customer parking spots are required.

MR. HART: The extraordinary circumstances we see in this case are the combination of two regulations that impact parking. The two code requirements for parking and setbacks should be varied from because they operate together and have an unreasonable impact. The resulting limitation of the display spaces is only the effect of the two code provisions impacting this site without considering how those two code provisions come together in an unintended way. There's no Zoning Code prohibition against the number of display spaces provided, but together these two factors, the right-of-way and the parking restrictions, mean that we can't provide the amount of display that we need.

I also want to address the issue of uniqueness. The impact here is uniquely severe as compared to other properties between Post Road and 33. Of course, there are other properties where the two rights-of-way affect existing sites, but I think this site is different. I don't think any site adjacent site loses as much parking because of the setback requirements. Bob Evans has a drive aisle in the northern portion of their site, not parking. We do think that there's a special condition present on the site based on those two factors and because of the configuration of this site, because of access in the front, which I'll go over.

Special circumstances aren't limited to topography or the shape of the property. In this case the fact that both the front and the back of the site are severely impacted by changes in the right-of-way and the large volume of parking that is lost compared to other sites.

Staff also commented that our display areas could have been permitted on the south side with exposure to 33 but we chose to arrange the site in a way that took away that potential. The problem with that is that we didn't have many choices where that service bays could go. There's very little impact on the Red Roof Inn property to the west from the addition of service bays because most people are not sleeping in those rooms during our operational hours before 6:00 p.m. We couldn't put the service bays on the east side because most people at Bob Evans don't want to see and hear vehicle service.

The other possibility, because we wanted to keep the service bays on the west side, would either be putting the service write-up on the front of the building. We didn't propose that location because we believe that would conflict with the entry to the site. We don't want the service write-up to be the first thing people see on the site. We think the architecture is going to be stunning. It's kind of modern, and we want visitors to have an experience. The portion on the northeast side of the building was eliminated as an option because of site circulation and because of the dumpster location. It is also the front elevation of our business, and we didn't want the service in the front of the site.

For those reasons, we disagree with staff that we could have proposed a different site plan or that there was any inaction on our part.

Staff also commented that customer parking is intended to be temporary, as opposed to display parking, which is continuous. There's no evidence to support that. The site has been vacant recently, but in the past this site was a car dealership and a restaurant. When it was a car dealership, there were cars parked as display all the time.

Next, with regard to staff comments on the parking variance, I think some of the issues are the same in terms of special conditions and substantial adverse effect. In terms of what we could have done differently to avoid the need for the variance, it's the right-of-way changes that

brought us here. If we didn't have the changes to the right-of-way, we wouldn't need these two variances.

MS. NEWELL: Are there any questions for the applicant?

BRETT PAGE: I have a couple questions. How do you define a customer?

MR. WIGLER: You're a man in a white shirt. We write it down. We're pretty good at tracking visits, regardless of whether they stop.

MR. PAGE: How many cars are serviced on average each day?

MR. WIGLER: We've never had a Fiat dealership before, but the industry average is 1.7 times per year per car sold. If we sold 400 cars a year, that would be about 800 vehicles per year for service. With the life cycle of a car, about 39 months, it equates to about 3,200 cars per year coming in, but that's not usually the way it turns out.

MS. NEWELL: You compared the size of a Fiat dealership to the Crown Kia dealership. Can you give me a comparison on what your parking space count is on your Kia dealership site in comparison to this site?

MR. WIGLER: We have 12 parking spaces for customers right out front. Sometimes we do have display vehicles sitting in those spots, but I don't have all of the numbers.

MS. NEWELL: Does staff have the parking count for the Kia site?

MS. HUSAK: I don't know off the top of my head, but the difference between the properties, as Mr. Wigler said, is that they are separate parcels that function as one campus. The spaces are shared throughout, and most importantly, it is a Planned Unit Development District, so the requirements may be different as approved with the final development plan.

MS. NEWELL: It seems that there's actually more parking spots on the Kia dealership site currently.

MR. WIGLER: I can tell you that we do service eight vehicles per day at the Kia dealership after almost ten years. We have about 20 spaces right behind the carwash used while the cars are being serviced. But directly behind that is where all the employees of all three dealerships park, so we don't utilize all the spaces for just Kia.

MS. NEWELL: Is the existing structure being renovated? Or will a substantial portion be torn down?

JOHN ONEY: John Oney, Architectural Alliance, 165 North Fifth Street, Columbus, Ohio. We're working with the existing building location and renovating from the footprint of the building and the exterior walls. We are renovating the existing showroom and parts areas. The back wall would stay, and then we're adding the service bays to the rear of the building.

MS. NEWELL: Is there a requirement for the number of service bays, or was that your choice?

MR. ONEY: Yes, there is a requirement. We were required that there be two service reception lanes for the incoming customers and eight working service bays.

MS. HUSAK: That's not a zoning requirement, though.

MS. NEWELL: Can you tell me where cars are going to be delivered to this site?

MR. WIGLER: Ultimately they would be delivered directly to the site and then probably unloaded behind service using a semi truck.

MS. NEWELL: Has staff looked at the turning radii?

MS. HUSAK: As part of the conditional use plan approved by the Commission, we had the applicant indicate where loading and unloading would occur.

MS. NEWELL: Did engineering make sure that semis could actually enter and exit the site? The reason I'm asking is because about a month ago, one of the other automotive dealerships was unloading their vehicle in the street.

MR. WIGLER: We first looked into servicing vehicles in our Chrysler facility, since Fiat is actually part of the Chrysler brand, but we're required to have service at the same location as the sales facility. We thought about unloading the vehicles and doing pre-delivery inspections at Chrysler and then just driving over or the cars over. If that's a real sticking point and we can't drop the cars, we certainly can accommodate.

MR. PAGE: Is the stormwater detention area untouchable, or is there some way that the site could be creatively utilized to potentially increase parking capacity?

MS. HUSAK: There are a couple of points to clarify. One is the plat that set aside that parcel in 1984 included the Post Road right-of-way as it is today, so there was no taking of right-of-way or changes to the right-of-way. How the parking came to be in the present location along Post Road is unclear, because the setback requirement from Post Road was the same in 1984 as it is today. The applicant is also required to screen the vehicular use area, including drives, parking areas, any kind of pavement from the roadway on their site. The proposed plan includes adequate screening and required trees. Certain landscape areas are required by the Zoning Code for parking areas.

MR. HART: We didn't ask for a variance along Post Road for those reasons. We needed that area for other code compliance issues.

MR. PAGE: I'm just wondering if the site plan has been maximized to the fullest extent.

MR. HART: Today, the site doesn't meet lot coverage. We're bringing it into compliance with lot coverage by maximizing parking versus green space.

MS. HUSAK: The code does not require a certain number of spaces for display. It also does not require display to happen in a parking space. We prefer to have the area outlined on a plan where the display occurs.

MS. NEWELL: Can you tell me what the setbacks are for other car dealerships in the city?

MS. HUSAK: This is the Perimeter Center area, with the Kia and Chrysler dealership that the applicant owns, and this is the Bob Evans site. All of those sites have the same 50-foot setback requirement from 33. The requirement for the Post Road setback is 50 feet as well, because the Post Road right-of-way is 100 feet. Parking is permitted to encroach 40 percent into that, setback requirement, which is 30 feet. The sites on the north side of Post Road are nonconforming.

BRIAN GUNNOE: Being part of the Bridge Street Corridor, how is this site going to be affected by the proposed changes regarding setback?

STEVE LANGWORTHY: One of the concepts for the Bridge Street Corridor includes the relocation of Post Road, potentially even north across the creek. Should that occur, one of the things we believe will occur is that this will allow the site to become much more developable. The other option is to keep the street south of the Indian Run Creek parallel to Bridge Street, ultimately into the Historic District. In this case, the street would become a primary street, and we would want most of these uses as they redevelop to push closer to this street and get more of a setback and green area along 33.

We also have to anticipate the changes that may occur with the US 33-270 interchange improvements and the potential effects on the parcels in this area. As a result, we're trying to push as much off of the 33 right-of-way as we can and then shift the emphasis up to Post Road as being the primary frontage road.

MR. HART: We feel very strongly that the application has to be considered on its merits for what has been presented, and how this site is impacted by the conditions we've outlined, and not necessarily what could happen in ten years.

MS. NEWELL: I'm struggling a little bit with seeing where there is a hardship on this property, and the reason is that I can think of multiple sites in the city of Dublin that have the exact same constraint this one does with dual frontage and large setbacks along 33. As an architect, I have tried developing some of these properties with similar constraints. Ultimately most of those sites have been developed within the city with similar requirements, so it's hard to say that there are circumstances unique to this site.

Is there anyone from the public that would like to comment on this application?

JEFF ROBY: Jeff Roby, 8596 Dunsinane Drive, Dublin, Ohio. We bought this property around 2000. The property technically is not vacant. There is a car dealership there licensed in the state of Ohio. If we look at where the drive-through, write-up area is, that's exactly where it was located on a site plan approved by the City of Dublin in 2006. The only issue was that we had to change radii on the corners of the building. Additionally, the area along 33 was our display area, since we were permitted a certain amount of designated display area.

I understand what the City is doing, but it is sickening to me to find that I have lost 90 parking spaces on a piece of property that we own. Then you have an applicant that comes in and wants to fix the property up, and now we have setbacks to deal with. I'm not sure I understand the setback requirement on Post Road and when that became effective.

MS. HUSAK: That setback was required when the former Chi-Chi's restaurant developed as well.

MR. ROBY: That's all I have. I hope you approve the application. Thank you.

MS. NEWELL: Any other thoughts? I have a harder time with the 50-foot setback than I do the variance in terms of the quantity of parking that they're providing on the site. I do know that it's not unusual that the parking counts in communities require more service bay parking than they actually need from having worked with auto dealerships in the past. I know that for the dealerships farther to the west on 33, their service bay parking was counted at the lower number than the maximum, and I think that's pretty common in Dublin. So I think there are some fair considerations to some of the parking reductions that are here. I'm struggling a little bit more

with the 50-foot setback, especially in terms of their increasing the size of the existing building in this instance. Now they're increasing the amount of coverage they have on site, in addition to asking for reduction of parking spaces, and the two of those are not really balancing for me.

It seems that the request is that they're asking for a reduction in the overall parking spaces, but the reduction includes the parking spaces that are in the setback, correct?

MS. HUSAK: Yes. What they are asking is that the zoning requirements be changed so instead of three parking spaces per bay they are requesting two per bay. Instead of one space per thousand, they're requesting per two thousand.

I also wanted to clarify that if you were not to approve this variance, these display spaces along the south side of the building would have to go away. The overall parking requirement would change because they would have less display area and, therefore, they would have to provide fewer parking spaces for that display area.

MS. NEWELL: I can agree and understand the request for reducing parking spaces. I would much rather have a site that has green space on it than have a site that is loaded with parking spaces that aren't needed. I'm equally concerned that we don't try to put too much into a small site. I just don't see that there's a hardship for the 50-foot setback requirement.

When this went through the Planning and Zoning Commission and they got their conditional use application, they allowed the driveway to extend into that 50-foot setback. They are still be permitted to have that. So the only thing that would have to be removed in this plan is those parking spots that are extending into the setback, correct? (Ms. Husak affirmed).

MR. PAGE: I'm really having a hard time finding that there are unique circumstances with this site, but I have less of an issue with parking. I am concerned about there not being adequate parking for the site, especially with the number of service bays being required in there, too. And I appreciate the information regarding the number of customers per day walking in and out. But we're also talking about other things going on beyond cars being parked for service. I am also concerned about a large vehicle dropping off cars there and getting in and out since there are some pretty tight turns. To me, it's a great concept, but that shouldn't be the justification for why we approve a variance for this particular site. I appreciate the opportunity for a new business at this site, but I don't see unique issues here.

MR. ROBY: When did the setback requirements along 33 and Post Road go into effect?

MS. HUSAK: The setback requirement along 33 went into effect with the 1991 Zoning Code, and the setback requirement from Post Road has been in the Zoning Code as long as Dublin was a city.

MR. ROBY: I have gone through the process of renovating this building twice. Now, when this applicant comes, you want to take 90 parking spaces away. Nobody ever brought up any setback issues. To me it sounds terribly unfair.

MS. NEWELL: We're here to interpret what the Zoning Code requires for the case before us. I'm looking at this application from the objective criteria, and that's where I am having the issues here, and I believe I'm hearing that from some other Board members also.

MR. WIGLER: We first thought about opening the Fiat dealership with off-site service just so we wouldn't have to go through everything we're going through today. If the variances aren't

approved, the site will likely end up with a pre-owned lot. The modifications to the building won't be done, and the site won't be brought into compliance. But because we want to make such significant improvements, we'll be at the point where we won't have enough parking. And I think we're bringing a great business to Dublin.

MS. NEWELL: And I appreciate that, because I think all of us would love to see this property redeveloped, but we are the Board of Zoning Appeals. We're not the Planning Commission, so we can only deal with the existing zoning regulations in reviewing the variance requests.

MR. PAGE: We have certain criteria we have to look at when reviewing variance requests. I appreciate the integrity of the design and the potential for new business, but that is not what our determination is based on.

MR. HART: I wanted to just make sure that the Board understands that the Planning and Zoning Commission is aware that we are seeking these variances. We were fully aware that we needed the variances to be able to develop this site.

The second thing is that the word "hardship" keeps being used. This is a non-use variance, or an area variance, and the legal standard, and I think the standard in the Dublin Zoning Code, is a finding of practical difficulty. Economics are part of that consideration. That consideration is based on a court case called Duncan, and the Duncan factors. I would argue Dublin's code allows economics to be a consideration, and that the entire circumstance can be considered. I would ask very strongly that if you consider Mr. Langworthy's testimony about what could happen someday in this area, that you also consider that we have a real economic benefit coming to this city today because that is part of this consideration for the practical difficulty test.

MS. RAY: I think we would respectfully disagree with Mr. Hart. We feel that the special conditions criterion relates to the particular property, either specific attributes to that particular property in terms of physical considerations that would require and necessitate the variance.

MR. HART: Special conditions are not only related to topography or the shape of the property; it's the total circumstance. My main focus is the case of Duncan v. Middlefield. That is the case that governs practical difficulty tests in Ohio, and Dublin does have a different set of standards in the code that they use. But Duncan is what governs any challenge, any court action, anything relating to area variances. I am stating for the record that economics is part of the mix. There are seven factors in that case, and if I have a moment, I can go back to the Dublin code and talk about where else I think economics come into play.

MS. NEWELL: It sounds to me like we have a difference of opinion with respect to what constitutes special conditions. You're saying that we are applying the wrong standard.

MR. HART: Yes, and we have substantial private property rights here at stake, and I would like a chance to each of the criteria once more.

First of all, I think all three required findings are made because in terms of special conditions, we have a unique site because there are two rights-of-way that constrain the site as we talked about. You don't just have to have topography to have that kind of special condition. We have a site that does have lots of limitations on it based on the tightness of where the drive entry is today. But in the end, regulatory impacts, can be special conditions.

In terms of action and inaction, the theme from staff's report tonight is about self-infliction or that we brought this condition on ourselves by virtue of this application. Again, it's the right-of-way

changes that eliminated the spaces, which is why we're here. I do want to talk about self-infliction because it is in the staff report. I don't like to use the word "hardship" because I don't think that's the legal context. This is not self-infliction, but for the right-of-way change, upon redevelopment of this site, we would be able to meet any parking requirement and the applicant's need for parking for display.

The right-of-way change I believe took place in 2007 with the adoption of the Thoroughfare Plan in the Community Plan. In Ohio, courts have found self-infliction for bringing a hardship onto the applicant themselves when an applicant builds something, and then tries to go in and get a permit for it and get a variance when it is noncompliant. These are cases of taking action first without permission and then seeking forgiveness through the variance process. And I have some copies of cases that I would like at this point to turn in to the Board of Zoning Appeals that document those cases in Ohio. The right-of-way changes are what changed the situation for the property. That was something we didn't know about, and sounds like Mr. Roby didn't either.

The parking on the site appears to have existed since the 1980s. We're asking for some of the parking that has been there since 1984 to stay. Also under Ohio law, even where self-infliction has been found, in the area of non-use variances, it's not considered fatal. And I have another case that I will turn in on that. In this case Crown is asking for a variance from the code provisions, which is our right to request. I don't think that, in and of itself, our application for a variance can be considered self-inflicting. We have a right to come here and request what we think is a variance for an unreasonable code situation. We shouldn't be penalized because we are here with an application. In a local court here in Franklin County, a Court of Appeals, in Bexley the Court found that prior knowledge of zoning restrictions is just one factor to be weighed and considered, and by itself, it's insufficient to be the reason that the property owner gets denied from obtaining a non-use or an area variance.

The facts are that Crown can't reconfigure the site to allow enough display spaces along the 33 setback without the variance. Asking for the variance because of difficulties created by these two code sections is perfectly within our right, and the idea that somehow we are denied because we're asking for a variance itself is inappropriate. There's no substantial adverse effect on the property or the improvements in the vicinity of this site on our neighbors whatsoever. In fact, quite the contrary, the applicant is going to get rid of some parking. The applicant is going to add substantial landscaping and investment to this city. The applicant is going to significantly upgrade the building and the grounds and the parking lot of this facility. I would say this is where economics comes in. It's the function of whether or not there is an adverse impact. We're coming here with an economic impact that is the opposite of adverse.

Asking to keep the parking in the setback is not a special privilege because it has existed and it is the pre-existing condition for 27 years. It's also very similar to what you saw on the aerials in the surrounding property. There is the parking in the right-of-way and in the setback areas on almost every one of the properties surrounding this facility. We are asking to keep an existing condition that is actually enjoyed by our neighbors. To say that we're asking for special privileges is wrong.

In terms of whether this would create a precedent or some kind of regulation that could be recurrent, I think we did address that. I think Mark addressed that. We have a pretty unique situation here in terms of the fact that there are very few properties of this size that would support a niche dealership that are crunched by two major changes in the right-of-way. There are a couple properties that are similar that are, you know, next to us, adjacent to us that are constrained by the 33 and the Post Road right-of-way, but they're existing businesses. In particular Bob Evans, the impact they have from Post Road is on their drive aisle. There's no elimination of parking if that site were to come forward with the same requests.

11-022V

Non Use (Area) Variances

Crown Fiat-Parking and Setback Variance

5105 Post Road

Finally, the reason it's not recurrent is because this dealership is, I think, pretty unique in terms of where it's located and the fact that it's going to have 15 employees. It's going to have a low site visitation. The danger of granting a car dealership a variance like this and then fearing that bigger car dealerships with more issues would come along is not going to happen because no other site this size is going to support any larger dealership that could happen.

The fourth criterion is in some ways the main point because that's where the term "practical difficulty" of this test comes from, and I think that's where economics in particular are a factor. The applicant doesn't agree that we could have somehow adjusted the site and gotten more parking a different way. We can't put the service bays, service write-up, garage, or facility, on the northeast or northwest corners. That's what I was saying, because it really mars the architecture and creates conflicts with drive aisles and the entry road.

These variances are about individual property rights. It's not about what could happen someday with a roundabout or an interchange. It's about this property and what they have today.

MS. NEWELL: In terms of some of the discussion that we had this evening and speaking with staff, the questions asked were intended to benefit the applicant in terms of wanting to understand how the site will be impacted. Even if we take into consideration your economic concerns that you addressed in front of this Board, if you look at the special conditions under section A, and you had felt that that special condition was because you have two rights-of-way that were unique to this particular parcel, I tend to disagree with you because we have other parcels throughout the City of Dublin that have two rights-of-way as well.

So there isn't something that's unique to this site with having those two setbacks. And we're looking at the Zoning Code and the current setbacks. You, even in your testimony this evening, said that it would not matter when that 50-foot setback came into play as long as it came into play before you brought this in front of the Board of Zoning Appeals. You have testified here this evening that that 50-foot setback came into play in 2007, and you're in agreement that the 50-foot setback is in place now. And so now we're judging new development on the site with new construction and building additions, so that new construction would have to be judged against current zoning requirements.

MR. HART: I concur with Ms. Newell that because of the new construction that we dealing with existing zoning requirements. I think there's some things that you bring up that are debatable, but based on our interpretation, I think those are yet to be completely finalized or to be worked out specifically here regarding the economics being a factor.

MR. PAGE: I'm looking at the first set of variance criteria, all three of which are required to be met. I think the applicant has met the third criterion, that granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity. I think where I am struggling is the definition in front of us of special conditions. The code states that "Special conditions or circumstances may include: Exceptional narrowness; shallowness or shape of a specific property on the effective date of this Chapter or amendment; or by reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or by reason of the use or development of the property immediately adjoining the property in question." So that's the standard we are working off of. Can you convince us, do you have an argument that you meet one of those?

MR. HART: First of all, the word in the middle of the paragraph is "may." The paragraph doesn't preclude any other argument. We're not just talking about topography and the shape of the

property as the reasons that somebody can ask for a variance. I think the chair is correct that there are other parts of the city that have two major thoroughfares that have 50-foot setback requirements, but I would argue that those don't necessarily have the existing conditions that are here. I think that the term "other extraordinary situations on the land, building or structure," relate to this site. I think we fall under that condition because I think they're expansive, not limiting, because we have a great proposal and a great site plan. We have a site that's severely limited, and we have two code provisions that act together that I think is unique to this site because, again, there's nothing in the code that says you can't have X number of display spaces.

It's the fact that these two code sections for setback and parking combined create an extraordinary circumstance. That to me is a situation on a land, building, or structure. If your code said you could only have X number of display spaces for a car dealership, we wouldn't have a point there, but your code doesn't say that. It's the impact of two separate code sections unintended on this particular site.

I do want to pass out some of the material I have on the criteria because I do want to get it into the record because the Duncan criteria are extremely liberal. They're not restrictive.

MS. NEWELL: You have every right to ask to table this application and submit additional documentation, and we can review it at the next meeting if you believe it is pertinent and important enough that we should see it before making a decision.

MR. HART: I made some references to the case law this evening, and I just want to submit that for the record, but I don't necessarily want to discuss it at length.

MS. NEWELL: The materials would be something that I would put due diligence to and read. If it's important enough for it to be in front of us, we should have the ability to sit here and read it and pay attention to it.

MS. FERGUSON: I agree with that. If you're going to pass out case law that arguably demonstrates that perhaps our definition of special conditions and circumstances is not consistent with Ohio law, I would certainly like the opportunity to read that case law and consider it. I think it would have been helpful if we had had someone from the Law Director's Office here tonight to maybe address those points.

MS. NEWELL: Clearly you have the right to submit anything into the record you would like to submit, but if the purpose is simply to submit it and get it into the record, that's one thing. If you would like to submit it and review and analyze it, it might be advantageous to table the application.

While you have stated the issues in terms of the setbacks creating a special condition on the site, I don't believe they do. And it can't meet all of those standards that are here based upon that. There is still usable, buildable land left after taking the setbacks into account. You can get a building on the site. You can get parking on that site. I can however agree that taking into account both of those setbacks, that I could use that in relationship to the parking variance that you're requesting. Because of that limitation I could see that creating a situation in which you could not provide as much parking while preserving green space. So, as I said earlier, I can support one of these variances. I can't support the other based upon the criteria that's in front of us.

MR. PAGE: I'm looking at the key words in the special circumstances criterion regarding the term "may": circumstances exist which are peculiar to the land or structure. That "may" may relate to the peculiarity of the lands or structure involved which are not applicable to other land or structures, and I think that there are many other properties in this area which have these same setbacks on both side. That's the criterion I can't get past right now.

MR. HART: What we gave you was the comparison of Bob Evans, and I understand that there are other sites around Dublin that have two rights-of-way. What I'm saying is we have evidence of another site that I think is probably a good comparison because it's right in the same district. Bob Evans is probably the most comparable site that we have to compare to, and while there may be other sites that are affected by two rights-of-way, Bob Evans is evidence to the contrary.

MS. RAY: Although there is parking on the Bob Evans site along the 33 right-of-way, it is in the same position as this particular site is in that it was either originally approved in error or is nonconforming, and if Bob Evans were to come forward and redevelop, they would be in the exact same position as this property.

MS. NEWELL: I was just going to ask that. If Bob Evans put an addition on their structure the same as this applicant is proposing, they would be facing the same site constraints with the setbacks on that property as well, correct? (Ms. Ray affirmed).

MR. HART: I have to respectfully disagree because, again, the number of Bob Evans parking spaces in that right-of-way is nowhere near the 20 or so that we have in that same right-of-way, so the impact on us compared to them is very dramatic, over 20 spaces.

MS. NEWELL: I think we have some agreement, although we have not taken an official vote, that we saw some support of the parking variance but not to the setback. Mr. Hart, what would you like to do? Do you want to present your additional evidence and table this case for this evening?

MR. HART: I'll make the request to table the application.

MS. NEWELL: I will make a motion based upon the applicant's request to table this application.

MR. PAIGE: Second. (Vote taken; motion passed unanimously.)

The meeting was adjourned at 8:44 p.m.



CITY OF DUBLIN.

Land Use and
Long Range Planning
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/TDD: 614-410-4600
Fax: 614-410-4747

Web Site: www.dublin.oh.us

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PLANNING AND ZONING COMMISSION

RECORD OF ACTION

APRIL 7, 2011

The Planning and Zoning Commission took the following action at this meeting:

4. Crown Fiat 11-008CU	5105 Post Road Conditional Use
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Proposal: An eight-bay vehicle service facility in association with a car dealership for a 2.5-acre site zoned CC, Community Commercial District, located on the south side of Post Road, approximately 1,000 feet west of the intersection with Frantz Road.

Request: Review and approval of a conditional use under the provisions of Zoning Code Section 153.236.

Applicant: Crown Automotive Group; represented by Michael Close.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

MOTION: To approve this conditional use and grant relief of the service parking at the lower Code requirement and the 20-foot drive aisle encroachment into the required setback along US 33 because it complies with all applicable review criteria and the existing development standards within the area, with two conditions:


- 1) That the safety bollards be painted black; and
- 2) That the applicant work with Planning to ensure that the screening for service doors address noise concerns.

* Tom Hart, Wiles, Boyles, Burkholder and Bringardner Company, LPA, agreed to the above conditions.

VOTE: 7-0.

RESULT: This Conditional Use application was approved with the relief of two development standards.

STAFF CERTIFICATION


 Claudia D. Husak, AICP
 Planner II

11-022V
 Non Use (Area) Variances
 Crown Fiat-Parking and Setback Variance
 5105 Post Road

Mr. Taylor made motion to approve this Final Development Plan for the proposed park development because it is appropriate, meets the NE Quad PUD development text, and complements the existing development in the area, with two conditions:

- 1) The plans should be revised to show site visibility triangles, and increase the turning radii to 35 feet, subject to approval by Engineering; and
- 2) Tree protection fencing must be installed and inspected prior to construction, to include the area for the new entrance driveway.

Mr. Zimmerman seconded the motion.

The vote was as follows: Ms. Kramb, yes; Ms. Amorose Grooms, yes; Mr. Budde, yes; Mr. Hardt, yes; Mr. Fishman, yes; Mr. Zimmerman, yes; and Mr. Taylor, yes. (Approved 7 - 0.)

**4. Crown Fiat
11-008CU**

**5105 Post Road
Conditional Use**

Richard Taylor requested to pull this application from the consent items to make comments.

Chris Amorose Grooms introduced this conditional use application involving an eight-bay vehicle service facility in association with a car dealership for a 2.5-acre site zoned CC, Community Commercial District, located on the south side of Post Road, approximately 1,000 feet west of the intersection of Frantz Road. She swore in those intending to address the Commission in regards to this case, including Tom Hart, Wiles, Boyles, Burkholder and Bringardner Company, LPA, representing Crown Automotive Group, and City representatives.

Claudia Husak presented this request for a conditional use which stemmed from Service being a conditional use in the CC District. She explained that a car dealership is a permitted use within this district. She said the existing building is currently vacant and the site has many non-compliance issues in terms of setbacks and landscaping. She said that Planning and Dublin's Zoning Compliance officer have been working with the applicant to bring the site into compliance.

Ms. Husak explained that the Commission is reviewing the conditional use requests which consist of approximately 5,000-square-feet of service area to the rear of the building on the west side. She said proposed are eight service bays, a four-vehicle write-up area on the south side, and screening along the western property line to screen the service doors per Code. She said the applicant has provided the hours the service area will be open. She said the reliefs that are being requested as part of this application include service bay parking at a ratio of two spaces per service bay and an encroachment of the drive aisle on the south side into the limited access setback which is at 50 feet. Ms. Husak pointed out that currently on site; there is parking and pavement within ten feet of that rear property line. She said the site is coming into compliance, but the drive aisle is proposed to encroach 20 feet.

Ms. Husak said that Planning reviewed this application and based on the criteria and they are recommending approval with a condition that the proposed yellow safety bollards be black to match the building and follow the Commission's preference.

Mr. Taylor asked how the relief requests were documented for the record since they were not conditions. He noted that there was nothing included except a letter to indicate the requests.

Ms. Husak explained that based on the minutes it would be reflected that they were made. However, she said a separate motion could be entertained as has been done for text

modifications in the past, if the Commission preferred. Ms. Husak said for recordkeeping that would probably be the preferred option.

Mr. Taylor said he visited the site, and he had a mild concern about eight vehicle bays potentially being open with noisy activities. He wanted Planning to be certain that the screening is adequate to address the potential noise issue.

Mr. Taylor said he thought the building was neat looking, and this would certainly be better than what exists there now. He said for the record, that this was the second automobile facility in this general area that this architectural firm has put forth recently and he wanted to commend the firm for the fine work they were doing on these kinds of facilities in Dublin.

Amy Kramb clarified that the pavement was not in the right-of-way, just the setback and that nothing was changing.

Ms. Husak explained that the pavement exists today.

Tom Hart, Wiles, Boyles, Burkholder and Bringardner Company, LPA, representing Crown Automotive Group said he thought their application requested three parking spaces per bay, and not two.

Ms. Husak said she accidentally misrepresented that. She said the two requirements in the Zoning Code were for having service bays parked per square footage, which in this case would require 50 parking spaces, and the other, having three spaces per bay and not two. She said the difference was 24 spaces. She explained that the Code stated whichever was greater, so 50 spaces would always end up being greater and the applicant was asking to allow the 24 to be provided. She clarified that the Planning Report correctly reflected that.

Mr. Hart said that they had discussed a different process to go to two spaces, but this request was for 3 spaces and 24. He said they felt they had adequate parking on the site, but allocation of what they can use for display parking versus general parking was an issue that they were going to pursue with a variance.

Mr. Taylor requested that the new condition be provided.

Ms. Husak proposed a second condition that the applicant work with Planning to ensure that the screening of service doors addresses any potential noise concerns. She suggested that regarding the two reliefs the applicant is requesting, 1) that they be allowed to parking the service bays at three spaces, and 2) the setback encroachment for the drive aisle, they made be part of the motion.

Motion and Vote

Mr. Taylor made the motion to approve this conditional use and grant relief of the service parking at the lower Code requirement and the 20-foot drive aisle encroachment into the required setback along US 33 because it complies with all applicable review criteria and the existing development standards within the area, with two conditions:

- 1) That the safety bollards be painted black; and
- 2) That the applicant work with Planning to ensure that the screening for service doors address noise concerns.

Mr. Hart, on behalf of the applicant, agreed to the above conditions.

Mr. Zimmerman seconded the motion.

11-022V

Non Use (Area) Variances
Crown Fiat-Parking and Setback Variance
5105 Post Road

The vote was as follows: Ms. Kramb, yes; Ms. Amorose Groomes, yes; Mr. Budde, yes; Mr. Hardt, yes; Mr. Fishman, yes; Mr. Zimmerman, yes; and Mr. Taylor, yes. (Approved 7 - 0.)

5. Tartan West PUD, Subarea B - Villas of Corazon **Corazon Drive**
11-009AFDP **Amended Final Development Plan**

Chris Amorose Groomes introduced this Amended Final Development Plan for the construction of 29 detached condominium units in Subarea B of the Tartan West Planned Unit Development District. Ms. Amorose Groomes swore in those intending to speak.

Ms. Amorose Groomes invited public input regarding this application. (There was none.)

Mr. Fishman said asked if the siding proposed for the new units is the same siding used on the current units. Randy Turturice, the applicant's representative, said yes.

Ms. Amorose Groomes asked the applicant if he agreed to the conditions. Mr. Turturice said yes.

Motion and Vote

Mr. Taylor made the motion to approve this Amended Final Development Plan, because the proposal meets the development text and will provide a more diverse type of housing choice within the subarea, with two conditions:

- 1) That minor modifications be made to the elevations of Units 1, 2, and 4 to include additional windows and dormers on the front and side elevations; and
- 2) That the outdoor spaces (patio, screened porches, stamped concrete area, etc.) be approved by Planning, prior to the submission of a building permit to ensure compatibility with the existing units.

Mr. Zimmerman seconded the motion.

The vote was as follows: Ms. Kramb, yes; Ms. Amorose Groomes, yes; Mr. Budde, yes; Mr. Hardt, yes; Mr. Fishman, yes; Mr. Zimmerman, yes; and Mr. Taylor, yes. (Approved 7 - 0.)

6. Oakland Nursery **4261 West Dublin-Granville Road**
11-014CDD **Corridor Development District**

Chris Amorose Groomes introduced this request for review of a Corridor Development District application for the construction of a 1,024-square-foot retail greenhouse attached to an existing building located on the south side of West Dublin Granville Road.

Ms. Kramb said a year ago the outdoor seasonal display area was approved, and she requested it be completed as approved.

Ms. Amorose Groomes invited public comment regarding this application. (There was none.)

Motion and Vote

Mr. Taylor made the motion to approve this Corridor Development District application because the proposed modifications are consistent with the surrounding development and the Corridor Development District requirements within the Zoning Code. Mr. Zimmerman seconded the motion.

The vote was as follows: Ms. Kramb, yes; Ms. Amorose Groomes, y
yes; Mr. Fishman, yes; Mr. Zimmerman, yes; and Mr. Taylor, yes. (Ap

11-022V
Non Use (Area) Variances
Crown Fiat-Parking and Setback Variance
5105 Post Road



CITY OF DUBLIN.

Land Use and
Long Range Planning
5800 Shier-Kings Road
Dublin, Ohio 43014-1236

Phone/ TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

Creating a Legacy

BOARD OF ZONING APPEALS

BOARD ORDER

FEBRUARY 26, 2009

The Board of Zoning Appeals took the following action at this meeting:

- 1. **Jelly Bean Junction Learning Center** **5105 Post Road**
09-005V **Use Variance**

Proposal: Permit day child care and tutoring services for 150 children within an existing building that are not permitted in the CC, Community Commercial District. The site is located on the south side of Post Road, approximately 560 feet west of the intersection with Kilgour Place.

Request: Request for review and recommendation of a use variance to the City of Dublin Zoning Code Section 153.028 under the provisions of Section 153.231(H).

Applicant: Jeffery Roby, Roby Holding Co. L.L.C.

Planning Contact: Steve Langworthy, Director and Ryan Pilewski, Planning Assistant.

Contact Information: (614) 410-4600, slangworthy@dublin.oh.us or rpilewski@dublin.oh.us.

MOTION: Keith Blosser made a motion, seconded by Drew Skillman, to recommend approval of this use variance to City Council.

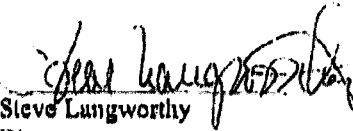
VOTE: 0 - 5.

RESULT: This Variance application was disapproved.

RECORDED VOTES:

Drew Skillman	No
Bangalore Shankar	No
Keith Blosser	No
Sean Cotter	No
Victoria Newell	No

STAFF CERTIFICATION


Steve Langworthy
Director

11-022V

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Crown Fiat-Parking and Setback Variances
5105 Post Road



DUBLIN BOARD OF ZONING APPEALS

MEETING MINUTES

FEBRUARY 26, 2009

CITY OF DUBLIN,

Land Use and
Long Range Planning
5800 Shier-Rings Road
Dublin, Ohio 43016-1234

Phone/TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

Case:

**1. Jelly Bean Junction Learning Center
09-005V**

**5105 Post Road
Use Variance**

Bangalore Shankar called the meeting to order at 7:00 p.m. Other members present were Keith Blosser, Sean Cotter, Drew Skillman, and Victoria Newell. City of Dublin representatives were Steve Langworthy, Tammy Noble-Flading, Rachel Swisher, and Flora Rogers.

Administrative Business

Motion and Vote

Bangalore Shankar made a motion, seconded by Keith Blosser to accept the documents into the record. The vote was as follows: Mr. Skillman, yes; Ms. Newell, yes; Mr. Cotter, yes; Mr. Blosser, yes; and Mr. Shankar, yes. (Approved 5 - 0.)

Motion and Vote

Mr. Shankar made a motion, seconded by Mr. Cotter to approve the January 22, 2009, meeting minutes as corrected. The vote was as follows: Mr. Skillman, yes; Mr. Blosser, yes; Ms. Newell, yes; Mr. Cotter, yes; and Mr. Shankar, yes. (Approved 5 - 0.)

Mr. Shankar presented resigning member Keith Blosser with a plaque acknowledging his service and contribution as a member of the Board from April 2004 until February 2009.

Mr. Blosser thanked the Board members and Planning for their support and said that he hoped that through the years his efforts had done a little good.

**1. Jelly Bean Junction Learning Center
09-005V**

**5105 Post Road
Use Variance**

Mr. Shankar swore in those who intended to speak in regard to this case, including the applicant, Jessica Roby of Roby Holding Company LLC, and City representatives.

Steve Langworthy explained that a use variance by definition, would permit a use not otherwise allowed in the zoning district in which the property is located. He said if approved, this application would permit a commercial childcare and tutoring facility with the capacity of up to

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150 children. He said the Board will, as a result of the action tonight, submit a recommendation to City Council for its final action.

Mr. Langworthy pointed out that a memo from the Law Director's office had been provided which indicated that while City Council may consider both the recommendation of the Board and the use variance review standards in the Code, they are not bound by them; that they may make the decision based upon factors that they deemed to be reasonable. He said unlike the non-use variance, where some standards can be met and others must be met, all review standards for a use variance must be met in order to recommend approval to City Council.

Mr. Langworthy presented photographs showing the Bob Evans restaurant located to the east of this site; the Red Roof Inn to the west, Embassy Suites across SR 161, and the MAG and the Toy Barn dealerships across the street. He said the site is zoned CC, Community Commercial, as are the surrounding sites. Mr. Langworthy stated the site has a shared drive off Post Road. He said the playground area is located on the side of the building which borders the Red Roof Inn. Mr. Langworthy said Planning was not concerned about the playground location near the Red Roof Inn, because typically, in the daytime when the children would be outside not many guests are in their rooms sleeping. He presented plans of the proposed drop-off and playground areas.

Mr. Langworthy said Planning in evaluating this use variance application, analyzed the review criteria and found that:

1. The site was flat and had suitable accessibility and that there are no existing physical conditions that would preclude its use as zoned.
2. The proposed use would not alter the character of the area and was appropriate because it had no effects that would disrupt the surrounding use of the property, given the comment about the Red Roof Inn.
3. The land could be used for a wide range of uses otherwise allowed in the zoning district.
4. The request as submitted is not based on the inability of the applicant to use the property as permitted in the CC District but is based solely on the applicant's desire to not wait on the outcome of a proposed zoning amendment.

Mr. Langworthy explained that there was a little 'mca culpa' because a Code amendment that would permit this use through a conditional use process was reviewed by the Planning and Zoning Commission (PZC) and briefly before City Council. He said it was expected that the Code amendment may be approved at the Council meeting in March or the first meeting in April and if approved, the applicant could submit for a conditional use request. Mr. Langworthy said that Planning felt that the better process would be for the applicant to wait for the amendment to be approved, and then apply for the conditional use. He said it had been indicated to the applicant that based on the conditional use criteria that Planning would probably support this use in this location when reviewed by the PZC.

Mr. Langworthy said that it is Planning's opinion that the application does not meet the criteria provided in Section 153.231(F)(3) of the City of Dublin Zoning Code and therefore recommends that the Board recommend disapproval of this application to City Council.

Mr. Shankar asked how 'school' was defined in the Code. Mr. Langworthy explained that a school had to be certified by the State, and there were different varieties of schools. He said that

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was separate and apart from a daycare operation. Mr. Langworthy said that Planning had made the determination that this was not a school.

Jessica Roby, the applicant, said she did not understand why they had to go through this process because she knows they are not going to meet criteria A, C, and D. She said they had been working on this since November and been delayed from getting on the City Council agenda for months. She said they were sitting with a vacant lot which looked horrible for the City of Dublin. She said they are losing money because they have nothing there. She said when it goes to City Council, they will have to do another conditional use application which was another \$2,200 or more to add to their expense. She said it was crazy that they could put a strip club on the site which was a permitted use as it was currently zoned, but they could not have a childcare center. She asked for sympathy and understanding that they want to fill this building, but the building needs a lot of interior work, and they did not want to begin it until they are approved. She asked for the Board's assistance.

Victoria Newell said she appreciated Ms. Roby's honesty and realized that she was in a tough position; however, the Board had to abide by the regulations that are in place. She said even in Ms. Roby's own testimony, she realized that there was not a case for requesting this variance.

Ms. Roby reiterated that they did not understand why they were told to pay the \$2,200 by Planning, when Planning knew that the Board had to disapprove the request.

Ms. Newell said although she could not speak for Planning, she thought they probably felt an obligation to inform the applicant what the options were. She said in asking for the variance, Planning must inform them of that option and Planning would be amiss if they did not provide the application information on all of the courses of options that would be available.

Mr. Shankar said the Board can only make recommendations based on what had already been stipulated. He said he did not feel comfortable with a childcare center use on this site unless there was screening for safety and protection because it was surrounded by SR 161 and businesses.

Sean Cotter asked if the use variance case would be placed on the next City Council Agenda.

Mr. Langworthy explained the use variance could go to City Council on the second March agenda. He said City Council is also reviewing a Code amendment to allow childcare as a conditional use in the Community Commercial District. He said if Council passes the amendment, then a condition use application will go to the PZC for review and approval.

Mr. Blosser asked if the Board were to recommend disapproval on the use variance tonight, and City Council would disapprove it, would that shut the door on them.

Mr. Langworthy said although the use variance process is one that is available to everyone should they choose to take advantage of it, Planning is not encouraging applicants to take that route. He said Planning was indicating that they are or should be difficult to get approved. He said that Planning would make the point to City Council that they did not have a particular objection to the use, this is largely procedural in nature, and they were not interested in having everyone bypass the ordinance to come to City Council, when a rezoning or amendment to the

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zoning code to allow uses would be an available procedure. He said Planning is trying to reserve use variances for those properties in a difficult situation, and there was not a good district they could be placed that would make sense.

Mr. Skillman asked if Mr. Langworthy was confident that City Council would install a Code amendment to allow a conditional use.

Mr. Langworthy explained that the Code amendment was delayed at the City Council level and had not yet been back to them.

Mr. Cotter asked if City Council could forgo the Board's recommendation where was that included in the Code.

Mr. Langworthy said there was actually no guidance in the Code whatsoever for City Council, and they do not have to follow the same criteria that the Board does, but can use whatever criteria they deem as long as it is reasonable. He said the amendment does not depend on this application.

Mr. Shankar asked if the Code was not changed, but this use variance was approved by City Council, would it set a precedent.

Mr. Langworthy explained that the precedent would only apply if the standards were ignored and some other criteria were used. He said then, the applicants would have the right to have that criteria applied to their request as well. He said by using a consistent set of criteria each individual case can be looked at in different circumstances, locations, or other situations and a different decision can always be reached.

Mr. Skillman said after studying the Code, he knows the Board is obligated to follow the Code and not issue a use variance, however he wished he could.

Mr. Blosser reiterated that he agreed with Mr. Skillman and Mr. Shankar in that the Board was bound by the Code. He said the project had merit and he would love to see it happen and he had the feeling that it would.

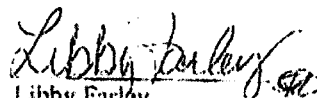
Motion and Vote

Keith Blosser made the motion to recommend approval of this use variance to City Council. Mr. Skillman seconded the motion.

The vote was as follows: Ms. Newell, no; Mr. Cotter, no; Mr. Skillman, no; Mr. Shankar, no; and Mr. Blosser, no. (Motion failed 0-5).

Mr. Shankar and the other Board members wished Mr. Blosser the best for the mission he was undertaking.

The meeting was adjourned at 7:34 p.m.


Libby Farley
Administrative Assistant

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Ms. Salay stated that perhaps additional space can be added on either side to store the receptacles without changing the garage door size.

Ms. Brautigam stated that in the pilot project, staff has been very flexible in regard to the kind of trash containers used. They have worked with residents to accommodate their needs with 33, 64, or 96-gallon containers. Not fitting in the garage has not been a problem for either of the pilot areas.

Mr. Reiner moved for passage of the amended Ordinance 59-03.

Ms. Salay seconded the motion.

Vote on the motion: Ms. Salay, yes; Mr. Lecklider, yes; Mr. Reiner, yes; Mr. Keenan, yes; Mayor Chinnici-Zuercher, yes; Mr. McCash, yes; Mrs. Boring, yes.

REZONINGS

The Clark road, the titles of Ordinances 94-03 (Amended), 108-03 (Amended), 109-03 (Amended) and 119-03 into the record.

Mr. Gunderman stated that, for the most part, these are area rezonings and involve corrections to the zoning map. He showed a map delineating the various rezonings. He noted that there have been few difficulties encountered in the review process of informal meetings with area residents. As is the case with other area rezonings, they are principally composed of land that either showed up on the previous zoning maps of the City as a City zoning classification, but where research did not demonstrate proper records supporting the zoning classification. In other cases, the areas were shown as township zonings, and based upon the recommendation from the Law Department, the desire is to assign City zoning classifications closest to the existing township zoning classification.

Ordinance 94-03 (Amended)

Establishing Dublin Zoning for 83 Parcels Comprising an Area of Approximately 142 Acres as Annexed from Perry Township in 1961 and 1972, South of I-270, West of Sawmill Road and East of the Scioto River, to R-1, Restricted Suburban Residential, R-2, Limited Suburban Residential, or R-4, Suburban Residential Districts. (Case No. 03-080Z - CDD, Residential Area Rezoning).

Mr. Gunderman stated that most of these are areas that showed up as City zoning districts, with a couple of exceptions. Some locations had shown up as R-4, permitting multi-family. The neighborhood meetings indicated a desire not to retain the R-4 which permits single family and multi-family. While this is somewhat of a discrepancy from the policy followed in other areas, based on the neighborhood's desire, staff did not see any reason not to assign the R-2 zoning.

Ordinance 108-03 (Amended)

Rezoning 50 Parcels Comprising an Area of Approximately 400 Acres as Annexed from Washington Township between 1965 and 1969, Southeast of I-270, West of Dublin Road, North of Rings Road, to: CC, Community Commercial, OLR, Office, Laboratory and Research, SO, Suburban Office and Institutional, and LI, Limited Industrial Districts. (Case No. 03-099Z - Inner Circle I-270, Commercial Area Rezoning)

Mr. Gunderman stated that this is the inner circle commercial area. There was no particular discussion on these, except for the LI district. It was pointed out that if changes were considered to this, much of the development pattern in the area would be non-conforming.

Ordinance 109-03 (Amended)

Rezoning 75 Parcels Comprising an Area of Approximately 126 Acres as Annexed from Franklin County and Washington Township between 1980 and 1989, Southeast of I-270, West of the Scioto River, North of Hayden Run Road, to: Dublin R-1, Restricted Suburban Residential District. (Case No. 03-105Z - Inner Circle I-270, Residential Area Rezoning - South Dublin Road)

Mr. Gunderman noted that these were fairly straightforward and had shown up as R-1 on the zoning map.

Ordinance 119-03

Rezoning Approximately 29 Parcels Comprising an Area of Approximately 43 Acres as Annexed from Washington Township between 1981 and 2001 South of Brand Road, North of West Bridge Street, East of Coffman Road, West of th

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considering downzoning or rezoning land to fit what the City wants it to be, this did not occur with the other area rezonings. Those would need to be rezoned also.

Mr. Gunderman responded that the difficulty arises with some of the oldest annexation areas. Staff tried to ascertain the City action on every parcel ever annexed to the City. The difficulty with the older annexations is the lack of records at the township for zoning. Therefore, staff then reviewed how the properties were treated in terms of zoning since the time they were annexed. For these tracts, the City administered zoning as though they had these categories - whether it was OCLC or other business. This is the only logical direction staff could take, once it was determined that the township zoning classification could not be verified in their records.

Mr. McCash stated that if the City cannot determine what the zoning was in the township records, how much active dialogue took place with the residents or property owners to see if they would have any records regarding the zoning of their properties?

Mr. Gunderman responded that some property owners have come to a hearing with this type of information about their township zoning. Staff has then investigated further. But for the most part, that has not happened, and the ownership of the properties has changed several times since the time of annexation.

Mr. McCash stated that there was an adopted 1980 zoning map that listed the zoning classifications on these properties. In essence, then, weren't these properties rezoned with the adoption of that zoning map including the classifications on that map? How is the City then down zoning various pieces of property?

Mr. Gunderman responded that he does not believe the City is down zoning any properties, other than the few residential properties pointed out. What is being presented is generally consistent with any of the maps staff has uncovered, and if staff had found a particular map that was adopted as a map, he does not believe it is being dealt with at this particular time.

Mayor Chinnici-Zuercher called for a vote on the ordinances.

Vote on Ordinance 94-03(Amended) - Mrs. Boring, yes; Mr. Keenan, yes; Mr. Reiner, yes; Ms. Salay, yes; Mayor Chinnici-Zuercher, yes; Mr. Lecklider, yes; Mr. McCash, no

Vote on Ordinance 106-03(Amended) - Mayor Chinnici-Zuercher, yes; Mr. Keenan, yes; Mr. Reiner, yes; Mr. McCash, no; Ms. Salay, no; Mr. Lecklider, no; Mrs. Boring, yes.

Vote on Ordinance 109-03(Amended) - Mr. Keenan, yes; Ms. Salay, yes; Mr. Lecklider, yes; Mr. McCash, no; Mrs. Boring, yes; Mr. Reiner, yes; Mayor Chinnici-Zuercher, yes.

Vote on Ordinance 119-03 - Mr. Keenan, yes; Mr. Reiner, yes; Mayor Chinnici-Zuercher, yes; Mr. McCash, no; Mrs. Boring, yes; Ms. Salay, yes; Mr. Lecklider, yes.

Ordinance 148-03

Rezoning Approximately 43.55 Acres Located on the East Side of Riverside Drive and the South Side of Hard Road, Approximately 900 Feet from the Riverside Drive and Hard Road Intersection, from: R-1, Restricted Suburban Residential District, to: PUD, Planned Unit Development District. (Case No. 03-155Z - Riverside Woods).

Mr. Gunderman stated that this rezoning is located on the east side of Dublin, close to the corner of Hard and Riverside Drive. It is proposed as a PUD, and is surrounded by residential PUD to the east, the high school PUD, and a PCD zoning for the fire station at the intersection of Hard and Riverside. The site plan in the packet reflects the current tree patterns on the property. The site consists of 43.5 acres and is proposed for 54 single-family lots of 90 feet in width. It was reviewed by Planning Commission on February 5 and approved by a vote of 8-0 with 17 conditions. He has another suggested condition which is related to the tree waiver listed on the agenda tonight.

Mayor Chinnici-Zuercher asked if Council would like to review the tree waiver at this time. Mrs. Boring stated that, legally, the zoning should be considered prior to consideration of any tree waiver for the site.

Mr. Gunderman responded that the reason he has suggested this is that if staff's recommendation for the tree waiver is adopted, a correction would be needed to the text which would then become Condition #18.

Mrs. Boring stated that she would not want to grant a tree waiver to the developer before having the zoning approval for the land.

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CITY OF DUBLIN.

Division of Planning
5000 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

PLANNING AND ZONING COMMISSION

RECORD OF ACTION

JANUARY 8, 2004

The Planning and Zoning Commission took the following action at this meeting:

3. **Area Rezoning 03-099Z - Inner Circle I-270 Commercial Area Rezoning**
Location: 46 parcels comprising an area of approximately 411 acres as annexed from Washington Township between 1965 and 1969, southeast of I-270, west of Dublin Road, north of Rings Road.
Request: Review and approval of ordinance to establish Dublin CC, Community Commercial, OLR, Office, Laboratory, and Research, SO, Suburban Office and Institutional and LI, Limited Industrial Districts.
Property Owners: (To the LI District) OCLC Online Computer Library Center Inc., 6565 Frantz Road; OCLC Online Computer Library Center Inc, 5000 Post Road; Midwestern Enterprises LLC, 6540 Frantz Road; (To the OLR District) Delphineus Associates LLC, 5151 Blazer Parkway; Ashland Oil & Refining Tax Dept., P.O. Box 14000, Lexington, Kentucky 40512; Metro Medical LLC Bradford Investment Co, 5050 Blazer Parkway; William and Lujean Bay, 5178 Paul G. Blazer Parkway; City Of Dublin, c/o Jane S. Brautigam, 5200 Emerald Parkway; Great Lakes Reit L P, 655 S. Metro Place Road; Great Lakes Reit L P, 823 Commerce Drive, Suite 300, Oakbrook, Illinois 60523; Randal Garvey, 5142 Paul G. Blazer Parkway; Susan Park, 5158 Paul G. Blazer Parkway; Kendall-Dublin LLC, 5100 Rings Road; Pizzuti Properties, 2 Miranova Place, Suite 800, Columbus, Ohio 43215; Duke Construction LP, 5600 Blazer Parkway, Suite 100; Tugys Ltd.; and National Tax Search LLC, PO Box 81290, Chicago, Illinois 60681-0290. (To the CC District) Dublin Plaza LP, 225 W. Bridge Street; Dublin Plaza LP, 221 W. Bridge Street; Heartland Bank, 6500 Frantz Road; Carolyn Nash, 220 Bridge Street; Carolyn Nash, 252 Monsarrat Drive; Host Restaurants, 5175 Post Road; NRS Equities, 5131 Post Road; Red Elm LLC, 5125 Post Road 43017; Realty Income Corp., P.O. Box 460069, Escondido, Ca 92046; West Bridge Street Associates, 200 W. Bridge Street; 5151 Post Road LLC, 5151 Post Rd.; Mid-America Properties, 5105 Post Rd.; Bef Reit Inc, 5067 Post Rd; Brentlinger Real Estate Company LLC, 5035 Post Rd.; Cooker Restaurant Corp, 5000 Upper Metro Place; Dublin Suites Inc, 5100 Upper Metro Place; Live Oak Properties Ltd, c/o Ohio Equities LLC, 605 S. Front S0t Suite 200, Columbus, Ohio 43215; Krisjal LLC, 9011 Fields, Ertel Road, Cincinnati, Ohio 45249; Richard Roby, 5200 Post Road; First American Tax L J Melody Co Inc., P.O. Box 560807, Dallas, Texas 75356-0807; and Sullivan Acquisition LLC, 218 W. Bridge

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PLANNING AND ZONING COMMISSION
RECORD OF ACTION
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3. **Area Rezoning 03-099Z - Inner Circle I-270 Commercial Area Rezoning Street. (To the SO District) 250 Bridge Group. All addresses are located in Dublin, Ohio 43017 unless otherwise noted.**
Applicant: City of Dublin, c/o Jane S. Brautigam, City Manager, 5200 Emerald Parkway, Dublin, Ohio 43017.
Staff Contact: Anne Wanner, Planner.

MOTION: To approve this area rezoning because it will provide an appropriate Dublin zoning classification for land within the City limits to provide for the effective administration of development standards, procedures, etc., and will maintain the established development pattern that has been in place for many years and establishes land uses consistent with those listed in the Community Plan.

VOTE: 7-0.

RESULT: This area rezoning was approved. It will be forwarded to City Council with a positive recommendation.

STAFF CERTIFICATION


Frank A. Ciarochi
Acting Planning Director

~~Mr. Messineo made a motion to approve this area rezoning because it will provide an appropriate Dublin zoning classification for land within the City limits to provide for the effective administration of development standards, procedures, etc., and will maintain the established development pattern that has been in place for many years, and establishes land uses consistent with those listed in the Community Plan. Mr. Zimmerman seconded the motion, and the vote was as follows. Mr. Gerber abstained, because his wife owned a property in this area for which he paid a mortgage. Ms. Boring, yes; Ms. Reiss, no; Mr. Sprague, yes; Mr. Saneholtz, no; Mr. Zimmerman, yes; and Mr. Messineo, yes. (Approved 4-2-1.)~~

3. Area Rezoning 03-099Z - Inner Circle I-270 Commercial Area Rezoning

Anne Wanner said this area rezoning is comprised of 46 parcels totaling approximately 411 acres. Most of the parcels are located on the inside of I-270. Properties listed in this application include several commercial, retail, and office establishments, including Ashland Incorporated, Embassy Suites, and OCLC. She showed an aerial slide indicating the proposed zonings. The zones proposed for these properties are: OLR, Office Laboratory Research District; LI, Limited Industrial District; CC, Community Commercial District; and SO, Suburban Office and Institutional District. She said these parcels have been shown on the Dublin Zoning Map for the last 15 to 20 years and the parcels range in size from 0.5 acre to 40 acres. The Post Road properties that are being rezoning are located on the south side. She said the MAG Dealerships and the Field of Corn are also included in this application.

These sites were annexed into Dublin between 1965 and 1969. Ms. Wanner said an informational meeting was held and several property owners attended. She had also spoken to property owners by phone. Ms. Wanner said staff is recommending approval of this application.

Ms. Reiss asked why LI was wanted along the freeway. Mr. Gerber said for the same reason given for the previous case. She said if the Commission recommended this, someone could come in tomorrow and put light industrial there.

Ms. Wanner said those two parcels were fully developed with LI development standards as the OCLC Campus. The sideyards and rear yards are dictated by the building height and depth. She said the development standards are not as strict in the LI District as they are in SO or OLR Districts. If something different was assigned to these parcels, it could potentially create non-conformities for OCLC that do not exist today.

Mr. Gerber made the motion to approve this area rezoning because it will provide an appropriate Dublin zoning classification for land within the City limits to provide for the effective administration of development standards, procedures, etc., will maintain the established development pattern that has been in place for many years and establish land uses consistent with those listed in the Community Plan. Mr. Zimmerman seconded the motion, and the vote was as follows: Mr. Messineo, yes; Mr. Saneholtz, yes; Mr. Sprague, yes; Ms. Boring, yes; Ms. Reiss, yes; Mr. Zimmerman, yes; and Mr. Gerber, yes. (Approved 7-0.)

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of the next 120,000 square foot building. The second component relates to the future growth of Cardinal Health. Cardinal has been aggressive in terms of pursuing acquisitions and may have opportunities to bring additional employees to Dublin. These annual incentive payments are therefore designed to encourage them to direct that future growth in Dublin. Once Cardinal reaches established target income tax withholdings as outlined in the agreement, anything over and above will be provided to them in the form of incentive payments. The intent is that when Cardinal has the opportunity to expand, they will expand in Dublin based upon the incentives offered to the company for bringing additional employees to Dublin. This can potentially provide a significant increase in the local income tax revenues and accelerate their need to begin construction on the next building, providing additional service payments from the existing TIF and allowing acceleration of the construction of Emerald Parkway east of Riverside Drive.

Mr. Lecklider noted that the provisions indicate that these payments are to be made solely from non-tax revenues. He asked for further clarification.

Ms. Grigsby responded that in all of the City's economic development agreements, any incentives are made from non-tax revenues. This relates to certain restrictions placed upon tax revenues. Non-tax revenues include such items as interest income, building permits, fines and forfeitures from courts. Language is included regarding carry forwards or balances not paid to cover a situation where in a given year there are not sufficient non-tax revenues to fund the payments to Cardinal. At this time, such a situation is not anticipated, but this is a standard provision contained in economic development agreements for the City.

Mr. Lecklider asked if staff is comfortable then with adding this obligation. Ms. Grigsby responded that the annual cap is a protection for the City as well. She does not anticipate any problems with available non-tax revenues, based upon the City's history.

There will be a second reading/public hearing at the October 6 Council meeting.

ZONING

Ordinance 107-03

Establishing Dublin Zoning for 119 Parcels Comprising an Area of Approximately 69 Acres as Annexed from Franklin County and Washington Township between 1881 and 1960, North of Rings Road, South of West Bridge Street, East of Frantz Road, West of the Scioto River To: Dublin R-2, Limited Suburban Residential and R-4, Suburban Residential Districts. (Case No. 03-098Z - Inner Circle I-270 Residential Old Dublin Area Rezoning)

Mr. Kranstuber introduced the ordinance and moved referral to Planning & Zoning Commission.

Mrs. Boring seconded the motion.

Vote on the motion: Mrs. Boring, yes; Mr. Kranstuber, yes; Mr. Reiner, yes; Ms. Chinnici-Zuercher, yes; Mayor McCash, yes; Mr. Lecklider, yes; Ms. Salay, yes.

Ordinance 108-03

Rezoning 46 Parcels Comprising an Area of Approximately 411 Acres as Annexed from Washington Township between 1985 and 1989, Southeast of I-270, West of Dublin Road, North of Rings Road, To: CC, Community Commercial, OLR, Office, Laboratory and Research, SO, Suburban Office and Institutional and LI, Limited Industrial Districts. (Case No. 03-099Z - Inner Circle I-270 Commercial Area Rezoning)

Mr. Kranstuber introduced the ordinance and moved referral to Planning & Zoning Commission.

Mr. Reiner seconded the motion.

Vote on the motion: Mr. Kranstuber, yes; Ms. Salay, yes; Mrs. Boring, yes; Mr. Lecklider, yes; Ms. Chinnici-Zuercher, yes; Mayor McCash, yes; Mr. Reiner, yes.

Ordinance 109-03

Rezoning Parcels Comprising an Area of Approximately 136 Acres as Annexed from Franklin County and Washington Township between 1980 and 1999, Southeast of I-270, West of the Scioto River, North of Hayden Run Road, To: Dublin R-1, Restricted Suburban Residential District. (Case No. 03-105Z - Inner Circle I-270 Residential South Dublin Road Area Rezoning)

Mr. Kranstuber introduced the ordinance and moved referral to Planning & Zoning Commission.

Mr. Reiner seconded the motion.

Vote on this motion: Mrs. Boring, yes; Mayor McCash, yes; Ms. Salay, yes; Mr. Kranstuber, yes; Mr. Reiner, yes; Mr. Lecklider, yes; Ms. Chinnici-Zuercher, yes.

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CITY OF DUBLIN

Office of City Manager

MINUTES OF MEETING

DUBLIN PLANNING AND ZONING COMMISSION

MARCH 8, 1990

1. Special Permit SP89-013 - Chi Chi's Restaurant
2. Special Permit SP90-003 - Just for Feet - Dublin Village Center Phase III
3. Conditional Use Application CU90-002 - Progressive Rent-A-Car - Wendy's International, Inc.
4. Rezoning Application Z90-002 - Sivad Investment Company
5. Development Plan - State Farm Insurance - Perimeter Center
6. Development Plan - McDonald's - Perimeter Center
7. Final Plat - Heather Glen, Section 2
8. Development Plan - Bank One - Perimeter Center

The meeting of the Dublin Planning and Zoning Commission was called to order at 7:35 p.m. by Vice-chairman Melvin. Other Commission members in attendance were Mr. Amoroso, Mr. Berlin, Mr. Kranstuber, Mr. Leffler, and Mr. Manus. Staff members in attendance were Mr. Bowman, Ms. Clarke, Mr. Willis, Mr. Mack, Mr. Jones, Ms. Jordan, Ms. Litzell and Mr. Banchefsky. Mr. Bowman introduced Mr. Terry Foegler, recently hired as Dublin's Development Director.

Mr. Banchefsky announced that Dublin is experiencing a sanitary sewer problem, and the Ohio Environmental Protection Agency has invoked a ban. He stated that the Commission could review and approve plans as usual; however, this approval does not entitle an applicant to connect into Dublin's sanitary sewer system. While the City is currently under a building ban, the specifics on the extent of the ban are being reviewed with the OEPA. Mr. Banchefsky assured everyone that the City is working to expediently resolve the issue.

Following the roll call, Mr. Manus moved for approval of the minutes of the February 8, 1990, Dublin Planning and Zoning Commission meeting. The motion was seconded by Mr. Kranstuber, and the vote was as follows: Mr. Berlin, yes; Mr. Kranstuber, yes; Mr. Leffler, yes; Mr. Manus, yes; Mr. Amoroso, yes; Mrs. Melvin, yes. (Approved 6-0)

1. Special Permit SP89-013 - Chi Chi's Restaurant

Ms. Clarke presented slides of the site and surrounding area along with information regarding the proposal as contained in the Staff Report dated March 8, 1990. The proposal is to install an eight-foot diameter, satellite dish antenna on the roof of Chi Chi's Restaurant which is located on the south side of Post Road. The dish will be located inside the six-foot high parapet walls which serve to screen the rooftop area. The proposal appears to address both the spirit and the letter of Dublin's Special Permit regulation, and Staff recommended approval.

Mr. Anthony Goldberg of Multivisions, the applicant, stated that an engineering site drawing showing the elevation of the dish antenna and the height of the parapet has been prepared. He stated that the drawing represents that the dish will not be visible by someone sitting in a car on either US 33/SR 161 or Post Road.

Mr. Leffler asked about the proposed color of the dish antenna. Mr. Goldberg replied that it will be a black mesh material but noted that Chi Chi's has agreed that the dish could be painted to match the color of the parapet if the City so desires.

Mr. Amorose noted concern about the severe pruning of the Code required landscape screening materials at the Chi Chi's Restaurant. He stated that he had called Chi Chi's to request that a representative attend the meeting to address his concerns. Mr. Goldberg stated that he will have Chi Chi's manager deliver a letter which states Chi Chi's commitment to comply with Dublin's pruning ordinance.

Mr. Amorose moved for approval of the Special Permit subject to the condition that no pruning is to be done on the perimeter landscaping at the Chi Chi's site. The motion was seconded by Mr. Manus, and the vote was as follows: Mrs. Malvin, yes; Mr. Kranstuber, yes; Mr. Berlin, yes; Mr. Manus, yes; Mr. Leffler, yes; Mr. Amorosa, yes. (Approved 6-0)

Discussion ensued among Commission members about code enforcement or development issues being tied to subsequent plan approvals.

~~2. Special Permit SP90-003 - Just for Feet - Dublin Village Center III~~

~~Ms. Clarke presented slides of the site and surrounding area as well as information regarding the proposal as contained in the Staff Report dated March 8, 1990. The proposal is to erect a ground-mounted, ten-foot diameter, mesh-type dish antenna at Just for Feet within the recently approved Phase III of Dublin Village Center. The dish is to be painted the same beige accent color as the center, and it will be located behind the building along the west elevation within the proposed service area just south of the existing Office America Store. Staff supported the proposal with additional screening by either mounding or evergreen trees to improve views from Village Parkway into the service area.~~

~~Mr. Bill Adams, representing Draxel Development Corp., distributed to Commission members a reduced plan showing the placement of the satellite dish antenna. He stated that a proposed future retail building on Village Parkway will screen views into this service area. Mr. Adams stated his agreement with the condition that additional evergreens be placed along Village Parkway temporarily, however, plans for a future building will include mounding and landscaping along Village Parkway similar to that in place along Dublin Center Drive. Mr. Adams stated that the dish is necessitated by the lack of cable television service in this area to accommodate the store's merchandising program.~~

~~Mr. Berlin moved for approval of the Special Permit for Just for Feet with the condition that the existing screening is augmented by additional evergreen trees. Mr. Amorose seconded the motion, and the vote was as follows: Mr. Berlin, yes; Mr. Leffler, yes; Mr. Amorosa, yes; Mr. Manus, yes; Mrs. Malvin, yes; Mr. Kranstuber, yes. (Approved 6-0)~~

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PLANNING AND ZONING COMMISSION/RECORD OF ACTION

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MEETING DATE: October 2, 1984

CASE: McKittrick Plat - Post Road

- COMMISSION ACTION: Mrs. Headlee moved that the Plat be _____ Approved
approved with the following conditions: _____ Disapproved
1. That the landscaping will be the same as the Red Roof Inn _____ Disapproved
scheme on Post Road.
 2. That the setback at the corner of Frantz Road be extended _____ Approved
15' for a total of 50'. _____ With Condition
 3. That the frontage treatment be consistent
 4. That the building setback on the S.R. 161 side of lot #3
 1. will be extended to 20'
 5. That the developers have agreed to construct one additional lane in the
 2. vicinity of the curb cut on Post Road
 6. That the recommendations of the Village Planner written in his Staff Report
 3. be included. Those recommendations are as follows:
 - a. That the intersection be found to be able to bear the additional
 4. traffic.
 - b. That the curb cut configuration be found adequate.
 - c. That the developer agree to make the temporary improvements needed
- AGREEMENTS: to make the roadway work.
- d. That the landscaping along the road frontages be made uniform with
additional landscaping at the corner.
 - e. -That some measure of architectural continuity be demonstrated to sedate
what is to be a very busy intersection.

Mr. Berlin seconded the motion.

VOTE:

2nd			
Yes	Berlin	Yes	Jezerinac
Yes	Callahan	Absent	Macklin
1st			
Yes	Headlee	Yes	Miller
		Yes	Reiner

Ronald M. James 10/2/84

Chairman Date

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Mr. Miller mentioned the extension of Muirfield Drive, and it was determined that no one can do anything about the Orr property except the Village of Dublin.

Mr. Callahan mentioned that this Plan is a drastic improvement and much superior to the approved plan that now exists, and the traffic flow has been addressed as best it can be.

Mr. Helman said that the cost of capital improvements of the old plan, with improvements, would exceed the cost of the new plan.

Counsel told Mr. Jezerinac that only portions of the P.U.D. could be approved until the road system(s) is/are developed. (The link between Muirfield Drive and Brand Road is made, e.g.).

Mr. Reiner moved to table the Earlington Subdivision request for 30 days, suggested that Mrs. Headlee discuss with Council the possibility of purchasing the piece of property to provide the link, and also the possibility of bike path underpasses be investigated. As part of the motion Mr. Smith and Mr. Helman agreed to meet with interested private citizens on Thursday, October 18, 1984 at 7:00 P.M. in Council Chambers. It will not be a meeting of the Commission. Mr. Miller seconded the motion. The vote was as follows: Mr. Berlin, no; Mr. Callahan, yes; Mrs. Headlee, yes; Mr. Jezerinac, yes; Mr. Miller, yes; Mr. Reiner, yes.

Mr. Reiner moved to table the Brandon Subdivision request for 30 days. Mr. Miller seconded the motion. The vote was as follows: Mr. Berlin, no; Mr. Callahan, yes; Mrs. Headlee, yes; Mr. Jezerinac, yes; Mr. Miller, yes; Mr. Reiner, yes.

There was a five minute recess.

Mr. Jezerinac announced that the next Planning and Zoning Commission Meeting will be held Wednesday, November 7, 1984 at 7:00 P.M. (Tuesday, November 6, 1984 is Election Day.)

McKitrick Plat - Post Road

The area is approximately 6.5 acres of a 22 acre tract bounded by Post Road, Frantz Road and U.S. 33/S.R. 161. The applicant is proposing to create three lots; the uses for the lots going west from the corner would be a bank, a Bob Evans Restaurant, and a Chi Chi's Restaurant. Mr. Bowman mentioned that because the remaining portion of the 22 acres has been split, Ohio Revised Code requires that for the three lot splits on the 6.5 acres the remaining ground must be platted.

Mr. Bowman made the following comments and observations regarding the plat:

1. An agreement was made some time ago with Mr. McKitrick (when some right-of-way was taken from Mr. McKitrick) that two curb cuts would be identified for the entire 20 acres.

11-022V

Non Use (Area) Variances
Crown Fiat-Parking and Setback Variances
5105 Post Road

2. At issue were the splits themselves; what operational needs will be required to make the intersection work as well as the curb cut; identifying some of the setbacks, some of the landscaping, and even some compatibility of building styles.
3. Lot #1 is to be used by Chi Chi's Restaurant.
Lot #2 is to be used by Bob Evans Restaurant.
Lot #3 will probably be a financial institution. The lot has been deed restricted against a future restaurant use.
4. The curb cut is located between lots 1 and 2.
5. The developers have agreed to construct a frontage road.
6. An engineering study has been done but was not available to be presented at the meeting.
7. The developers have agreed to build a lane that will be a through lane to accommodate a turn lane into these three uses.
8. As regards the traffic study from an operational standpoint two issues must be addressed:
 - a. what will it take to make the use work,
 - b. to take a larger look at the intersection itself - what improvements will have to be done to the intersection to accommodate future land uses. It will probably involve two more lanes on the Frantz Road intersection. Most of the traffic goes to the I-270 outerbelt. Eventually there will have to be two left turn lanes into Post Road as well as two right turn lanes out of Post Road.
9. Probably the worst configuration at the intersection is the loop of Frantz Road that goes north into the OCLC site.
10. In the short term the improvements suggested to the developers (which they have agreed to create) will be a temporary solution until Post Road is widened from at least 161 to the bridge.
11. Lot #3 is a peninsular lot, very difficult to develop.
12. The site plan submitted shows a 10' building parking setback line. Chi Chi's setback line is 95' and Bob Evans' is 70'. The parking, however, comes up to the 10' line.
13. Additional landscaping is being suggested on the 10' line to be consistent with the Red Roof Inn site around the corner, and be picked up at the corner with a hedge row. The developers have also agreed that there will be 25' of landscaping from the new right-of-way.
14. Red Roof Inn will not use the service road.

Mr. Harrison Smith said that he felt that mounding works better than hedge in landscaping because of the potential littering problems associated with hedges. Concern was raised regarding the diversity of architectural styles. Mr. Smith, at Mr. Bowman's request, said that the Bob Evans Restaurant will be built of brick.

Mrs. Headlee and other Commission members hoped that the structures would be compatible and offer some continuity of design.

Mr. Miller thanked Mr. Bowman for his work on the traffic pattern and said that he felt this was the best that can be done.

Mrs. Headlee moved that the Plat be approved with the following conditions:

1. That the landscaping will be the same as the Red Roof Inn scheme on Post Road.
2. That the setback at the corner of Frantz Road be extended 15' (feet) for a total of 50' (feet).
3. That the frontage treatment be consistent.
4. That the building setback on the S.R. 161 side of lot #3 will be extended to 20'.
5. That the developers have agreed to construct one additional lane in the vicinity of the curb cut on Post Road.
6. That the recommendations of the Village Planner written in his Staff Report to Commission members be included. Those recommendations are as follows:
 - A. That the intersection be found to be able to bear the additional traffic.
 - B. That the curb cut configuration be found adequate.
 - C. That the developer agree to make the temporary improvements needed to make the roadway work.
 - D. That the landscaping along the road frontages be made uniform with additional landscaping at the corner.
 - E. That some measure of architectural continuity be demonstrated to sedate what is to be a very busy intersection.

Mr. Berlin seconded the motion. The vote was 6-0 in favor.

~~CDD Review - Office Project - Emerald Point.~~

~~This is a 0.65 acre tract located on the south side of West Dublin-Granville Road across the street from David Road. Mr. Bowman made the following comments:~~

- ~~1. This was to be an informal review of the parcel. It was rezoned in two phases in April and June of 1984. At that time the service road concept was identified; the beginning of that service road concept into the office site now would be developed.~~
- ~~2. Mr. Bowman raised questions regarding how the service road would be built, by whom, and noted that there are also some storm drainage questions involved.~~
- ~~3. In some instances the Village has required developers to build appropriate streets and service drives; in other instances they have required only that developers set aside the land.~~
- ~~4. The developers were requesting a waiver of curb and gutter.~~
- ~~5. Mr. Bowman said that at issue at present is: 1) the overall concept of development, and 2) the disposition and building of the service drives.~~

MEMORANDUM

TO: Dublin Board of Zoning Appeals
Steve Langworthy, Director of Land Use and Long Range Planning

FROM: Jennifer Readler
Chris W. Michael

DATE: May 18, 2011

RE: Crown Fiat Non-Use Variances – Case No. 11-022V

Introduction

The Dublin Board of Zoning Appeals (“BZA”) held a hearing on April 28, 2011 to consider Applicant Crown Automotive Group’s (“Crown”) proposal requesting two non-use (area) variances for a site located at 5105 Post Road. Specifically, Crown is seeking variances from the setback and parking space requirements of the Dublin Zoning Code so that it may operate a Fiat car dealership on the site. After considering the application, staff has recommended disapproval of the application. Crown disagreed with the recommendation at the hearing and has submitted additional information in support of its request for the two non-use variances. Some debate ensued at the previous hearing regarding the applicable standard for non-use variances. For the reasons set forth below, the Dublin Code sets forth the property “practical difficulty standard, and the BZA has the capacity to disapprove the application. Of course, the BZA must independently weigh the criteria and come to its own conclusion with regard to the two variance requests.

Discussion

A. Ohio Law

The standard for determining whether to grant a variance differs depending on whether the type of variance sought is a use variance or a non-use (area) variance. A use variance authorizes uses not expressly or impliedly permitted by the zoning code, whereas a non-use variance deals with departures from frontage, setback, and other non-use requirements. An applicant must establish that the denial of a variance will create an “unnecessary hardship” when a use variance is sought. *Kisil v. Sandusky*, 12 Ohio St.3d 30, 465 N.E.2d 848 (1984). Conversely, a request for a non-use variance need not establish “unnecessary hardship,” as it is sufficient that the application show “practical difficulties.” *Id.*

Crown has applied for two non-use variances from the Dublin Zoning Code. The application seeks a variance from the Code’s setback requirements and another from the City’s mandate that automobile dealerships maintain certain minimum parking spaces. Consequently, Crown must establish that the Dublin Zoning Code would create “practical difficulties” should the variances be denied.

The Ohio Supreme Court articulated the test for whether “practical difficulties” exist in *Duncan v. Middlefield*, 23 Ohio St.3d 83 (1986). The Court held that “practical difficulties” exist whenever a non-use zoning requirement unreasonably deprives a property owner of a permitted use of his property. *Duncan* at 86. The key to this standard is “whether the non-use zoning requirement, as applied to the property owner in question, is reasonable.” *Id.*

Additionally, the *Duncan* Court adopted the following non-exhaustive factors to be considered and weighted in determining whether a property owner seeking a non-use or area variance has encountered “practical difficulties” in the use of its property:

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 government services;
5. Whether the property owner purchased the property with knowledge of the zoning restriction;
6. Whether the problem can be solved by some manner other than the granting of a variance; and
7. Whether the variance preserves the spirit and intent of the zoning requirement and whether substantial justice would be done by granting the variance.

Subsequent decisions have determined that all of the above factors should be considered when reaching a decision where a non-use variance is at issue and no single factor is dispositive. See *Hebeler v. Colerain Tp. Bd. of Zoning Appeals*, 116 Ohio App.3d 182, 687 N.E.2d 324 (1st Dist. Hamilton County 1997). However, failure to consider each of the factors separately does not constitute reversible error. *Krumm v. Upper Arlington City Council*, 2006-Ohio-2829 (Ohio Ct. App. 10th Dist. Franklin County 2006). Further, an agency’s decision will not be reversed if a “preponderance of reliable, probative, and substantial evidence exists,” and the burden rests with the contesting party. *Budd Co. v. Mercer*, 14 Ohio App.3d 269, 471 N.E.2d 151 (1984).

Notably, a recent court of appeals case held that a trial court’s failure to fully review all factors considered by a municipal corporation’s board of zoning appeals was reversible error when the court reviewed the board’s findings solely under *Duncan*. *Redilla v. Avon Lake*, 2010-Ohio-4653 (Ohio App. 9 Dist.). In *Redilla*, the zoning board denied an application for a non-use variance from city frontage requirements. The city’s zoning code required, in addition to the *Duncan* factors, that the board consider whether special circumstances existed on the land or as a

result of the applicant's actions. The trial court, in reversing the BZA's decision, only analyzed the board's decision under the seven *Duncan* factors without considering the additional factors prescribed by city code. On appeal, the Ninth District found this to constitute error. As demonstrated by this case, Dublin can prescribe factors other than *Duncan* in setting forth the standard for non-use variances.

B. Dublin Zoning Code

The Dublin Zoning Code ("Code") vests the BZA with the authority to grant non-use variances when practical difficulties exist that prevent a property owner from conforming with the strict requirements of the Code. D.C. § 153.231(C)(3). Under Section 153.231(H)(2), the BZA may approve a request for a non-use variance only in cases where there is evidence of practical difficulty present on the property and certain additional findings are satisfied. These additional findings require the BZA to make each of the following determinations:

1. That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this chapter would involve practical difficulties. Special conditions or circumstances may include:
 - a. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter or amendment; or
 - b. By reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or
 - c. By reason of the use or development of the property immediately adjoining the property in question.
2. That the variance is not necessitated because of any action or inaction of the applicant.
3. Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this chapter. D.C. § 153.231(H)(2)(a).

Additionally, the BZA must also make at least two of the following findings:

1. That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter.
2. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.

3. The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).
4. The practical difficulty could be eliminated by some other method, even if the solution is less convenient or more costly to achieve. D.C. § 153.231(H)(2)(b).

Analysis

The above referenced provisions of the Dublin Zoning Code closely mirror the factors articulated in *Duncan* for determining whether “practical difficulties” exist in the context of a non-use variance. Counsel for Crown agreed in its letter to the BZA dated May 5, 2011 in which it recognized that all but one of the *Duncan* factors were either expressly written into the Dublin Zoning Code or applied in the same manner as *Duncan*. Further, the *Duncan* Court expressly stated that the factors it articulated for determining whether “practical difficulties” exist are non-exhaustive suggesting that additional factors may be considered when ruling on a request for a non-use variance, as was the case in *Redilla*. Thus, the Dublin Zoning Code is in harmony with Ohio law regarding the standards for non-use variances.

A. Setback Requirements

Section 153.072(E) of the Dublin Zoning Code requires a minimum 50 foot setback for buildings and vehicular use areas (parking, driveways) along all freeways and expressway rights-of-way. The site location upon which this non-use variance is sought has frontage along U.S. 33/State Route 161 and is so subject to the setback requirement. Crown’s application requests a variance to allow vehicular sales use area to encroach 40 feet into the required setback area along U.S. 33 to accommodate the display needs of the business.

After analyzing the application pursuant to Section 153.231 of Dublin Zoning Code, staff has recommended disapproval of the setback variance. The BZA Planning Report stated that none the three required findings under 153.231(H)(2)(a) were met. Specifically, there are no special conditions that are peculiar to the site that are relevant to permit parking within a required setback as the topography and shape of the site have no bearing on the parking or display needs of the business; the applicant’s desire for vehicle display spaces necessitates the variance; and that the full-time use of the setback area for display purposes would shift the character of the site.

Further, the Report concluded that the findings required by Section 153.231(H)(2)(b) were not satisfied as only the delivery of governmental services will remain unaffected by the requested variance. In doing so, staff stated that granting the variance would create a special privilege not available to others similarly situated, and that Crown could reduce inventory and allocation of inventory in order to comply with the zoning regulations.

The factors listed in 153.231(H)(2) address nearly all of the *Duncan* factors, and essentially incorporate all of them into Section 153.231(H)(2)(a)(1) allowing the BZA to consider all special conditions and circumstances in determining whether “practical difficulties”

exist. Analyzing the BZA Planning Report's conclusions under *Duncan* yields the following results:

1. Crown can still make beneficial use of the property without the variance by reducing inventory and/or inventory allocation;
2. The variance could reasonably be construed as substantial as a 40 foot deviation from the required 50 foot setback would only leave 10 feet of setback off of a major expressway;
3. The character of the neighborhood would likely not be substantially altered by the variance and neither would it negatively impact adjoining properties. The variance does turn a temporary parking use into a full-time use though;
4. The delivery of governmental services would be unaffected by the variance;
5. Crown ostensibly knew of the zoning restriction when the property was purchased;
6. The problem could be solved without granting the variance as Crown could reduce its display area and reevaluate its inventory needs and allocation;
7. The variance does not preserve the spirit and intent of the zoning requirement as a temporary use would be converted to a full-time use should the variance be granted.

This analysis demonstrates that most, if not all, of the *Duncan* factors were taken into account in recommending disapproval. As a result, the BZA may reasonably determine that Crown has not demonstrated the existence of any "practical difficulties." Further, as demonstrated in *Redilla v. Avon Lake*, a reviewing court may only analyze a BZA's decision to deny a non-use variance as to whether it was supported by "a preponderance of reliable, probative and substantial evidence." According to the Planning Report's recommendations, it appears that a decision to deny the Crown Fiat variances will not be based on any one dispositive factor as reasonable explanations have been provided for each factor considered as to why it was or was not satisfied. Therefore, the BZA may properly deny Crown's non-use variance application as it applies to the setback provisions of the Code.

B. Parking Space Requirements

According to Section 153.212 of the Dublin Zoning Code, Crown is required to provide 71 total parking spaces on the site location based on the desired display area and planned number of service bays. The application seeks a total variance of 15 parking spaces which would reduce the required 71 spaces to 56.

Based on its review of the application, staff has recommended disapproval of the parking space variance as well. The Planning Report stated that none of the three findings required by 153.231(H)(2)(a) were met. Specifically, the site does not have any unusual features that limit the ability to place parking or display areas; Crown could meet the requirement by decreasing its

vehicle display area; and the requested variance is a direct result of Crown's desired amount of display area. The Report also concluded that the findings required by Section 153.231(H)(2)(b) were not satisfied for the same reasons it found that the setback variance failed to satisfy them.

Staff's findings as they relate to *Duncan* are as follows:

1. Crown can still make beneficial use of the property without the variance by adjusting the amount of inventory displayed on the site;
2. The variance could reasonably be construed as substantial as it seeks a reduction of 15 required parking spaces in addition to the reduction authorized by the Planning & Zoning Commission in approving the conditional use;
3. It is unclear from the Report and hearing minutes whether granting the variance would substantially alter the essential character of the neighborhood or act as a substantial detriment to adjoining properties;
4. The delivery of governmental services would be unaffected by the variance;
5. Crown knew of the zoning restriction when the property was purchased;
6. The problem could be solved without granting the variance as Crown can adjust the amount of inventory displayed on the site;
7. The variance does not preserve the spirit and intent of the zoning requirement as inadequate parking spaces would be available for customers visiting the site.

Thus, the Planning Report considers the *Duncan* factors in recommending disapproval of the parking variance, and its recommendation is not based on one dispositive factor. Based on the findings articulated in the Report, a denial of the requested parking variance will meet the standard of reasonableness under *Duncan*, and the BZA may deny Crown's non-use parking variance.

Conclusion

For the aforementioned reasons, the justifications set forth in the BZA's Planning Report recommending disapproval of Crown Fiat's non-use variance application are consistent with Ohio law and sufficient to warrant a denial of the application. However, BZA must consider both the Staff Report and Crown's position in weighing the Dublin Code factors to come to its own conclusion on whether to grant the variances or not.

**WILES, BOYLE,
BURKHOLDER
BRINGARDNER**
Co., LPA
ATTORNEYS AT LAW

300 Spruce Street, Floor One
Columbus, Ohio 43215-1173
Telephone: 614/221-5216
Facsimile: 614/221-5692
www.wileslaw.com

10979 Reed Hartman Highway
Suite 239
Cincinnati, OH 45242
(513) 791-7202

JAMES M. WILES
MARK J. SHERIFF
MICHAEL L. CLOSE*
LAWRENCE A. BELSKIS****
JOHN C. LUCAS
RICHARD D. BRINGARDNER
DANIEL E. BRINGARDNER
J. MILES GIBSON
STEVEN P. ELLIOTT

BRUCE H. BURKHOLDER
DALE D. COOK
JAY B. EGGSPUEHLER**
EUGENE L. HOLLINS
WILLIAM B. BENSON
SAMUEL M. PIPINO***
THOMAS L. HART
JAMES M. HUGHES
BRIAN M. ZETS

MARK C. MELKO
KERRY T. BOYLE
NEIL C. SANDER
JENNIFER B. CROGHAN
ALICIA E. ZAMBELLI
BRANDON L. ABSHIER
NIKKI S. MESNARD

ARTHUR W. WILES
(1906-1989)
THOMAS A. DOUCHER
(1908-1991)
THOMAS E. BOYLE
(1947-2011)

DANIEL G. WILES
(Retired)

*ADMITTED IN OHIO
AND FLORIDA
**ADMITTED IN OHIO,
NEW YORK AND THE
DISTRICT OF COLUMBIA
JAY B. EGGSPUEHLER, ESQ., LLC
***ADMITTED IN OHIO AND
PENNSYLVANIA
****ADMITTED IN OHIO, FLORIDA AND
THE DISTRICT OF COLUMBIA

Submitted by Electronic and Regular Mail

May 17, 2011

Claudia Husak, ACIP
City of Dublin, Planning Department
5800 Shier Rings Road
Dublin, Ohio 43216

Re: 5105 Post Road, BZA Case No. 11-022V

Dear Claudia:

This letter is written to clarify the intent of my client and the applicant Crown Automotive Group ("Crown") in the above referenced case before the Dublin Board of Zoning Appeals ("BZA"). Crown had previously submitted two alternative site plans based on the submission deadline for the upcoming BZA hearing on May 26, 2011. This was required at the time as engineering, cost and feasibility analyses for either alternative plan could not be completed prior to the deadline.

At this point, Crown wants to clarify that Alternative Three is the plan it requests that the BZA consider. This plan is a result of the applicant listening to and attempting to accommodate BZA members' comments, while still meeting business requirements.

The plan removes parking from the US 33 setback and requests 20 spaces within the Post Road setback. Thus, the proposed variance drops the request for 22 spaces to remain in the US 33 setback, in favor of keeping spaces along Post Road. The applicant believes this is consistent with BZA members'

comments, has less precedential impact than the proposed display spaces on US 33 and is consistent with other existing parking along Post Road.

This plan would keep the customer "write-up" bays at the southwest corner of the site and building. It retains the large landscape island in the front parking lot in order to keep that significant green space as a break in the parking. Under the revised plan, 56 general parking spaces and 60 display spaces are shown, for a total of 116 parking spaces.

The second variance from two parking code provisions remains as proposed in the original application.

I trust that this clarifies Crown's intent for the variances requested. Please contact me if additional information is needed or if you have any questions.

As always, thank you for your assistance.

Sincerely,



Thomas L. Hart
Attorney for Applicant
Crown Automotive Group

**WILES, BOYLE,
BURKHOLDER
BRINGARDNER**
Co. LPA
ATTORNEYS AT LAW

300 Spruce Street, Floor One
Columbus, Ohio 43215-1173
Telephone: 614/221-5216
Facsimile: 614/221-5692
www.wileslaw.com

10979 Reed Hartman Highway
Suite 239
Cincinnati, OH 45242
(513) 791-7202

JAMES M. WILES
MARK J. SHERIFF
MICHAEL L. CLOSE*
LAWRENCE A. BELSKIS****
JOHN C. LUCAS
RICHARD D. BRINGARDNER
DANIEL E. BRINGARDNER
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JENNIFER B. CROGHAN
ALICIA E. ZAMBELLI
BRANDON L. ABSHIER
NIKKI S. MESNARD

ARTHUR W. WILES
(1906-1989)
THOMAS A. DOUCHER
(1908-1991)
THOMAS E. BOYLE
(1947-2011)
DANIEL G. WILES
(Retired)

*ADMITTED IN OHIO
AND FLORIDA
**ADMITTED IN OHIO,
NEW YORK AND THE
DISTRICT OF COLUMBIA
JAY B. EGGSPUEHLER, ESQ., LLC
***ADMITTED IN OHIO AND
PENNSYLVANIA
****ADMITTED IN OHIO, FLORIDA AND
THE DISTRICT OF COLUMBIA

May 5, 2011

Victoria Newell, Chair
Dublin City Board of Zoning Appeals
5800 Shier-Rings Road
Dublin, Ohio 43016

Subject: 5105 Post Road, Case Number 11-022V

Chair and Members of Dublin Board of Zoning Appeals (the "BZA"):

On behalf of the applicant Crown Automotive Group, I appreciate the opportunity to submit the following information and evidence in support of the requests by Crown-Fiat for non-use variances at 5105 Post Road. This is the information that was the subject of testimony and was requested to be submitted during the recent hearing on this matter before the BZA on the evening of April 28, 2011. This subsequent submission is in keeping with your suggestion during the hearing.

This submission generally covers three areas:

1. Ohio Law. I have provided an outline of Ohio Law, including governing case law, and how it differentiates use variances from non-use or area variances and the different legal standards that are used by boards of zoning appeals and/or courts. Much of this material refers to and includes excerpts from *The Ohio Planning and Zoning Law Handbook*, 2009 Edition, by authors Stuart Meck and Kenneth Pearlman.
2. Dublin Code. An analysis of factors from Dublin Code Section 153.231 (H)(1) used in determining non-use (area) variances, as it applies to the Crown-Fiat proposal at 5105 Post Road.
3. Duncan Factors. Finally, in addition to the outline and analysis, a comparison of Dublin's Code standards with the standards from *Duncan v. Middlefield* is provided. These standards are used by Ohio courts to assess a non-use (area) variance is provided for consideration.

Ohio Law

The Ohio Planning and Zoning Law Handbook, by Meck and Pearlman, is widely accepted as the definitive legal treatise on Ohio planning and zoning law. The enclosed excerpts from Section 9 of the *Handbook* establish the following general rules for Ohio case law relative to use and non-use (area) variances.

- The purpose of a variance is to “permit amelioration of the strict letter of the law in individual cases”...A variance is “intended to alleviate a situation in which for no public reason, zoning for an area more stringently burdens one parcel of land than others.” Pp. 455-456, *Handbook*, 2009 Edition.
- Variances are of two types: (1) non-use or area, which deals with a departure from yard and height requirements, parking or setbacks as examples; and (2) use variances, which authorize uses not expressly permitted by the zoning code itself.
- The Ohio Supreme Court determined in *Kisil v. City of Sandusky*, 12 Ohio St. 3d 30 (1984) that legal standards for non-use variances were different from those for use variances. Where an applicant must show “**unnecessary hardship**” for a use variance, he or she need show only “**practical difficulties**” for a non-use variance.
- The “unnecessary hardship” standard applies when there is no other viable, or economic use for the property without the variance in case law, and that without a variance, the zoning regulations threatens to “take” the property without just compensation, in violation of constitutional protections. However, evidence that the property could be used under the zoning ordinance for other economic purposes, without the variance requested, operates as evidence that an economic hardship is not present and the approval of the requested use variance is not appropriate. Pp. 471- 472, *Handbook*, 2009 Edition.
- In *Duncan v. Middlefield*, 23 Ohio St. 3d 83 (1986), the Supreme Court reiterated its *Kisil* holding that non-use (area) variances require a lesser standard. Both *Kisil* and *Duncan* make clear that the denial of a non-use variance is not to be based on the higher standard involved in evaluating a use variance (the “unnecessary hardship” test). Page 473, *Handbook*, 2009 Edition. As an Ohio Court has explained, “...area variances do not alter the character of the district and the surrounding neighborhood. A city cannot refuse an area variance where practical difficulties are present.” Page 473, *Handbook*, 2009 Edition, citing *Streetside Records/Sound Distributors, Inv. V. City of Montgomery*, Ohio Ct. App. 1st Dist. Hamilton County (1994).
- Thus, from *Duncan*, Ohio moved away from a test involving whether a landowner would be deprived of all reasonable use of the property or not, to a complex formula involving multiple and shifting factors. The Supreme Court adopted the following standards for Board’s of Zoning Appeals and courts to use in considering non-use or area variances, under the *Duncan* “practical difficulties” test:

- (1) whether the property will yield a reasonable return or whether there can be a 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 adjoining properties suffer a "substantial detriment";
- (4) whether the variance would adversely affect the delivery of governmental services;
- (5) whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) whether the problem can be solved by some manner other than the granting of a variance;
- (7) whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.

- The courts have recognized that economic factors and different potential economic uses or financial returns are part of the 'practical difficulties' test for analyzing non-use variances under *Duncan*. (*Handbook*, Section 9:7, 2010 Edition.) This is in contrast with the legal standard for a use variance, under which a variance must be granted if there is no other possible economic use of the property and the property would have no viable use without the variance. The applicant believes that Dublin Section 153.231 (H)(1)(b)(4) specifically includes "economic" factors as part of the City's own practical difficulty standard. In addition, the language in 153.231 (H)(1)(a), which considers "other extraordinary situation on the land, building or structure" can be read to mean excessive cost impacts with no compelling public policy support. Ohio case law would support such an interpretation. Such reading and interpretation are ultimately the City's to make with the support of its own legal council.
- Courts have stated that there is no need for municipalities to write *Duncan* into their codes. The courts will recognize the standards regardless. (*Handbook*, Page 477, 2009 Edition.) That being stated, municipal home rule authority allows Dublin to enact variance tests as it sees fit, and the BZA, staff and city attorney must interpret and apply such standards.
- Self-Infliction or self imposed hardship: In Ohio, courts have found Self-Infliction most often when an applicant builds something that is non-compliant and then seeks a variance. These are cases of taking action without permission, then asking for forgiveness and a variance after the fact. A number of cases interpret a self-imposed hardship to be a purchaser taking a property with knowledge of zoning restrictions. (*Handbook*, Page 484, 2009 Edition.) This is not the case with Crown Fiat, as the ROW changes were adopted many years after the initial purchase and development. The parking on site appears also to have existed since the mid-80s and the site has been previously used for car dealership display.

Also, under Ohio law, even where self-infliction is found, when considering area variances, as opposed to use variances, this has not been fatal or the sole reason for a denial. It is just one of several factors to consider. (See, Kandel v. City Council of Kent, Ohio Ct. App. 11th Dist. Portage County, (1991), *Handbook*, Page 483, 2009 Edition.)

At the local Court of Appeals governing Franklin County, 'practical difficulties' were found where variances from off-street loading requirements, from a prohibition on parking spaces in front of the principal building (of one foot, eight inches) and from set back lines to permit parking spaces and a trash enclosure to be located on the property would "help maximize off-street parking and encourage local shopping." The Court further found that prior knowledge of the zoning restriction "is just one factor to be weighed and considered, and it is insufficient, standing alone, to preclude a property owner from obtaining a variance." (Elbert v. Bexley Planning Commission, 108 Ohio App. 3d 59 (1995)) For these reasons, it is doubtful courts would support a finding of self-infliction, and it would be unfair to declare self-infliction or inaction by the applicant based on the sole act of applying and asking for a non-use variance.

The Analysis and Application of Dublin Code Section 153.231 (H)(1) to the Non-Use Variance Request of Crown Fiat at 5105 Post Road

(a) That all the following three findings are made:

(1) Special conditions and circumstances exist in the combination effect of both Dublin setback and parking code regulations acting together on this particular property. ROW of changes and setback regulations would eliminate substantial numbers of current parking spaces without the requested variances. No other properties sitting between Post Road and US 33 would have as much parking eliminated by both ROW changes. (From the current 200 spaces to approximately 96.) It would be difficult for any proposed use to recover from this reduction of parking and useable ground. The setback limitation on other properties similarly situation, such as Bob Evans, involve an impact on the drive aisle off Post Road, with no loss of parking spaces and use, as well as fewer parking spaces lost off US 33. This impact is far less than those on 5105 Post Road. The fact is that most of the surrounding sites maintain parking within these same setbacks today.

The parking code and its required allocations for general parking, further reduce the flexibility of the remaining parking after the setback impacts. The limitations on allocation for display parking are without any supporting policy reason or compelling City interest as general parking would be adequate.

Topography and/or the shape of the property are not the only reasons to approve a non-use under the Dublin standards or the practical difficulty test outline in Duncan. The language of 153.231(H)(1)(a) is permissive in its use of the word "may." The language does not solely allow the factors cited in the staff report, rather it provides factors such as narrowness, shallowness, or shape of a property as examples of what may support a variance. Certainly, another "extraordinary situation on the land" may be the unintended regulatory impact of the zoning code itself. The facts of the Elbert, Kandell

and Kisil cases all demonstrate that City Code regulations themselves can drive the need and be appropriate reasons for a variance. (See attached material)

In this case, both the setback regulations and parking allocation formulas in code operate to create a regulation on the number of display spaces as they both apply to this site that is not a separate code provision itself. This impact and result make variance requests appropriate because the regulation itself creates an unusual issue at this site – there is enough parking but it cannot be allocated to serve the proposed and approved uses.

(2) Action/Inaction - The City ROW changes created the setback challenge and loss of parking since the time the site was developed. The City parking code acts unreasonably to require a number of general parking spaces that are excessive on the site. But for these two City requirements the applicant would have more than enough parking to comply with City codes and business needs. (200 existing spaces). The applicant cannot reconfigure the site by moving the proposed service bays.

The act of applying for a variance in and of itself is not an appropriate reason to support a finding of self-imposed hardship or inaction on the part of the applicant. Ohio law supports this conclusion. The applicant must request the use of greater display areas and display parking because the Dublin regulations do not allow the necessary display parking. This is the reason for the application. To suggest that the applicant could reduce display parking needs, or propose a “decrease in the area used for vehicle display” are inappropriate, as both these suggestions would not allow Crown Fiat to exist and operate.

The applicant has attempted to move service write-up bays and display parking to meet all Dublin requirements and its own business needs based on input received. This creates other expenses and regulatory hurdles. Whether this is an appropriate solution will be determined by the BZA.

(3) There is no substantial adverse effect on the property or improvements in the vicinity. On the contrary, the applicant is asking to keep some of the existing parking condition, so that impact is the same or even improved as the site would go from 200 to 118 parking spaces under the initial proposal and 125 spaces under a possible revised proposal. These changes would also increase greenery, and landscaping. The variances will allow significant investment and upgrade of the property, jobs and commerce where a site is vacant, so the impact is positive, not adverse.

In terms of intent and purposes of the requirement being varied, the negative impact the variances would solve is not in the Code at all - that is a restriction of display parking spaces. The variances would curtail the odd and special circumstance of two regulatory provisions that when combined with site conditions create what is an uncodified and likely unintended restriction on display spaces.

Customer parking would still be still adequate. Under the revised proposal more overall parking is available and more general or customer parking is available. The testimony on the BZA record by Mr. Marc Wigler supports this fact, as do total projected employee numbers, visits that can be allocated to service bay use and experiences at other dealership locations. All this point to the fact that site traffic for this dealership is low in comparison to larger operations and historic selling patterns. Furthermore, there was no specific evidence or testimony provided by staff to support the finding that customer parking would be inadequate.

Allowing parking to stay in the ROW along US 33 or Post Road would keep the existing condition. There has been vehicle display parking located in these areas for many years. It is not accurate to state that this parking was "occasional" or only for short periods during the day. The site is approved for use as a car dealership now, and the current owner has and could again park display cars in those spaces without limitation.

Although it is uncertain when the US 33 ROW and thus setback regulations changed, it was certainly after the initial development of the site and parking has been there since that time. Although the Post Road ROW is shown on the original plat, parking has been allowed in this setback at 5105 Post Road and surrounding sites for many years and exists today. The staff exhibit aerial photo showing the parking of display cars and other parking in the setbacks from both Post Road and US 33 at adjacent sites is evidence to refute a finding of a character shift or breakdown of the effect or intent of the Code provisions at issue. If there is such a character issue, allowing parking to remain would fit the existing and long-term character that prevails. If the effect or intent of the Code is at stake, this issue is consistent with the other sites in the vicinity.

(b) That at least two of the following four findings are made:

1. Special Privilege or deprivation of the applicant of rights enjoyed by other properties in same zoning district:

i. Setback variance

Asking to keep parking within the setback is not a special privilege because this is the long-term existing condition and other similarly situated sites have the same condition today, parking in the setback. The variance is needed because of a change in the ROW, not just because the applicant needs more display spaces. Without the change in ROW and setbacks eliminating parking spaces, there would be enough parking for city code and the proposed use. The variance condition would be limited and only run with the conditional use as proposed by the applicant.

ii. Parking variance

The literal interpretation of the zoning code as it relates to parking, mandates customer parking numbers that are not based on the use. Rather than providing

a special privilege, literal code enforcement negatively impacts the proposed use without any clear public policy support, by mandating excessive customer parking and limiting display parking compared to what has been allowed. On the other hand, applying the code literally would deprive the applicant of parking that is currently enjoyed by many, if not all surrounding uses.

2. Specific Property Conditions are so general or recurrent as will make the formulation of a general regulation reasonably practical.

- i. Setback variance
- ii. Parking variance

The specific conditions that apply in this situation are unique and not likely to apply in general and be recurrent to make the formation of general regulation practical for other sites. Few properties of this small size and without a stable and ongoing use exist between Post Road and US 33. The site and proposal are additionally impacted by regulatory changes to both rights-of-way. This operates to severely restrict the maximization of the property's beneficial use.

The applicant has attempted to alter its approach and re-configure the site to meet staff and BZA concerns, but still needs the variance from the restrictive nature of the parking regulations.

The parking code impact on this applicant is unique in that enough actual parking exists to support the proposed use, but the required allocation of parking spaces based on the code, in combination with new setbacks lines, operates in a manner that uniquely restricts this use without variances. Most commercial businesses do not need as many parking display spaces in relation to general/business parking. This is based on the applicant's need for a specific number of display spaces required by the manufacturers' specifications. This is an appropriate reason for a variance because there is no evidence to support a public policy interest in restricting display parking.

Finally, the proposed dealership is low impact, and most appropriate for a smaller site based on low volume sales, and niche target market. The site and dealership will only support approximately 15 total employees. Most other new car dealerships would need much larger site acreage in order to support greater employee, customer, parking and display needs. Only larger properties could support such size, scale and need. In the case of large volume car dealerships, which involve larger scale operations, employee numbers and car volume, variance requests for setback and display parking could not likely overcome the limitations of a smaller site. Such proposals could not work in this district.

3. The variances would not adversely affect delivery of governmental services.

- i. Setback variance

ii. Parking variance

The applicant agrees with staff that the staff finding is appropriate in both cases.

4. Practical difficulty can be eliminated by some other method, even if solution is less convenient or most costly to achieve.

- i. Setback variance
- ii. Parking variance

The applicant does not agree that Vehicle "inventory could be adjusted" or "allocation of inventory" adjusted throughout the site as staff suggests. This would only mean the proposed business, jobs and car sales do not happen.

Code would then mandate 71 spaces for general parking according to staff. Even without the theoretical necessity of the variances for either setback, and with a re-designed site plan, this leaves only 54 spaces for inventory of display cars. This is not a reasonable regulation as applied to a car dealership and its needs. Such regulation presents a practical difficulty because it eliminates this viable and code supported use, even after extraordinary and expensive measures are taken to alter the site. Overcoming these remaining challenges would be impossible as the lack of flexibility to allow display parking kills the proposal.

Entry access conflicts to the Northeast preclude the relocation of customer service bays to that location. Drive circulation, storm water treatment and green space needs on the Northwest severely challenge the relocation of customer service bays to this alternative location, in order to free up vehicle display on the south as staff suggests. In addition, the architecture and aesthetics of the building front mean that service bay placement is very challenging. However, the applicant has presented a plan version that proposes the relocation of customer service bays to the Northwest corner of the site. At the time of this submittal, whether such a revision will be cost prohibitive in terms of storm water regulatory requirements is unknown. The applicant will supplement its comments about this and further narrow its requests as necessary.

The Duncan "Practical Difficulties" test and Dublin's Section 153.231(H)(1) and Standards for Non-Use Variances

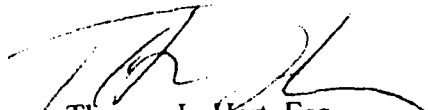
Duncan Factors:

- (1) whether the property will yield a reasonable return or whether there can be a 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 adjoining properties suffer a "substantial detriment";

- (4) whether the variance would adversely affect the delivery of governmental services;
- (5) whether the property owner purchased the property with knowledge of the zoning restriction;
- (6) whether the problem can be solved by some manner other than the granting of a variance;
- (7) whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.

The applicant believes that Dublin's standards for non-use variances are substantially similar to those of Duncan. Duncan standards (3), (4), (5), (6), and (7) are either explicitly written into the Dublin standards or staff is applying them in the same manner as Duncan as is the case with factor (5). Factor (2) under Duncan, whether the variance is substantial compares with Dublin standard (a)(1)(3). As stated previously, the applicant believes that economic impacts are a part of the Dublin test, as they are under Duncan and Ohio Law in general when non-use (area) variances are considered.

Respectfully,



Thomas L. Hart, Esq.

Encl.

buyers. The township countered with its own witnesses, who testified that comparable sales demonstrated that residential construction was economically feasible, that the increase in traffic flow would be negligible, that nearly all the surrounding parcels had residences built on them, and that the cost of construction varied widely within the township so that housing types lower in price than that proposed by the owner could be built. In addition, there were disagreements over the relative expertise of the witnesses for both sides. The case illustrates how a local government can build a strong case to support its decision.

Of course, despite the customary judicial deference, where the court feels that there would be confiscation absent a variance, it will overturn a denial, as was done in *Negin v. Board of Building and Zoning Appeals of City of Mentor*.⁷ In *Negin*, the Ohio Supreme Court ruled that where a landowner would be required to purchase additional property before being permitted to improve a substandard lot (platted before the ordinance) for residential use, a variance had to be granted. For a court to determine whether the grant or denial of a variance is appropriate, there must be sufficient evidence in the record.⁸

§ 9:6 Variances—Standards—Unnecessary hardship and practical difficulties

Perhaps nothing in the area of land use law has caused as much confusion as the standards for variances. In general there are a number of standards that have been applied to decide whether a variance should be granted. They can be divided in various ways, but it seems useful to focus on the four principal ones:

- (1) whether the ordinance creates unnecessary hardship to a particular property;
- (2) whether strict application of the ordinance results in practical difficulties;
- (3) whether the variance would have an adverse impact on the immediate neighborhood, community land use, or the community's comprehensive plan;
- (4) whether the hardship is self-created.

The first two standards create problems. Most jurisdictions in the United States have some form of requirement of unnecessary hardship or practical difficulties. The interpretation is not necessarily the same in all districts. Is "unnecessary hardship or practical difficulties" to be read as one standard with two alternatives, or do the terms "unnecessary hardship" and "practical difficulties" apply to different kinds of variances?

⁷*Negin v. Board of Bldg. and Zoning Appeals of City of Mentor*, 69 Ohio St. 2d 492, 23 Ohio Op. 3d 423, 433 N.E.2d 165 (1982).

⁸*Mishler v. Suffield Tp. Bd. of Zoning Appeals*, 1993 WL 318821 (Ohio Ct. App. 11th Dist. Portage County 1993).

The Ohio Supreme Court in *Kisil v. City of Sandusky*¹ has taken the position that the two terms apply to different types of variances. "Unnecessary hardship" is a term that is to be used in cases of use variances. In this situation a landowner is asking that he or she be allowed to use property in a manner not permitted in the zoning ordinance. For example, if a single-family district does not allow a doctor's office, a request for a variance to allow a doctor's office is a request for a use variance. On the other hand, where a day care facility is a permitted use in a given zone, variances for landscaping may not be denied under the "unreasonable hardship" standard.²

"Practical difficulties," the court concluded in *Kisil*, is a term to be applied to requests for area variances. An area variance involves an exception from such requirements as yard, lot, and even height standards. Thus, in *Kisil*, the owner wanted to convert a one-family dwelling to a two-family dwelling. Both uses were allowed in the ordinance, but the minimum lot area requirements were larger for two-family than for one-family dwellings and the lot would be substandard in this respect if used for two dwellings.

The nature of an unnecessary hardship is that the owner, unless granted a variance, will be unable to use the property for the purposes for which it is zoned.³ In effect, because of the character of the property, it cannot be used and the result would be a taking.⁴ For example, in *Negin v. Board of Building and Zoning Appeals of City of Mentor*,⁵ the Ohio Supreme Court ruled that in denying a variance (in that case an area variance) the BZA totally restricted the use of the applicant's property, thus violating his constitutional rights. In *Negin*, the owner of a substandard lot was denied front (from fifty to forty feet) and rear (from fifteen to five feet) yard variance requests for residential housing under an ordinance dealing with lots of substandard frontage. It is not clear from the case why the land could not be used other than as a residence unless the variance were granted (other uses under the ordinance included churches and schools, which the Court felt were highly speculative), but the testimony indicated that the only possible uses were as land to make adjoining parcels larger or as some sort of future recreation land for a community association. The Court concluded that requiring an owner to purchase land in order to build on it resulted in a taking of property.

On the other hand, under the Supreme Court's decision in

[Section 9:6]

¹*Kisil v. City of Sandusky*, 12 Ohio St. 3d 30, 465 N.E.2d 848 (1984).

²*Perez v. City of Cleveland Bd. of Zoning Appeals*, 2000 WL 23123 (Ohio Ct. App. 8th Dist. Cuyahoga County 2000).

³*In re Dinardo Const., Inc.*, 1999 WL 262161 (Ohio Ct. App. 11th Dist. Geauga County 1999).

⁴*Hulligan v. Columbia Tp. Bd. of Zoning Appeals*, 59 Ohio App. 2d 105, 108, 13 Ohio Op. 3d 162, 392 N.E.2d 1272, 1274 (9th Dist. Lorain County 1978) (citing *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals of Mentor Tp.*, 168 Ohio St. 113, 5 Ohio Op. 2d 372, 151 N.E.2d 533 (1958)).

⁵*Negin v. Board of Bldg. and Zoning Appeals of City of Mentor*, 69 Ohio St. 2d 492, 23 Ohio Op. 3d 423, 433 N.E.2d 165 (1982).

Consolidated Management, Inc. v. City of Cleveland,⁶ as long as economically viable alternatives are available, "[t]he mere fact that one's property can be put to a more profitable use does not, in itself, establish an unnecessary hardship." In this case a board of zoning appeals granted a variance to allow a tenant in a shopping center to use a storeroom as an electronic video games center after the city's building commissioner denied the request on the ground that the commercial zoning category in effect at the time did not allow entertainment uses. The common pleas and the appeals courts upheld the granting of the variance. The Ohio Supreme Court reversed. The Court concluded that no evidence of unnecessary hardship or even of practical difficulty had been demonstrated, that the applicant had brought on his own problem by having knowledge of the restrictions, and that, even though the property might be worth more with the variance, it was still usable commercially for other purposes.

In considering whether a taking has occurred, an appeals court has held in *Diversified Construction, Inc. v. City of Willoughby Hills*⁷ that where a board concludes that no hardship is present justifying self-storage units in a residential zone and the issue is subject to reasonable debate, the board's decision will be upheld. In another case a developer who was denied subdivision approval to build a single-family development in a river buffer zone and requested a variance lost because the court found that the city would permit access to the part of the property not in the buffer zone, thus allowing development of some of the land, even though to an overall less profitable use.⁸

How far the Ohio Supreme Court is willing to go short of a total confiscation of land is unclear. However, where the Court finds a confiscation, as it did in *State ex rel. Killeen Realty Co. v. City of East Cleveland*,¹⁰ where it held that since land was surrounded on three sides by different zoning and was unable to be used as it was zoned, a variance to allow a use permitted on the adjacent land could not be denied. Similarly, where a particular property is subject to difficulties in use not present in other nearby properties, then a use variance may well be appropriate.¹¹ A lower court in *Zurow v. City of Cleveland*¹² indicated that if the refusal of the variance resulted in substantial deprivation of property rights, then the refusal will be

⁶*Consolidated Management, Inc. v. City of Cleveland*, 6 Ohio St. 3d 238, 452 N.E.2d 1287 (1983).

⁷*Consolidated Management, Inc. v. City of Cleveland*, 6 Ohio St. 3d 238, 238, syl. 2, 452 N.E.2d 1287, 1288 (1983).

⁸*Diversified Const., Inc. v. City of Willoughby Hills*, 1992 WL 361445 (Ohio Ct. App. 11th Dist. Lake County 1992). Cf. *Lesser v. Cleveland*, 102 Ohio App. 3d 151, 656 N.E.2d 1301 (8th Dist. Cuyahoga County 1995).

⁹*Weiss Development Co. v. Board of Zoning Appeals*, 1997 WL 380230 (Ohio Ct. App. 8th Dist. Cuyahoga County 1997), appeal allowed, 80 Ohio St. 3d 1470, 687 N.E.2d 298 (1997), appeal dismissed by 83 Ohio St. 3d 1465, 700 N.E.2d 1290 (1998).

¹⁰*State ex rel. Killeen Realty Co. v. City of East Cleveland*, 169 Ohio St. 375, 8 Ohio Op. 2d 409, 160 N.E.2d 1 (1959).

¹¹*Paris v. Board of Zoning Appeals of City of Mayfield Heights*, 1992 WL 390089 (Ohio Ct. App. 8th Dist. Cuyahoga County 1992), jurisdictional motion overruled, 66 Ohio St. 3d 1460, 610 N.E.2d 424 (1993).

¹²*Zurow v. City of Cleveland*, 61 Ohio App. 2d 14, 15 Ohio Op. 3d 21, 399 N.E.2d 92 (8th Dist. Cuyahoga County 1978).

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unconstitutional. Nonetheless, absent what would amount to a taking, a use variance will not be favored. In any event, the issue on appeal is the reasonableness of the decision to grant or deny the variance.¹³ For example, an appeals court has upheld a common pleas court ruling that a township board of zoning appeals denial of a use variance that would have allowed a landowner to store 30 semi-trailers not permitted in an agricultural district was justified because the variance application was based on grounds of convenience or profit, not to overcome unnecessary hardship.¹⁴

Certainly, where land cannot be profitably used without a variance, the courts will find a taking absent the granting of a variance. In *Sullivan v. City of Eastlake Board of Zoning Appeals*,¹⁵ an appeals court overturned the denial of a variance to a plaintiff in a district requiring sixty-foot frontage where the plaintiff's lot had only twenty-five. The appeals court concluded that the evidence demonstrated that if the plaintiff did not receive a variance to build a house, she would be unable to have any beneficial use of the property and ordered the granting of a variance.

However, where only additional site development expenses are involved to make a lot buildable in order to comply with an ordinance, denial of an area variance may be warranted. In *Haven v. City of Solon*,¹⁶ an appeals court affirmed a trial court's decision for the denial of an area variance. The developer had requested a variance to fifty feet from a 100-foot required setback because houses it was proposing would otherwise have to be built on a slope and would require special foundations. This requirement of special foundations was not found to be an unconstitutional imposition since the property would still yield a reasonable return.

Kisil makes clear, however, that the denial of an area variance requires no such high standard. Citing a New York Court of Appeals decision,¹⁷ the Ohio court explained that area variances do not alter the character of the district and the surrounding neighborhood. A city cannot refuse an area variance where practical difficulties are present.¹⁸

The problem with the *Kisil* decision is that it undermines a community's judgment as to its land uses and shifts the burden of proof away from one attacking the decision. While the Supreme Court has

¹³See also *Adelman Real Estate Co. v. Gabanic*, 1991 WL 239331 (Ohio Ct. App. 11th Dist. Geauga County 1991); *Standard Oil Co. v. Boardman Tp. Bd. of Zoning Appeals*, 1993 WL 78816 (Ohio Ct. App. 7th Dist. Mahoning County 1993).

¹⁴*Williamson v. Board of Zoning Appeals of Newton Tp.*, 2003-Ohio-848, 200: WL 491059 (Ohio Ct. App. 5th Dist. Licking County 2003).

¹⁵*Sullivan v. City of Eastlake Bd. of Zoning Appeals*, 1996 WL 761987 (Ohio Ct. App. 11th Dist. Lake County 1996).

¹⁶*Haven v. City of Solon*, 1996 WL 695615 (Ohio Ct. App. 8th Dist. Cuyahoga County 1996), dismissed, appeal not allowed, 78 Ohio St. 3d 1464, 678 N.E.2d 221 (1997).

¹⁷*Kisil v. City of Sandusky*, 12 Ohio St. 3d 30, 32, 465 N.E.2d 848, 851 (1984) (citing *Hoffman v. Harris*, 17 N.Y.2d 138, 144, 269 N.Y.S.2d 119, 216 N.E.2d 326, 329 (1966)).

¹⁸*Streetside Records/Sound Distributors, Inc. v. City of Montgomery*, 1994 WL 680133 (Ohio Ct. App. 1st Dist. Hamilton County 1994).

upheld deference to a city's zoning decisions if reasonable, the effect of *Kisil* is to change that standard when an area variance is requested. As dissenting Justice Locher (joined by Celebrezze and Holmes) opined,

The real problem with this court's holding today, though, is the abrogation of the home rule power of appellee city to enforce its zoning code. The property in question is less than one-half of the required two-family area dimensions. There is no question here of any arbitrariness on the part of appellee. Zoning has long been an established power of the municipality, with the burden on the claimant to show that a zoning board's refusal to grant a variance is unreasonable, arbitrary, or capricious.¹⁹

If a city deems it appropriate to have a larger lot size for two-family than one-family dwellings, should it not be able to do so?

The importance of properly deciding whether a variance is a use or an area variance can be seen in the case of *Rootstown Township Trustees v. Morgan*,²⁰ where an auto body shop use appeared to have become a gas tank refurbishing business. The Ohio EPA ordered the business enclosed because of dust from sandblasting. The business, as a previous nonconforming business, had been given an extension of a nonconforming use on grounds that no further extension would be given. The owners applied for a variance on hardship grounds but the BZA denied it. The Rootstown appeals court, treating the case as a use variance, held that the EPA order did not amount to an unnecessary hardship and sustained the BZA's denial. The dissenting judge treated the cases as a request for an area variance and voted to require that a variance be granted.

§ 9:7 Variances—Standards—The *Duncan v. Village of Middlefield* tests

Duncan v. Village of Middlefield,¹ decided in 1986, two years after *Kisil*, spelled out the requirements for area variances. Basically, under *Duncan*, the rule for determining if a variance is justified shifts from one involving whether the landowner would be deprived of all reasonable use of property to a complex formula involving multiple (and shifting) tests. These tests include, but are not limited to:

- (1) whether the property will yield a reasonable return or whether there can be a beneficial use of the property without the variance;
- (2) whether the variance is substantial;²
- (3) whether the essential character of the neighborhood would be

¹⁹*Kisil v. City of Sandusky*, 12 Ohio St. 3d 30, 36, 465 N.E.2d 848, 854 (1984) (Locher, J., dissenting, joined by Celebrezze, C.J., and Holmes, J.).

²⁰*Rootstown Tp. Trustees v. Morgan*, 1991 WL 70113 (Ohio Ct. App. 11th Dist. Portage County 1991).

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¹*Duncan v. Village of Middlefield*, 23 Ohio St. 3d 83, 491 N.E.2d 692 (1986), cert. denied, 479 U.S. 986, 107 S. Ct. 576, 93 L. Ed. 2d 579 (1986).

²When deciding variance requests, a board can compare the extent of requested variances with other variances granted and this can be given weight by a trial court when the decision to grant a variance is attacked. *Krumm v. Upper Arlington City*

- substantially altered or adjoining properties suffer a "substantial detriment";
- (4) whether the variance would adversely affect the delivery of governmental services;
 - (5) whether the property owner purchased the property with knowledge of the zoning restriction;
 - (6) whether the problem can be solved by some manner other than the granting of a variance;
 - (7) whether the variance preserves the "spirit and intent" of the zoning requirement and whether "substantial justice" would be done by granting the variance.³

These requirements are, frankly, a mishmash of differing standards. The first is of course the traditional variance standard. If it is present, then the others are all irrelevant, for there is a taking. If it is not, what is the point of considering it? The fifth applies to all variances, but why should it not be determinative here, if it is in the more serious case of use variance denial? Words like "substantial," "substantial detriment," "substantial justice," and "spirit and intent" are not very clear.⁴ The seventh runs counter to the Court's expressed view that zoning matters are for the legislative body of the community, not the courts or a quasi-judicial body like the BZA. To make matters worse, the Ohio Supreme Court indicates that there can well be other tests employed by the local BZA. For example, a local requirement that hardship be other than economic may preclude the granting of a variance even though economic difficulties are part of practical difficulties of the *Duncan* factors.⁵ Further, the BZA's responsibility is to weigh the interests of the owner against those of the community and neighboring property owners. What about the interests of the community as a whole, as expressed in the zoning legislation?

At the same time that it enunciated these tests, the Court examined the case as though the traditional burdens had not been changed and, indeed, stated that the individual applying for the variance has the burden of showing that the zoning ordinance, as applied to his or her property, is "inequitable." The Court appeared to place heavy burdens on *Duncan*. The dissenting Justice, Clifford F. Brown, argued that the

Council, 2006-Ohio-2829, 2006 WL 1530156 (Ohio Ct. App. 10th Dist. Franklin County 2006).

³*Duncan v. Village of Middlefield*, 23 Ohio St. 3d 83, 86, 491 N.E.2d 692, 695 (1986), cert. denied, 479 U.S. 986, 107 S. Ct. 576, 93 L. Ed. 2d 579 (1986). Cf. *Fisher-Yan v. Bill Mason*, 2000 WL 1371474 (Ohio Ct. App. 11th Dist. Geauga County 2000); *Harlamert v. City of Oakwood*, 2000 WL 770515 (Ohio Ct. App. 2d Dist. Montgomery County 2000); *Wolstein v. Pepper Pike City Council*, 156 Ohio App. 3d 20, 2004-Ohio-361, 804 N.E.2d 75 (8th Dist. Cuyahoga County 2004).

⁴One factor in determining whether a variance is substantial is the numerical percentage deviation of the variance from the ordinance requirements. *Stovall v. City of Streetsboro*, 2007-Ohio-3381, 2007 WL 1882604 (Ohio Ct. App. 11 Dist. Portage County 2007) ("Appellants wanted variances to locate their wall eighteen inches from their rear and side property lines and further to increase its height to six feet. The height variance would allow appellants to rebuild their wall from its current thirty inches to a height of six feet. The variance would result in a variance of forty-eight and one-half feet of the fifty foot rear yard setback and variance of ten and one-half feet of the twelve foot side yard setback." (2007 WL 1882604 at *2).

⁵*Smith v. Board of Zoning Appeals*, 2000 WL 262629 (Ohio Ct. App. 2d Dist. Montgomery County 2000).

"practical difficulties test has been rendered so spongy and flexible as to validate any arbitrary and capricious restriction on use of property that may be desired."⁶ Certainly, it has left the matter unclear.

Following *Duncan* an appeals court held that a gas station's request for additional signage beyond that allowed by the code does not constitute grounds for an area variance.⁷ Another court ruled that the denial of a request for a variance to keep a shed mistakenly placed on a lot line in violation of the ordinance is not grounds for a variance despite the argument that the lot was hilly in the middle and that placing the shed there would be an eyesore.⁸ Similarly, a governmental jurisdiction can refuse to grant a variance for a sign that is too close to a utility road, where a variance would have permitted the sign to be seen from both of its sides, although without the variance only one side was visible.⁹ A Cuyahoga County appeals court refused to find unconstitutional a zoning ordinance requirement that campers must be parked in a rear yard and that the owners of a camper had failed to show a hardship that would justify a variance from the requirement.¹⁰ Other situations relevant to signs analyzed against the backdrop of the *Duncan* factors include whether the property can be of beneficial use without the variance (the first *Duncan* factor), the existence of highway theme signs advertising hotels that reduce the need for sign variances (sixth factor), purchase of the property with knowledge of the sign restrictions (fifth factor), and a request for a variance that substantially exceeds the restrictions (sixth factor).¹¹

In all events the traditional appeal standard of RC 2506.04 applies, namely whether a preponderance of reliable, probative, and substantial evidence exists to support the board's decision, with judicial deference being accorded to the board's expertise.¹² On the other hand, the *Duncan* factors can be awkward to apply and courts may appear sometimes to place the burden on the community. In *Evelyn E. Kinsey, Inc. v. Cleveland Board of Zoning Appeals*,¹³ an appeals court upheld a lower court reversal of a board of zoning appeals refusal to grant relief from a setback requirement. The court placed the burden on the board to show that a commercially viable business could be run from a building complying with the setback in response to the applicant's

⁶*Duncan v. Village of Middlefield*, 23 Ohio St. 3d 83, 90, 491 N.E.2d 692, 698 (1986), cert. denied, 479 U.S. 986, 107 S. Ct. 576, 93 L. Ed. 2d 579 (1986) (Brown, C.F., J., dissenting).

⁷*Standard Oil Co. v. City of Mayfield Heights*, 1992 WL 90732 (Ohio Ct. App. 8th Dist. Cuyahoga County 1992).

⁸*Hydeck v. Suffield Tp. Bd. of Zoning Appeals*, 1992 WL 190164 (Ohio Ct. App. 11th Dist. Portage County 1992).

⁹*Whiteco Outdoor Advertising v. Violet Township, Bd. of Zoning Appeals*, 1997 WL 219159 (Ohio Ct. App. 5th Dist. Fairfield County 1997).

¹⁰*Martin v. Independence Bd. of Zoning Appeals*, 2003-Ohio-2736, 2003 WL 21234910 (Ohio Ct. App. 8th Dist. Cuyahoga County 2003).

¹¹*Cross Country Inns, Inc. v. City of Westerville*, 2003-Ohio-3297, 2003 WL 21453480 (Ohio Ct. App. 10th Dist. Franklin County 2003).

¹²*Weiss Development Co. v. Board of Zoning Appeals*, 1997 WL 380230 (Ohio Ct. App. 8th Dist. Cuyahoga County 1997), appeal allowed, 80 Ohio St. 3d 1470, 687 N.E.2d 298 (1997), appeal dismissed by 83 Ohio St. 3d 1465, 700 N.E.2d 1290 (1998).

¹³*Evelyn E. Kinsey, Inc. v. Cleveland Bd. of Zoning Appeals*, 1999 WL 435775 (Ohio Ct. App. 8th Dist. Cuyahoga County 1999).

argument that it would be difficult to do so. The court further held that the BZA could not compare the size of the proposed building with that of the previous building on the site. The court found that the new owner was not aware of the restrictions and that other buildings, with greater encroachments, had received variances in the past. It may well be that the BZA in this case did a sloppy job in dealing with the request, but the authors would argue that such an approach as used by the court should be done only after careful consideration of its role in the process.

Many subsequent cases have followed the holding in *Duncan*.¹⁴ In one case, *Zangara v. Chester Township Trustees*,¹⁵ an appeals court held that the distinction between use variances and area variances applied to townships as well as municipalities, notwithstanding the language of RC 519.14(B). The court determined that the Supreme Court in *Kisil* intended a uniform standard of review based on the character of the variance, not on the nature of the governmental entity. Even for municipalities, there is no need to write the *Duncan* factors into their codes. The courts will take cognizance of them anyway.¹⁶

Other cases have had similar resolutions. In one request for a variance, a developer sought to build a two-family home on lots consisting

*14*For an example of a detailed use of *Duncan* factors in a variance case, see *Stickelman v. Harrison Twp. Bd. of Zoning Appeals*, 148 Ohio App. 3d 190, 2002-Ohio 2785, 772 N.E.2d 683 (2d Dist. Darke County 2002). Other examples include *Duffy v. Board of Bldg. and Zoning Appeals of City of Willoughby Hills*, 1992 WL 207824 (Ohio Ct. App. 11th Dist. Lake County 1992), cause dismissed, 66 Ohio St. 3d 1478, 612 N.E.2d 329 (1993); *State ex rel. Horning Diversified Inv. Group, Inc. v. Michael*, 1991 WL 179590 (Ohio Ct. App. 11th Dist. Portage County 1991); *Barr v. Monroe Tp. Bd. of Zoning Appeals*, 1990 WL 70101 (Ohio Ct. App. 5th Dist. Licking County 1990); *Ebosh v. Haydn*, 1988 WL 37623 (Ohio Ct. App. 9th Dist. Lorain County 1988); *Musarra v. Board of Zoning & Building Code Appeals, City of Strongsville*, 1993 WL 276908 (Ohio Ct. App. 8th Dist. Cuyahoga County 1993); *Coventry Tp. Bd. of Zoning Appeals v. Barendfeld*, 1992 WL 194228 (Ohio Ct. App. 9th Dist. Summit County 1992); *Howard v. Coventry Twp. Bd. of Zoning Appeals*, 110 Ohio App. 3d 691, 675 N.E.2d 41 (9th Dist. Summit County 1996); *Klubnik v. Granger Tp. Bd. of Zoning Appeals*, 1996 WL 367347 (Ohio Ct. App. 9th Dist. Medina County 1996); *Barendfeld v. Coventry Twp. Bd. of Zoning Appeals*, 1996 WL 15847 (Ohio Ct. App. 9th Dist. Summit County 1996), appeal not allowed, 75 Ohio St. 3d 1512, 665 N.E.2d 681 (1996), motion for reconsideration denied, 76 Ohio St. 3d 1425, 667 N.E.2d 27 (1996); *Roberts v. Put-In-Bay Planning Com'n*, 1995 WL 643139 (Ohio Ct. App. 6th Dist. Ottawa County 1995); *McPhillips v. Cleveland Bd. of Zoning Appeals*, 1995 WL 329018 (Ohio Ct. App. 8th Dist. Cuyahoga County 1995), dismissed, appeal not allowed, 74 Ohio St. 3d 1418, 655 N.E.2d 739 (1995); *Matter of Appeal of Rutherford*, 1995 WL 347995 (Ohio Ct. App. 5th Dist. Licking County 1995); *Elbert v. Bexley Planning Comm.*, 108 Ohio App. 3d 59, 670 N.E.2d 245 (10th Dist. Franklin County 1995), discretionary appeal not allowed, 75 Ohio St. 3d 1477, 663 N.E.2d 1304 (1996); *Carroll v. Bath Tp. Bd. of Zoning Appeals*, 1995 WL 643115 (Ohio Ct. App. 2d Dist. Greene County 1995); *Prochazka v. Orange Village*, 2002-Ohio-2032, 2002 WL 745573 (Ohio Ct. App. 8th Dist. Cuyahoga County 2002); *Miller v. Willowick*, 2007-Ohio-465, 2007 WL 314677 (Ohio Ct. App. 11th Dist. Lake County); *Smith v. Coventry Twp. Zoning Dept.*, 200-Ohio-2532, 2008 WL 2192811 (Ohio Ct. App. 9th Dist. Summit County 2008).

*15**Zangara v. Chester Twp. Trustees*, 77 Ohio App. 3d 56, 601 N.E.2d 77 (11th Dist. Geauga County 1991), jurisdictional motion overruled, 62 Ohio St. 3d 1508, 583 N.E.2d 1320 (1992).

*16**Giambrone v. Aurora*, 85 Ohio App. 3d 758, 621 N.E.2d 475 (11th Dist. Portage County 1993).

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of 5,000 square feet where the requirement for such a use was 12,000 square feet.¹⁷ Three variances were sought by the plaintiff, one each for lot area, side yard, and lot coverage. An appeals court affirmed the decision made by the board and trial court to deny the variance request. Although the plaintiff asserted that the "property's unique location and elevation"¹⁸ provided a basis for practical difficulties, the appeals court indicated that there was evidence supporting four of the seven requirements set forth in *Duncan*. Similarly, in *Haven v. City of Solon*,¹⁹ an appeals court upheld the denial of variances to reduce to fifty feet a required setback of 100 feet. The court found the denial to be supported by a number of *Duncan* factors, including the facts that the variances would require special foundations but not amount to a taking, the variances would change the character of the area with its deep setbacks, there was an alternative solution that did not require a variance, and the developer knew of the zoning restrictions prior to purchase of the property.

In *Barensfeld v. Coventry Township Board of Zoning Appeals*,²⁰ another appeals court, following *Duncan*, held that although denial of a variance to expand the deck of a business to the water's edge in violation of an existing setback regulation would lead to a loss of an increase in potential profit, no practical difficulty was created. The plaintiff had admitted that the deck was added to increase the revenue of his business.

However, in *Elbert v. Bexley Planning Commission*,²¹ an appeals court found that practical difficulties were present where variances from off-street loading requirements, from a prohibition on parking spaces in front of the principal building (of one foot, eight inches), and from set back lines to permit parking spaces and a trash enclosure to be located on the property would "help maximize off-street parking and encourage local shopping." The court further found that prior knowledge of the zoning restrictions "is just one factor to be weighed and considered, and it is insufficient, standing alone, to preclude a property owner from obtaining a variance."²²

A Portage County appeals court sustained a common pleas court's overruling of denial of a variance request to split a lot in two parts, each of which would be five acres in size but would fail to meet the

¹⁷*Powers v. City of Rocky River Bd. of Zoning Appeals*, 1996 WL 648689 (Ohio Ct. App. 8th Dist. Cuyahoga County 1996).

¹⁸*Powers v. City of Rocky River Bd. of Zoning Appeals*, 1996 WL 648689, at *2 (Ohio Ct. App. 8th Dist. Cuyahoga County 1996).

¹⁹*Haven v. City of Solon*, 1996 WL 695615 (Ohio Ct. App. 8th Dist. Cuyahoga County 1996), dismissed, appeal not allowed, 78 Ohio St. 3d 1464, 678 N.E.2d 221 (1997).

²⁰*Barensfeld v. Coventry Twp. Bd. of Zoning Appeals*, 1996 WL 15847 (Ohio Ct. App. 9th Dist. Summit County 1996), appeal not allowed, 75 Ohio St. 3d 1512, 665 N.E.2d 681 (1996), motion for reconsideration denied, 76 Ohio St. 3d 1425, 667 N.E.2d 27 (1996).

²¹*Elbert v. Bexley Planning Comm.*, 108 Ohio App. 3d 59, 670 N.E.2d 245 (10th Dist. Franklin County 1995), discretionary appeal not allowed, 75 Ohio St. 3d 1477, 663 N.E.2d 1304 (1996).

²²*Elbert v. Bexley Planning Comm.*, 108 Ohio App. 3d 59, 79, 670 N.E.2d 245, 257 (10th Dist. Franklin County 1995), discretionary appeal not allowed, 75 Ohio St. 3d 1477, 663 N.E.2d 1304 (1996).

minimum frontage requirements (123 and 105 feet with a requirement of 150 foot frontage). The court considered the *Duncan* factors, weighing those in favor of the board's decision (property owner purchased without knowledge of the regulation and requested the variance only to sell two small properties at a premium over one large property and these factors would not establish practical difficulties) against those failing to support the board's decision (the variance was minimal and would not interfere with the purpose of the zoning regulation to assure potable water and adequate sanitary systems). The court viewed the *Duncan* factors in their totality and concluded that the variance was relatively small and would not substantially change the character of the neighborhood. The court did, however, modify the lower court judgment to allow the BZA to place reasonable limitations on the variance.²³

Moreover, it has been determined that a court must specifically consider the appropriate *Duncan* standards in reaching a decision where an area variance is at issue.²⁴ Indeed, cases can occasionally be found where a court goes through the factors one after the other.²⁵ At the same time an appeals court has ruled that it is not reversible error if a trial court fails to consider each of the factors separately.²⁶ Especially where several *Duncan* standards are seriously involved, courts will look closely at a board's decision. In *BMR Development Corp. v. City of Green*,²⁷ an appeals court affirmed a trial court reversal of a BZA decision that denied a variance. In this case there was an ordinance requirement in a primarily apartment district zone that tracts of land be at least fifteen acres. The developer, who had purchased a ten-acre tract prior to the fifteen-acre requirement, was able to demonstrate that it would not be possible to build anything else on the property, that the proposed development would not alter the essential character of the area nor affect the delivery of government services, that apparently there was confusion at the time the developer took an option as to whether the fifteen-acre requirement applied to this property, and that no adjacent property was available to bring the acreage up to the required level. The court concluded that

²³Rydbom v. Palmyra Tp. Bd. of Zoning Appeals, 1998 WL 556323 (Ohio Ct. App. 11th Dist. Portage County 1998).

²⁴Hebeler v. Colerain Tp. Bd. of Zoning Appeals, 116 Ohio App. 3d 182, 687 N.E.2d 324 (1st Dist. Hamilton County 1997).

²⁵For a good example, see Corsaro v. City of Highland Heights Bd. of Bldg. and Zoning Appeals, 1998 WL 102489 (Ohio Ct. App. 8th Dist. Cuyahoga County 1998). Here the court considered all the factors one at a time, found that all but one of the factors favored the landowner, and concluded, contrary to a BZA decision and lower court affirmation, that the landowner had demonstrated practical difficulties by a preponderance of the evidence under the *Duncan* factors.

²⁶Roberts v. Village of Lordstown, 1998 WL 553625 (Ohio Ct. App. 11th Dist. Trumbull County 1998); Krumm v. Upper Arlington City Council, 2006-Ohio-2829, 2006 WL 1530156 (Ohio Ct. App. 10th Dist. Franklin County 2006); Carrolls Corp. v. Willoughby Bd. of Zoning Appeals, 2006-Ohio-3411, 2006 WL 1816935 (Ohio Ct. App. 11th Dist. Lake County 2006) (variance granted for parking space requirements); Kohrman v. Cincinnati Zoning Bd. of Appeals, 2007-Ohio-3450, 2007 WL 1953606 (Ohio Ct. App. 1st Dist. Hamilton County 2007), appeal not allowed by 116 Ohio St. 3d 1440, 2007-Ohio-6518, 877 N.E.2d 991 (2007).

²⁷BMR Development Corp. v. City of Green, 1997 WL 537668 (Ohio Ct. App. 9th Dist. Summit County 1997).

the record was especially egregious as the failure to grant the variance amounted to a taking. In gauging whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance, one court has even held that personal issues, such as divorce proceedings, age, poor health, inability to afford to maintain a property, and a fire that destroys a home, may be considered, at least when viewed in the light of other *Duncan* factors (inability to find a purchaser, lack of substantial nature of the variance requested).²⁸

It should be noted that an applicant who states that all of a requested number of variances must be granted for him to develop the property may be held to his request and a reviewing court may require evidence to be presented by the applicant on all the *Duncan* factors before a reversal can be considered.²⁹ Moreover, where property is sold, a new owner may not be able to step directly into the shoes of the previous owner. An appeals court has held that where property is sold during the pendency of litigation on a variance that has been denied, the new party in interest may be substituted in the litigation, but must allege specific facts relating to its needs for a variance: "Although not all of the *Duncan* factors are contingent upon the identity of the party seeking the area variance, . . . [t]he *Duncan* analysis as a whole . . . depends on the specific predicament, or practical difficulties, faced by a given property owner."³⁰

A major unsettled question is whether the *Duncan* and *Kisil* distinction between use and area variances can apply to townships and counties. RC 519.14 grants townships the power to grant variances on grounds of "unnecessary hardship" and does not provide for variances on the basis of "practical difficulties." RC 303.14 contains the same language with respect to townships. Appellate courts have split with respect to whether a "practical difficulties" test can (and must) be applied to area variances in townships, with more courts allowing the distinction.³¹ Litigation with respect to counties on this issue is minimal, with one case concluding that the unnecessary hardship

²⁸*Strohecker v. Green Tp. Bd. of Zoning Appeals*, 1999 WL 167838 (Ohio Ct. App. 7th Dist. Mahoning County 1999).

²⁹*Burkholder v. Twinsburg Twp. Bd. of Zoning Appeals*, 122 Ohio App. 3d 339, 701 N.E.2d 766 (9th Dist. Summit County 1997).

³⁰*Fisher-Yan v. Bill Mason*, 2000 WL 1371474, at *6 (Ohio Ct. App. 11th Dist. Geauga County 2000).

³¹For a discussion of these cases, see *Dsuban v. Union Twp. Bd. of Zoning Appeals*, 140 Ohio App. 3d 602, 607-09, 748 N.E.2d 597, 600-02 (12th Dist. Butler County 2000). The *Dsuban* court comes down on the side of the *Briggs v. Dinsmore Twp. Bd. of Zoning Appeals*, 161 Ohio App. 3d 704, 2005-Ohio-3077, 831 N.E.2d 1063 (3d Dist. Shelby County 2005) opinion, holding that under RC 519.14 a township may grant an area variance or a use variance to a zoning resolution only where literal enforcement of the resolution will result in unnecessary hardship. The same court reiterated its interpretation in *Thompson v. Schwab*, 2002-Ohio-2066, 2002 WL 745602 (Ohio Ct. App. 12th Dist. Butler County 2002), and in *Smith v. Warren County Rural Zoning Board of Appeals*, 2008-Ohio-2910, 2008 WL 2404743 (Ohio Ct. App. 12th Dist. Warren County 2008). Accord: *Taylor Bldg. Corp. Of America v. Clearcreek Tp.*, 2001-Ohio-8635, 2001 WL 1652618 (Ohio Ct. App. 12th Dist. Warren County 2001); *In re Appeal Of American Outdoor Advertising, L.L.C.*, 2003-Ohio-1820, 2003 WL 1835525 (Ohio Ct. App. 3d Dist. Union County 2003); *Briggs v. Dinsmore Twp. Bd. of Zoning Appeals*, 161 Ohio App. 3d 704, 2005-Ohio-3077, 831 N.E.2d 1063 (3d Dist.

standard is to be applied in area variance cases.³² This is a question that needs to be resolved by the Ohio Supreme Court.

§ 9:8 Variances—Standards—Character of the area

There are not many cases dealing with the question of a property's surroundings. *Consolidated Management, Inc. v. City of Cleveland*¹ indicates that "[t]he authority to permit a variance does not include the authority to alter the character and use of a zoning district."² The idea is that, even if there is a hardship, if a variance would have a detrimental effect on the area or the comprehensive plan of the community, it should not be granted. The proper procedure is to rezone the property to an appropriate use. It has been held that consideration must be given to all the surrounding interests and it is relevant whether the variance will disturb or be seriously detrimental to the public health and safety of the applicant's closest neighbors.³ Thus, it is reasonable for a zoning board to hold that, while a storage yard for second hand building materials may be acceptable, use of the property for dismantling and storage of automobiles may not be because of the impact on the neighborhood.⁴ Where a proposed variance would result in a more intense use than surrounding uses, it should not be granted.⁵ However, where the operation of a beauty salon in the breezeway of a home would not alter the character of the neighborhood, a lower court held that a variance granted for that purpose was proper.⁶ A fraternity or sorority house in a district containing a variety of uses including

Shelby County 2005).

For a contrary analysis see *Stickelman v. Harrison Twp. Bd. of Zoning Appeals*, 148 Ohio App. 3d 190, 2002-Ohio-2785, 772 N.E.2d 683 (2d Dist. Darke County 2002); *Stace Dev., Inc. v. Wellington Twp. Bd. of Zoning Appeals*, 2005-Ohio-4798, 2005 WL 2219618 (Ohio Ct. App. 9th Dist. Lorain County 2005). Cf. *Go v. Sugarcreek Tp. Bd. of Zoning Appeals*, 2001 WL 585657 (Ohio Ct. App. 2d Dist. Greene County 2001) (*Kisil* and *Duncan* factors applied to area variance); *Trent v. German Twp. Bd. of Zoning Appeals*, 144 Ohio App. 3d 7, 759 N.E.2d 421 (2d Dist. Montgomery County 2001) (*Kisil* and *Duncan* factors accepted).

³²*Schellhardt v. Mercer Cty. Bd. of Zoning Appeals*, 2008-Ohio-2116, 2008 WL 1932010 (Ohio Ct. App. 3d Dist. Mercer County 2008).

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¹*Consolidated Management, Inc. v. City of Cleveland*, 6 Ohio St. 3d 238, 452 N.E.2d 1287 (1983).

²*Consolidated Management, Inc. v. City of Cleveland*, 6 Ohio St. 3d 238, 240, 452 N.E.2d 1287, 1289 (1983).

³*Susman v. City of Cleveland*, 111 Ohio App. 18, 13 Ohio Op. 2d 378, 83 Ohio L. Abs. 161, 162 N.E.2d 225 (8th Dist. Cuyahoga County 1959), appeal dismissed for want of debatable question, 171 Ohio St. 164, 167 N.E.2d 927 (1960).

⁴*Susman v. City of Cleveland*, 111 Ohio App. 18, 13 Ohio Op. 2d 378, 83 Ohio L. Abs. 161, 162 N.E.2d 225 (8th Dist. Cuyahoga County 1959), appeal dismissed for want of debatable question, 171 Ohio St. 164, 167 N.E.2d 927 (1960).

⁵*Amberley Swim & Country Club, Inc. v. Zoning Bd. of Appeals of Amberley Village*, 117 Ohio App. 466, 24 Ohio Op. 2d 260, 191 N.E.2d 364 (1st Dist. Hamilton County 1963), appeal dismissed by 175 Ohio St. 127, 191 N.E.2d 820 (1963).

⁶*Spencer v. Board of Zoning Appeals of Perry Tp.*, 13 Ohio Op. 2d 467, 85 Ohio L. Abs. 361, 170 N.E.2d 870 (C.P. 1959), determination sustained, 13 Ohio Op. 2d 469, 85 Ohio L. Abs. 366, 171 N.E.2d 914 (Ct. App. 5th Dist. Stark County 1960). The court actually overturned the refusal to grant the variance, almost certainly incorrectly.

multiple-resident student housing has been found to be an appropriate use.⁷ Finally, *de minimis* variances are unlikely to change the character of the area. As one court stated: "The evidence does not support a finding that the essential character of the neighborhood would be altered or that adjoining properties would suffer as a result of the extension of one parking space twenty inches."⁸

§ 9:9 Variances—Standards—Self-imposed hardship

The self-created standard is designed to ensure that landowners do not request variances for hardships they themselves have created. Where an applicant for a variance to engage in surface mining that was not permitted in the ordinance had received a state permit to mine subject to local ordinances, the Ohio Supreme Court determined that agreeing to abide by local ordinances was a hardship created by the landowner.¹ Where a landowner constructs foundation walls in violation of a setback requirement and has to remove them,² or where an applicant instructed his surveyor to draw lines that were not in compliance with the zoning ordinance, the court found a self-created hardship.³ Similarly, a landowner who divides his property so that the resulting parcels fail to satisfy minimum size or width requirements cannot complain that the requirements then render those parcels useless.⁴ Likewise, where owners of six lots requested a rezoning that was approved to a category in which the lots at the time of the rezoning were substandard in area and width and where it was assumed that the lots would be consolidated, one of the owners could not subsequently complain that a variance to develop his lot at its substandard size was rejected.⁵ In *Klubnik v. Granger Township Board of Zoning Appeals*,⁶ an appeals court determined that in spite of an already incurred investment of \$50,000 to install an atrium in violation of a setback requirement, the applicant inadequately demonstrated practical difficulties. Klubnik requested an area variance of approximately 3 feet 7 inches into a 100-foot setback. The BZA denied

⁷*Tempo Holding Co. v. Oxford City Council*, 78 Ohio App. 3d 1, 603 N.E.2d 414 (12th Dist. Butler County 1992), jurisdictional motion overruled, 65 Ohio St. 3d 1420, 598 N.E.2d 1171 (1992). This was actually a conditional use case but *Kisil* was cited by the court in considering the issue of surrounding impact.

⁸*Elbert v. Bexley Planning Comm.*, 108 Ohio App. 3d 59, 79, 670 N.E.2d 245, 258 (10th Dist. Franklin County 1995), discretionary appeal not allowed, 75 Ohio St. 3d 1477, 663 N.E.2d 1304 (1996).

[Section 9:9]

¹*Set Products, Inc. v. Bainbridge Tp. Bd. of Zoning Appeals*, 31 Ohio St. 3d 260, 510 N.E.2d 373 (1987).

²*D & D Investment v. Franklin County Bd. of Zoning Appeals*, 1999 WL 943 (Ohio Ct. App. 10th Dist. Franklin County 1998).

³*Reed v. Rootstown Tp. Bd. of Zoning Appeals*, 9 Ohio St. 3d 54, 458 N.E.2d 840 (1984).

⁴*Clark v. Village of Woodmere*, 28 Ohio App. 3d 66, 502 N.E.2d 222 (8th Dist. Cuyahoga County 1985). Cf. *North Fork Properties v. Bath Twp.*, 2007-Ohio-243, 2007 WL 172121 (Ohio Ct. App. 9 Dist. Summit County 2007).

⁵*Belich v. Board of Zoning Appeals, City of Solon*, 1997 WL 186779 (Ohio Ct. App. 8th Dist. Cuyahoga County 1997).

⁶*Klubnik v. Granger Tp. Bd. of Zoning Appeals*, 1996 WL 367347 (Ohio Ct. App. 9th Dist. Medina County 1996).

the variance on the ground that the hardship was self-created. The trial court decided that it was unreasonable to deny a variance for three feet of a window extension, where the setback is 100 feet. The appeals court reinstated the board's decision, ruling that the trial court exceeded its scope of review and improperly substituted its judgment for that of the board of zoning appeals. A similar self-created hardship occurred where an owner converted a temporary construction trailer into a permanent office, placing it in violation of the zoning code's setback requirements.⁷

A number of cases have interpreted and applied the self-imposed hardship standard in the *Duncan* test to purchasers with knowledge of zoning restrictions. In general, where an applicant for a variance purchases his property with knowledge of zoning restrictions, this will be a self-created hardship.⁸ While a self-imposed hardship will be fatal in a use variance, this is not the case in an area variance. In *Kandell v. City Council of Kent, Ohio*,⁹ an appellate court held that purchase with knowledge of zoning restrictions is not determinative in area variance situations. Rather, it must be balanced along with the other *Duncan* factors.¹⁰

On the other hand, an individual who purchases with knowledge of such restrictions may not thereafter obtain a use variance.¹¹ The Ohio Supreme Court case of *Consolidated Management, Inc. v. City of Cleveland*¹² so ruled when the purchaser of commercial property acquired his interest with knowledge of the zoning restrictions. In *Neforos v. Richfield Village Board of Zoning Appeals*,¹³ an appellate court decided that where an owner of property splits a lot with knowledge that a zoning ordinance applies to him and thereafter argues for area variances because the lots are too small, no variance is war-

⁷*Teets v. Ravenna Tp. Bd. of Zoning Appeals*, 1997 WL 269319 (Ohio Ct. App. 11th Dist. Portage County 1997).

⁸*FRC of Kamms Corner, Inc. v. Cleveland Bd. of Zoning Appeals*, 14 Ohio App. 3d 372, 471 N.E.2d 845 (8th Dist. Cuyahoga County 1984). One lower court has found to the contrary, but this case precedes the other cases discussed above and cannot be considered current law. *Beerman v. City of Kettering*, 14 Ohio Misc. 144, 43 Ohio Op. 2d 351, 237 N.E.2d 641 (C.P. 1965). The case was affirmed for procedural reasons, but no ruling was made by higher courts on the merits. See *Beerman v. City of Kettering*, 13 Ohio St. 2d 149, 42 Ohio Op. 2d 371, 235 N.E.2d 231 (1968).

⁹*Kandell v. City Council of Kent, Ohio*, 1991 WL 147448 (Ohio Ct. App. 11th Dist. Portage County 1991), cause dismissed, 65 Ohio St. 3d 1403, 598 N.E.2d 710 (1992).

¹⁰*Cf. Cooke v. Village of Chardon Bd. of Zoning Appeals*, 1991 WL 216936 (Ohio Ct. App. 11th Dist. Geauga County 1991), jurisdictional motion overruled, 63 Ohio St. 3d 1431, 588 N.E.2d 131 (1992).

¹¹*Cf. Craig v. City Council of Kent, Ohio*, 1991 WL 147437 (Ohio Ct. App. 11th Dist. Portage County 1991), jurisdictional motion allowed, 62 Ohio St.3d 1483, 581 N.E.2d 1390 (1991), cause dismissed, 65 Ohio St. 3d 1403, 598 N.E.2d 710 (1992) and *Craig v. Babcock*, 1991 WL 147446 (Ohio Ct. App. 11th Dist. Portage County 1991), jurisdictional motion allowed, 62 Ohio St.3d 1483, 581 N.E.2d 1390 (1991), cause dismissed, 65 Ohio St. 3d 1403, 598 N.E.2d 710 (1992).

¹²*Consolidated Management, Inc. v. City of Cleveland*, 6 Ohio St. 3d 238, 452 N.E.2d 1287 (1983).

¹³*Neforos v. Richfield Village Bd. of Zoning Appeals*, 1993 WL 280408 (Ohio Ct. App. 9th Dist. Summit County 1993), jurisdictional motion overruled, 68 Ohio St. 3d 1429, 624 N.E.2d 1066 (1994).

ranted since there was knowledge and the lots can be recombined, easily obviating the need for a variance. Similarly, in *Muncie v. City of Columbus*,¹⁴ an appeals court held that a church that requested a variance to use property to house recovering chemically dependant and battered women could not receive a variance where it received the property with knowledge of the restriction.

One appellate court has held that knowledge of restricted use as grounds for a denial of a variance should be limited to cases where the owner purchased property knowing that his or her intended use was not allowed. Where changed conditions require a variance, the rule should not prevent an owner from seeking a variance for a use that might have been illegal when the property was purchased.¹⁵ Further, where an owner takes property with knowledge of restrictions expressed in a variance but which are subsequently declared invalid, the owner's knowledge of those restrictions cannot be charged against him in a later request for a variance.¹⁶

§ 9:10 Variances—Standards—Other issues

Other issues surrounding the practical difficulties test have been examined by the courts. In one case an appellate court held that, in a request for an area variance, practical difficulties may be said to result whenever an area zoning requirement (e.g., frontage, setback, height) unreasonably deprives an owner of a permitted use of property.¹ This decision would seem to go beyond the *Duncan* standard as to whether there can be beneficial use of the property. Another appellate court ruled that the additional expense of relocating existing utility lines cannot be regarded as a practical difficulty.² Yet another court has held that denial of a variance request that still permits use to be made of a parcel will not be considered a practical difficulty even where seventy per cent of the property cannot be used when the owner took the property knowing that this would be the case and where the owner is requesting a significant reduction in the requirements (in this case a seventy-eight per cent reduction in frontage requirements).³

Look out

Where an individual acts in reliance on governmental actions, the courts may well find hardship or practical difficulties. In *Harner v. Building and Zoning Board of Appeals, City of Urbana*,⁴ an appeals court decided that where an owner applied for a variance on a build-

Reliance of gov't

*

¹⁴*Muncie v. City of Columbus*, 1993 WL 194104 (Ohio Ct. App. 10th Dist. Franklin County 1993).

¹⁵*Kandell v. City Council of Kent, Ohio*, 1991 WL 147448 (Ohio Ct. App. 11th Dist. Portage County 1991), cause dismissed, 65 Ohio St. 3d 1403, 598 N.E.2d 710 (1992).

¹⁶*Keynes Bros., Inc. v. Pickaway Tp. Trustees*, 1988 WL 35800 (Ohio Ct. App. 4th Dist. Pickaway County 1988).

[Section 9:10]

¹*Hempleman v. Bloom Tp. Bd. of Zoning Appeals*, 1993 WL 134884 (Ohio Ct. App. 5th Dist. Fairfield County 1993).

²*Cottrell v. Russell Tp. Bd. of Zoning Appeals*, 1993 WL 130105 (Ohio Ct. App. 11th Dist. Geauga County 1993).

³*In re Appeal of Averill*, 1999 WL 390983 (Ohio Ct. App. 11th Dist. Geauga County 1999), appeal dismissed by 87 Ohio St. 3d 1409, 716 N.E.2d 1170 (1999).

⁴*Harner v. Building and Zoning Bd. of Appeals, City of Urbana*, 1992 WL 380307

City of Dublin Agenda

BOARD OF ZONING APPEALS

Dublin Municipal Building
5200 Emerald Parkway
Thursday, May 26, 2011
6:30pm

Our Mission...

The City of Dublin strives to preserve and enhance the unique high quality offered to those who live and work in our community by providing the vision, leadership and performance standards which allow for managed growth and development. We endeavor to deliver our services cost-effectively, with an emphasis on quality and innovation. The City of Dublin seeks recognition in the field of local government as being responsive, cooperative, and culturally and environmentally sensitive, while embracing the highest standards of integrity and accountability to those we serve.

Victoria Newell, Chair
Patrick Todoran, Vice Chair
Brett Page
Kathy Ferguson
Brian Gunnoe



CITY OF DUBLIN.

- I. ROLL CALL
- II. ACCEPTANCE OF DOCUMENTS
- III. APPROVAL OF MINUTES – April 28, 2011
- IV. COMMUNICATIONS
- V. CASES

Previously Tabled Case:

- 1. **Crown Fiat – Parking and Setback Variances** **5105 Post Road**
11-022V **Non-Use (Area) Variances**

Proposal: Non-use (area) variances to permit vehicular use areas to encroach the required 50-foot setback from Post Road by 40 feet and to permit 14 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership. The site is zoned CC, Community Commercial District, and is located on the south side of Post Road approximately 600 feet west of the intersection with Frantz Road.

Request: Review and approval of variances to Zoning Code Sections 153.072(E) and 153.212 under the provisions of Zoning Code Section 153.231.

Applicant: Crown Automotive Group, represented by Mike Close and Tom Hart, attorneys.

Planning Contact: Claudia D. Husak, AICP, Planner II.
Contact Information: (614) 410-4675, chusak@dublin.oh.us

New Case:

- 2. **Woods at Muirfield Village – Rear Yard Setback – Domijan Residence** **5768 Royal Lytham Court**
11-027V **Non-Use (Area) Variance**

Proposal: A non-use (area) variance to permit a deck to encroach into the required rear yard setback by 2 feet for a condominium residence in the Muirfield Village Planned Unit Development located on the south side of Royal Lytham Court, approximately 380 feet south of Greenstone Point and Royal Lytham Court.

Request: Review and approval of a variance application under the provisions of Code Section 153.231.

Applicant: Joyce Domijan, property owner.
Planning Contact: Tammy J. Noble-Flading, Senior Planner.
Contact Information: (614) 410-4649, tnoble-flading@dublin.oh.us

- VI. ADJOURNMENT



CITY OF DUBLIN.

NOTICE OF MEETING

DUBLIN BOARD OF ZONING APPEALS

DATE: Thursday, May 26, 2011
TIME: 6:30 p.m.
PLACE: Dublin Municipal Building
5200 Emerald Parkway

It is the policy of the Dublin Board of Zoning Appeals to notify the applicant and adjacent property owners of pending Variances, Special Permit applications and Administrative Appeals.

If you are unable to attend the meeting and want more information, please contact Rachel Ray, AICP, Planner I, at 410-4600. If you have any questions or comments concerning the pending case, please attend this meeting. The meeting starts promptly at 6:30 p.m. and it is advisable that you are present at that time. Meetings are held within the Council Chambers of the Municipal Building located at 5200 Emerald Parkway.

**Crown Fiat – Parking and Setback Variances
11-022V**

**5105 Post Road
Non-Use (Area) Variances**

Proposal: Non-use (area) variances to permit vehicular use areas to encroach the required 50-foot setback from Post Road by 40 feet and to permit 14 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership. The site is zoned CC, Community Commercial District, and is located on the south side of Post Road approximately 600 feet west of the intersection with Frantz Road.

Request: Review and approval of variances to Zoning Code Sections 153.072(E) and 153.212 under the provisions of Zoning Code Section 153.231.

Applicant: Crown Automotive Group, represented by Mike Close and Tom Hart, attorneys.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

1-022V 5105 Post Road

Crown Fiat – Non-Use Variance

- Michael L. Close, Esq.
Wiles, Boyle , Burkholder &
Bringardner Co. LPA
300 Spruce Street, Suite 100
Columbus, OH 43215

R-Roof III LLC
4001 International Parkway
Carrollton, TX 75007

- Roby Holding Co. LLC
7100 Muirfield Drive
Dublin, OH 43017

BEF REIT Inc.
5067 Post Road
Dublin, OH 43017-1115

- Marc Wigler
Crown Automotive Group
6350 Perimeter Loop
Dublin, OH 43017

Hinderer Family Realty LLC
5100 Post Road
Dublin, OH 43017



BOARD OF ZONING APPEALS

BOARD ORDER

APRIL 28, 2011

**Land Use and
Long Range Planning**
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/ TDD: 614-410 4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

The Board of Zoning Appeals took the following action at this meeting:

- 1. **Crown Fiat – Parking and Setback Variances** **5105 Post Road**
11-022V **Non-Use (Area) Variances**

Proposal: Non-use (area) variances to permit vehicular use areas to encroach the required 50-foot setback from State Route 161 by 40 feet and to permit 15 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership. The site is zoned CC, Community Commercial District, and is located on the south side of Post Road approximately 600 feet west of the intersection with Frantz Road.

Request: Review and approval of variances to Zoning Code Sections 153.072(E) and 153.212 under the provisions of Zoning Code Section 153.231.

Applicant: Crown Automotive Group, represented by Mike Close and Tom Hart, attorneys.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

MOTION: Victoria Newell made a motion, seconded by Brett Page, to table this variance application at the request of the applicant.


VOTE: 5 – 0.

RESULT: This Variance application was tabled.

RECORDED VOTES:

Victoria Newell	Yes
Patrick Todoran	Yes
Brett Page	Yes
Kathy Ferguson	Yes
Brian Gunnoe	Yes

STAFF CERTIFICATION


 Claudia D. Husak, AICP
 Planner II

1. **Crown Fiat – Parking and Setback Variances**
11-022V

5105 Post Road
Non-Use (Area) Variances

(Ms. Newell introduced the case)

MS. HUSAK: Good evening. This is a request for two variances for a parking requirement and for a setback requirement. The site is located on the south side of Post Road just north of US 33. The Bob Evans restaurant is located to the east and to the west is the Red Roof Inn hotel. The site is currently vacant and contains a 10,000 square foot building that was originally developed as the Chi-Chi's restaurant with ample parking around the site.

The applicant is proposing to develop the site with a car dealership for the Fiat brand with eight service bays and a service write-up area included as part of the dealership. The car dealership is a permitted use in the Community Commercial District, and the Planning and Zoning Commission recently approved a conditional use for vehicle service bays. The Commission also approved two deviations from the zoning requirements to allow the service drive to encroach into the 50-foot required building and pavement setback from State Route 33. The Commission also allowed the parking for the service bays to be provided at three spaces per service bay.

The first request is for a variance to the setback requirement from State Route 33. In the mid 1980s this site was included on a plat for Post Road, and the plat included a 10-foot setback for parking along the southern property line. The Zoning Code was amended in 1991 to require a 50-foot setback for building and pavement, and because the applicant is making significant improvements to this property, they are required to bring the site into compliance. They are requesting a variance of 40 feet into the required setback.

The second request is for parking. The Zoning Code does not have a requirement for display area, where auto dealers typically store their inventory vehicles. The current requirement is one space per 1,000 square feet of display area. The total requested variance is for 15 parking spaces based on the parking requirements for the sales facility, service bays, and display spaces.

For the setback variance, in Planning's opinion, the need for the variance stems from the applicant's action requiring additional vehicle display versus customer parking for this site. Display parking is something that the code does not require, but is something that the applicant wants to have. Planning has made similar findings on the review criteria for the parking variance, that adequate parking would be available if more spaces would be used for display. Planning therefore recommends disapproval of both variance requests.

KATHY FERGUSON: You said if the variance is approved, it would mean more space for display and less for parking, correct? [Ms. Husak affirmed]. What is the purpose of the parking requirements?

MS. HUSAK: The Zoning Code requires a minimum number of parking spaces for each use that are fairly typically for many cities. If a site were not to provide enough parking spaces, it would force customers to park in drive aisles, which could potentially prove a hazard for Fire to get around the building if there were an emergency. It may also cause people to park on the road and then impeding travel through the city. The applicant is essentially proposing to use spaces that would typically be available for a customer to come to the site and park and walk around and look at cars for vehicle display. The display spaces would take away from spaces available for customers because they would be occupied by cars for sale.

MS. NEWELL: Will the applicant please come forward.

TOM HART: Tom Hart, 300 Spruce Street, Columbus, Ohio. With me tonight is Mark Wigler, the president and general manager of the Crown Auto Group. As Claudia said, we have been approved for a conditional use by the Planning and Zoning Commission. We are planning major improvements and upgrades to the architecture of the building on this site. We're remodeling the inside of the building with the addition of the service bays that we requested. There will be significant landscaping additions and new jobs and auto product sales on what is now a vacant site. Along with the requested variances, if Crown purchases the property, we will also bring it up to all Dublin Zoning Code standards.

In summary, this case is about two changes to the rights-of-way on Post Road and State Route 33 since the site has been developed that impact the use of the site. That's the reason for the variance requests. Regarding the first variance, the code changes and the changes to the Thoroughfare Plan has resulted in a significant change resulting in a loss of parking. In addition to the setback constraints, we have an issue in terms of the second variance for non-display parking.

A car dealership of this size in today's world doesn't need that much general parking. We think it's an unreasonable requirement to only leave 47 spaces for display for a dealership of this type. Without the setback variance, we would only have 25 spaces left for vehicle display. The reality is that we're not going to get a national contract from Fiat USA to have a dealership here with that number of display spaces for this business. Crown Fiat is a low impact dealership in terms of sales, traffic, and employee size. Our service function simply does not need 24 parking spaces - we believe 16 is adequate. The dealership will probably have 15 total employees, and under the proposed variances what we're asking for would result in 15 employee spaces, 16 spaces allocated to the service bays for the public, and then 62 inventory display spaces. There would be 25 remaining spaces for customers. There are 200 spaces on this site today. Our request would result in taking a lot of those spaces away to address landscape issues, screening, and the addition of service bays.

MARK WIGLER: I've been running the Mercedes-Benz, Chrysler, and Kia dealerships on Perimeter Loop Road for six years. We track all of our customers that come in through phone, internet, and regular traffic. Looking at a three-year average for the other three stores that we currently run, at our Mercedes store, we get an average of 6.2 clients per day over nine to ten hours. Our Chrysler store does 4.5 customers per day, and our Kia dealership actually has 5.2 customers per day. When we start talking about 25 parking spaces for customers, unless there is some sort of an event which would create that kind of traffic, we may have three or four customers per day. Looking at the volume that Fiat is looking for, the full planning volume is 493 vehicle sales per year. The industry has changed - we don't get as many visits as we used to get in the mid '80s. People do their research on the internet, and we look at 3.5 visits per every sale that we do. So we're looking at if we sell everything that they say we could sell, 1,725 customers would be the projected number to visit over an entire year. About five customers a day would actually visit the store from the sales side. And I think that's what a lot of these parking spaces are actually allocated for, is for the sales side, so it looks like too many customer parking spots are required.

MR. HART: The extraordinary circumstances we see in this case are the combination of two regulations that impact parking. The two code requirements for parking and setbacks should be varied from because they operate together and have an unreasonable impact. The resulting limitation of the display spaces is only the effect of the two code provisions impacting this site without considering how those two code provisions come together in an unintended way. There's no Zoning Code prohibition against the number of display spaces provided, but together

these two factors, the right-of-way and the parking restrictions, mean that we can't provide the amount of display that we need.

I also want to address the issue of uniqueness. The impact here is uniquely severe as compared to other properties between Post Road and 33. Of course, there are other properties where the two rights-of-way affect existing sites, but I think this site is different. I don't think any site adjacent site loses as much parking because of the setback requirements. Bob Evans has a drive aisle in the northern portion of their site, not parking. We do think that there's a special condition present on the site based on those two factors and because of the configuration of this site, because of access in the front, which I'll go over.

Special circumstances aren't limited to topography or the shape of the property. In this case the fact that both the front and the back of the site are severely impacted by changes in the right-of-way and the large volume of parking that is lost compared to other sites.

Staff also commented that our display areas could have been permitted on the south side with exposure to 33 but we chose to arrange the site in a way that took away that potential. The problem with that is that we didn't have many choices where that service bays could go. There's very little impact on the Red Roof Inn property to the west from the addition of service bays because most people are not sleeping in those rooms during our operational hours before 6:00 p.m. We couldn't put the service bays on the east side because most people at Bob Evans don't want to see and hear vehicle service.

The other possibility, because we wanted to keep the service bays on the west side, would either be putting the service write-up on the front of the building. We didn't propose that location because we believe that would conflict with the entry to the site. We don't want the service write-up to be the first thing people see on the site. We think the architecture is going to be stunning. It's kind of modern, and we want visitors to have an experience. The portion on the northeast side of the building was eliminated as an option because of site circulation and because of the dumpster location. It is also the front elevation of our business, and we didn't want the service in the front of the site.

For those reasons, we disagree with staff that we could have proposed a different site plan or that there was any inaction on our part.

Staff also commented that customer parking is intended to be temporary, as opposed to display parking, which is continuous. There's no evidence to support that. The site has been vacant recently, but in the past this site was a car dealership and a restaurant. When it was a car dealership, there were cars parked as display all the time.

Next, with regard to staff comments on the parking variance, I think some of the issues are the same in terms of special conditions and substantial adverse effect. In terms of what we could have done differently to avoid the need for the variance, it's the right-of-way changes that brought us here. If we didn't have the changes to the right-of-way, we wouldn't need these two variances.

MS. NEWELL: Are there any questions for the applicant?

BRETT PAGE: I have a couple questions. How do you define a customer?

MR. WIGLER: You're a man in a white shirt. We write it down. We're pretty good at tracking visits, regardless of whether they stop.

MR. PAGE: How many cars are serviced on average each day?

MR. WIGLER: We've never had a Fiat dealership before, but the industry average is 1.7 times per year per car sold. If we sold 400 cars a year, that would be about 800 vehicles per year for service. With the life cycle of a car, about 39 months, it equates to about 3,200 cars per year coming in, but that's not usually the way it turns out.

MS. NEWELL: You compared the size of a Fiat dealership to the Crown Kia dealership. Can you give me a comparison on what your parking space count is on your Kia dealership site in comparison to this site?

MR. WIGLER: We have 12 parking spaces for customers right out front. Sometimes we do have display vehicles sitting in those spots, but I don't have all of the numbers.

MS. NEWELL: Does staff have the parking count for the Kia site?

MS. HUSAK: I don't know off the top of my head, but the difference between the properties, as Mr. Wigler said, is that they are separate parcels that function as one campus. The spaces are shared throughout, and most importantly, it is a Planned Unit Development District, so the requirements may be different as approved with the final development plan.

MS. NEWELL: It seems that there's actually more parking spots on the Kia dealership site currently.

MR. WIGLER: I can tell you that we do service eight vehicles per day at the Kia dealership after almost ten years. We have about 20 spaces right behind the carwash used while the cars are being serviced. But directly behind that is where all the employees of all three dealerships park, so we don't utilize all the spaces for just Kia.

MS. NEWELL: Is the existing structure being renovated? Or will a substantial portion be torn down?

JOHN ONEY: John Oney, Architectural Alliance, 165 North Fifth Street, Columbus, Ohio. We're working with the existing building location and renovating from the footprint of the building and the exterior walls. We are renovating the existing showroom and parts areas. The back wall would stay, and then we're adding the service bays to the rear of the building.

MS. NEWELL: Is there a requirement for the number of service bays, or was that your choice?

MR. ONEY: Yes, there is a requirement. We were required that there be two service reception lanes for the incoming customers and eight working service bays.

MS. HUSAK: That's not a zoning requirement, though.

MS. NEWELL: Can you tell me where cars are going to be delivered to this site?

MR. WIGLER: Ultimately they would be delivered directly to the site and then probably unloaded behind service using a semi truck.

MS. NEWELL: Has staff looked at the turning radii?

MS. HUSAK: As part of the conditional use plan approved by the Commission, we had the applicant indicate where loading and unloading would occur.

MS. NEWELL: Did engineering make sure that semis could actually enter and exit the site? The reason I'm asking is because about a month ago, one of the other automotive dealerships was unloading their vehicle in the street.

MR. WIGLER: We first looked into servicing vehicles in our Chrysler facility, since Fiat is actually part of the Chrysler brand, but we're required to have service at the same location as the sales facility. We thought about unloading the vehicles and doing pre-delivery inspections at Chrysler and then just driving over or the cars over. If that's a real sticking point and we can't drop the cars, we certainly can accommodate.

MR. PAGE: Is the stormwater detention area untouchable, or is there some way that the site could be creatively utilized to potentially increase parking capacity?

MS. HUSAK: There are a couple of points to clarify. One is the plat that set aside that parcel in 1984 included the Post Road right-of-way as it is today, so there was no taking of right-of-way or changes to the right-of-way. How the parking came to be in the present location along Post Road is unclear, because the setback requirement from Post Road was the same in 1984 as it is today. The applicant is also required to screen the vehicular use area, including drives, parking areas, any kind of pavement from the roadway on their site. The proposed plan includes adequate screening and required trees. Certain landscape areas are required by the Zoning Code for parking areas.

MR. HART: We didn't ask for a variance along Post Road for those reasons. We needed that area for other code compliance issues.

MR. PAGE: I'm just wondering if the site plan has been maximized to the fullest extent.

MR. HART: Today, the site doesn't meet lot coverage. We're bringing it into compliance with lot coverage by maximizing parking versus green space.

MS. HUSAK: The code does not require a certain number of spaces for display. It also does not require display to happen in a parking space. We prefer to have the area outlined on a plan where the display occurs.

MS. NEWELL: Can you tell me what the setbacks are for other car dealerships in the city?

MS. HUSAK: This is the Perimeter Center area, with the Kia and Chrysler dealership that the applicant owns, and this is the Bob Evans site. All of those sites have the same 50-foot setback requirement from 33. The requirement for the Post Road setback is 50 feet as well, because the Post Road right-of-way is 100 feet. Parking is permitted to encroach 40 percent into that, setback requirement, which is 30 feet. The sites on the north side of Post Road are nonconforming.

BRIAN GUNNOE: Being part of the Bridge Street Corridor, how is this site going to be affected by the proposed changes regarding setback?

STEVE LANGWORTHY: One of the concepts for the Bridge Street Corridor includes the relocation of Post Road, potentially even north across the creek. Should that occur, one of the things we believe will occur is that this will allow the site to become much more developable. The other option is to keep the street south of the Indian Run Creek parallel to Bridge Street, ultimately into the Historic District. In this case, the street would become a primary street, and we would want most of these uses as they redevelop to push closer to this street and get more of a setback and green area along 33.

We also have to anticipate the changes that may occur with the US 33-270 interchange improvements and the potential effects on the parcels in this area. As a result, we're trying to push as much off of the 33 right-of-way as we can and then shift the emphasis up to Post Road as being the primary frontage road.

MR. HART: We feel very strongly that the application has to be considered on its merits for what has been presented, and how this site is impacted by the conditions we've outlined, and not necessarily what could happen in ten years.

MS. NEWELL: I'm struggling a little bit with seeing where there is a hardship on this property, and the reason is that I can think of multiple sites in the city of Dublin that have the exact same constraint this one does with dual frontage and large setbacks along 33. As an architect, I have tried developing some of these properties with similar constraints. Ultimately most of those sites have been developed within the city with similar requirements, so it's hard to say that there are circumstances unique to this site.

Is there anyone from the public that would like to comment on this application?

JEFF ROBY: Jeff Roby, 8596 Dunsinane Drive, Dublin, Ohio. We bought this property around 2000. The property technically is not vacant. There is a car dealership there licensed in the state of Ohio. If we look at where the drive-through, write-up area is, that's exactly where it was located on a site plan approved by the City of Dublin in 2006. The only issue was that we had to change radii on the corners of the building. Additionally, the area along 33 was our display area, since we were permitted a certain amount of designated display area.

I understand what the City is doing, but it is sickening to me to find that I have lost 90 parking spaces on a piece of property that we own. Then you have an applicant that comes in and wants to fix the property up, and now we have setbacks to deal with. I'm not sure I understand the setback requirement on Post Road and when that became effective.

MS. HUSAK: That setback was required when the former Chi-Chi's restaurant developed as well.

MR. ROBY: That's all I have. I hope you approve the application. Thank you.

MS. NEWELL: Any other thoughts? I have a harder time with the 50-foot setback than I do the variance in terms of the quantity of parking that they're providing on the site. I do know that it's not unusual that the parking counts in communities require more service bay parking than they actually need from having worked with auto dealerships in the past. I know that for the dealerships farther to the west on 33, their service bay parking was counted at the lower number than the maximum, and I think that's pretty common in Dublin. So I think there are some fair considerations to some of the parking reductions that are here. I'm struggling a little bit more with the 50-foot setback, especially in terms of their increasing the size of the existing building in this instance. Now they're increasing the amount of coverage they have on site, in addition to asking for reduction of parking spaces, and the two of those are not really balancing for me.

It seems that the request is that they're asking for a reduction in the overall parking spaces, but the reduction includes the parking spaces that are in the setback, correct?

MS. HUSAK: Yes. What they are asking is that the zoning requirements be changed so instead of three parking spaces per bay they are requesting two per bay. Instead of one space per thousand, they're requesting per two thousand.

I also wanted to clarify that if you were not to approve this variance, these display spaces along the south side of the building would have to go away. The overall parking requirement would change because they would have less display area and, therefore, they would have to provide fewer parking spaces for that display area.

MS. NEWELL: I can agree and understand the request for reducing parking spaces. I would much rather have a site that has green space on it than have a site that is loaded with parking spaces that aren't needed. I'm equally concerned that we don't try to put too much into a small site. I just don't see that there's a hardship for the 50-foot setback requirement.

When this went through the Planning and Zoning Commission and they got their conditional use application, they allowed the driveway to extend into that 50-foot setback. They are still be permitted to have that. So the only thing that would have to be removed in this plan is those parking spots that are extending into the setback, correct? [Ms. Husak affirmed].

MR. PAGE: I'm really having a hard time finding that there are unique circumstances with this site, but I have less of an issue with parking. I am concerned about there not being adequate parking for the site, especially with the number of service bays being required in there, too. And I appreciate the information regarding the number of customers per day walking in and out. But we're also talking about other things going on beyond cars being parked for service. I am also concerned about a large vehicle dropping off cars there and getting in and out since there are some pretty tight turns. To me, it's a great concept, but that shouldn't be the justification for why we approve a variance for this particular site. I appreciate the opportunity for a new business at this site, but I don't see unique issues here.

MR. ROBY: When did the setback requirements along 33 and Post Road go into effect?

MS. HUSAK: The setback requirement along 33 went into effect with the 1991 Zoning Code, and the setback requirement from Post Road has been in the Zoning Code as long as Dublin was a city.

MR. ROBY: I have gone through the process of renovating this building twice. Now, when this applicant comes, you want to take 90 parking spaces away. Nobody ever brought up any setback issues. To me it sounds terribly unfair.

MS. NEWELL: We're here to interpret what the Zoning Code requires for the case before us. I'm looking at this application from the objective criteria, and that's where I am having the issues here, and I believe I'm hearing that from some other Board members also.

MR. WIGLER: We first thought about opening the Fiat dealership with off-site service just so we wouldn't have to go through everything we're going through today. If the variances aren't approved, the site will likely end up with a pre-owned lot. The modifications to the building won't be done, and the site won't be brought into compliance. But because we want to make such significant improvements, we'll be at the point where we won't have enough parking. And I think we're bringing a great business to Dublin.

MS. NEWELL: And I appreciate that, because I think all of us would love to see this property redeveloped, but we are the Board of Zoning Appeals. We're not the Planning Commission, so we can only deal with the existing zoning regulations in reviewing the variance requests.

MR. PAGE: We have certain criteria we have to look at when reviewing variance requests. I appreciate the integrity of the design and the potential for new business, but that is not what our determination is based on.

MR. HART: I wanted to just make sure that the Board understands that the Planning and Zoning Commission is aware that we are seeking these variances. We were fully aware that we needed the variances to be able to develop this site.

The second thing is that the word "hardship" keeps being used. This is a non-use variance, or an area variance, and the legal standard, and I think the standard in the Dublin Zoning Code, is a finding of practical difficulty. Economics are part of that consideration. That consideration is based on a court case called Duncan, and the Duncan factors. I would argue Dublin's code allows economics to be a consideration, and that the entire circumstance can be considered. I would ask very strongly that if you consider Mr. Langworthy's testimony about what could happen someday in this area, that you also consider that we have a real economic benefit coming to this city today because that is part of this consideration for the practical difficulty test.

MS. RAY: I think we would respectfully disagree with Mr. Hart. We feel that the special conditions criterion relates to the particular property, either specific attributes to that particular property in terms of physical considerations that would require and necessitate the variance.

MR. HART: Special conditions are not only related to topography or the shape of the property; it's the total circumstance. My main focus is the case of Duncan v. Middlefield. That is the case that governs practical difficulty tests in Ohio, and Dublin does have a different set of standards in the code that they use. But Duncan is what governs any challenge, any court action, anything relating to area variances. I am stating for the record that economics is part of the mix. There are seven factors in that case, and if I have a moment, I can go back to the Dublin code and talk about where else I think economics come into play.

MS. NEWELL: It sounds to me like we have a difference of opinion with respect to what constitutes special conditions. You're saying that we are applying the wrong standard.

MR. HART: Yes, and we have substantial private property rights here at stake, and I would like a chance to each of the criteria once more.

First of all, I think all three required findings are made because in terms of special conditions, we have a unique site because there are two rights-of-way that constrain the site as we talked about. You don't just have to have topography to have that kind of special condition. We have a site that does have lots of limitations on it based on the tightness of where the drive entry is today. But in the end, regulatory impacts, can be special conditions.

In terms of action and inaction, the theme from staff's report tonight is about self-infliction or that we brought this condition on ourselves by virtue of this application. Again, it's the right-of-way changes that eliminated the spaces, which is why we're here. I do want to talk about self-infliction because it is in the staff report. I don't like to use the word "hardship" because I don't think that's the legal context. This is not self-infliction, but for the right-of-way change, upon redevelopment of this site, we would be able to meet any parking requirement and the applicant's need for parking for display.

The right-of-way change I believe took place in 2007 with the adoption of the Thoroughfare Plan in the Community Plan. In Ohio, courts have found self-infliction for bringing a hardship onto the applicant themselves when an applicant builds something, and then tries to go in and get a

permit for it and get a variance when it is noncompliant. These are cases of taking action first without permission and then seeking forgiveness through the variance process. And I have some copies of cases that I would like at this point to turn in to the Board of Zoning Appeals that document those cases in Ohio. The right-of-way changes are what changed the situation for the property. That was something we didn't know about, and sounds like Mr. Roby didn't either.

The parking on the site appears to have existed since the 1980s. We're asking for some of the parking that has been there since 1984 to stay. Also under Ohio law, even where self-infliction has been found, in the area of non-use variances, it's not considered fatal. And I have another case that I will turn in on that. In this case Crown is asking for a variance from the code provisions, which is our right to request. I don't think that, in and of itself, our application for a variance can be considered self-inflicting. We have a right to come here and request what we think is a variance for an unreasonable code situation. We shouldn't be penalized because we are here with an application. In a local court here in Franklin County, a Court of Appeals, in Bexley the Court found that prior knowledge of zoning restrictions is just one factor to be weighed and considered, and by itself, it's insufficient to be the reason that the property owner gets denied from obtaining a non-use or an area variance.

The facts are that Crown can't reconfigure the site to allow enough display spaces along the 33 setback without the variance. Asking for the variance because of difficulties created by these two code sections is perfectly within our right, and the idea that somehow we are denied because we're asking for a variance itself is inappropriate. There's no substantial adverse effect on the property or the improvements in the vicinity of this site on our neighbors whatsoever. In fact, quite the contrary, the applicant is going to get rid of some parking. The applicant is going to add substantial landscaping and investment to this city. The applicant is going to significantly upgrade the building and the grounds and the parking lot of this facility. I would say this is where economics comes in. It's the function of whether or not there is an adverse impact. We're coming here with an economic impact that is the opposite of adverse.

Asking to keep the parking in the setback is not a special privilege because it has existed and it is the pre-existing condition for 27 years. It's also very similar to what you saw on the aerials in the surrounding property. There is the parking in the right-of-way and in the setback areas on almost every one of the properties surrounding this facility. We are asking to keep an existing condition that is actually enjoyed by our neighbors. To say that we're asking for special privileges is wrong.

In terms of whether this would create a precedent or some kind of regulation that could be recurrent, I think we did address that. I think Mark addressed that. We have a pretty unique situation here in terms of the fact that there are very few properties of this size that would support a niche dealership that are crunched by two major changes in the right-of-way. There are a couple properties that are similar that are, you know, next to us, adjacent to us that are constrained by the 33 and the Post Road right-of-way, but they're existing businesses. In particular Bob Evans, the impact they have from Post Road is on their drive aisle. There's no elimination of parking if that site were to come forward with the same requests.

Finally, the reason it's not recurrent is because this dealership is, I think, pretty unique in terms of where it's located and the fact that it's going to have 15 employees. It's going to have a low site visitation. The danger of granting a car dealership a variance like this and then fearing that bigger car dealerships with more issues would come along is not going to happen because no other site this size is going to support any larger dealership that could happen.

The fourth criterion is in some ways the main point because that's where the term "practical difficulty" of this test comes from, and I think that's where economics in particular are a factor. The applicant doesn't agree that we could have somehow adjusted the site and gotten more

parking a different way. We can't put the service bays, service write-up, garage, or facility, on the northeast or northwest corners. That's what I was saying, because it really mars the architecture and creates conflicts with drive aisles and the entry road.

These variances are about individual property rights. It's not about what could happen someday with a roundabout or an interchange. It's about this property and what they have today.

MS. NEWELL: In terms of some of the discussion that we had this evening and speaking with staff, the questions asked were intended to benefit the applicant in terms of wanting to understand how the site will be impacted. Even if we take into consideration your economic concerns that you addressed in front of this Board, if you look at the special conditions under section A, and you had felt that that special condition was because you have two rights-of-way that were unique to this particular parcel, I tend to disagree with you because we have other parcels throughout the City of Dublin that have two rights-of-way as well.

So there isn't something that's unique to this site with having those two setbacks. And we're looking at the Zoning Code and the current setbacks. You, even in your testimony this evening, said that it would not matter when that 50-foot setback came into play as long as it came into play before you brought this in front of the Board of Zoning Appeals. You have testified here this evening that that 50-foot setback came into play in 2007, and you're in agreement that the 50-foot setback is in place now. And so now we're judging new development on the site with new construction and building additions, so that new construction would have to be judged against current zoning requirements.

MR. HART: I concur with Ms. Newell that because of the new construction that we dealing with existing zoning requirements. I think there's some things that you bring up that are debatable, but based on our interpretation, I think those are yet to be completely finalized or to be worked out specifically here regarding the economics being a factor.

MR. PAGE: I'm looking at the first set of variance criteria, all three of which are required to be met. I think the applicant has met the third criterion, that granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity. I think where I am struggling is the definition in front of us of special conditions. The code states that "Special conditions or circumstances may include: Exceptional narrowness; shallowness or shape of a specific property on the effective date of this Chapter or amendment; or by reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or by reason of the use or development of the property immediately adjoining the property in question." So that's the standard we are working off of. Can you convince us, do you have an argument that you meet one of those?

MR. HART: First of all, the word in the middle of the paragraph is "may." The paragraph doesn't preclude any other argument. We're not just talking about topography and the shape of the property as the reasons that somebody can ask for a variance. I think the chair is correct that there are other parts of the city that have two major thoroughfares that have 50-foot setback requirements, but I would argue that those don't necessarily have the existing conditions that are here. I think that the term "other extraordinary situations on the land, building or structure," relate to this site. I think we fall under that condition because I think they're expansive, not limiting, because we have a great proposal and a great site plan. We have a site that's severely limited, and we have two code provisions that act together that I think is unique to this site because, again, there's nothing in the code that says you can't have X number of display spaces.

It's the fact that these two code sections for setback and parking combined create an extraordinary circumstance. That to me is a situation on a land, building, or structure. If your code said you could only have X number of display spaces for a car dealership, we wouldn't have a point there, but your code doesn't say that. It's the impact of two separate code sections unintended on this particular site.

I do want to pass out some of the material I have on the criteria because I do want to get it into the record because the Duncan criteria are extremely liberal. They're not restrictive.

MS. NEWELL: You have every right to ask to table this application and submit additional documentation, and we can review it at the next meeting if you believe it is pertinent and important enough that we should see it before making a decision.

MR. HART: I made some references to the case law this evening, and I just want to submit that for the record, but I don't necessarily want to discuss it at length.

MS. NEWELL: The materials would be something that I would put due diligence to and read. If it's important enough for it to be in front of us, we should have the ability to sit here and read it and pay attention to it.

MS. FERGUSON: I agree with that. If you're going to pass out case law that arguably demonstrates that perhaps our definition of special conditions and circumstances is not consistent with Ohio law, I would certainly like the opportunity to read that case law and consider it. I think it would have been helpful if we had had someone from the Law Director's Office here tonight to maybe address those points.

MS. NEWELL: Clearly you have the right to submit anything into the record you would like to submit, but if the purpose is simply to submit it and get it into the record, that's one thing. If you would like to submit it and review and analyze it, it might be advantageous to table the application.

While you have stated the issues in terms of the setbacks creating a special condition on the site, I don't believe they do. And it can't meet all of those standards that are here based upon that. There is still usable, buildable land left after taking the setbacks into account. You can get a building on the site. You can get parking on that site. I can however agree that taking into account both of those setbacks, that I could use that in relationship to the parking variance that you're requesting. Because of that limitation I could see that creating a situation in which you could not provide as much parking while preserving green space. So, as I said earlier, I can support one of these variances. I can't support the other based upon the criteria that's in front of us.

MR. PAGE: I'm looking at the key words in the special circumstances criterion regarding the term "may": circumstances exist which are peculiar to the land or structure. That "may" may relate to the peculiarity of the lands or structure involved which are not applicable to other land or structures, and I think that there are many other properties in this area which have these same setbacks on both side. That's the criterion I can't get past right now.

MR. HART: What we gave you was the comparison of Bob Evans, and I understand that there are other sites around Dublin that have two rights-of-way. What I'm saying is we have evidence of another site that I think is probably a good comparison because it's right in the same district. Bob Evans is probably the most comparable site that we have to compare to, and while there may be other sites that are affected by two rights-of-way, Bob Evans is evidence to the contrary.

MS. RAY: Although there is parking on the Bob Evans site along the 33 right-of-way, it is in the same position as this particular site is in that it was either originally approved in error or is nonconforming, and if Bob Evans were to come forward and redevelop, they would be in the exact same position as this property.

MS. NEWELL: I was just going to ask that. If Bob Evans put an addition on their structure the same as this applicant is proposing, they would be facing the same site constraints with the setbacks on that property as well, correct? [Ms. Ray affirmed].

MR. HART: I have to respectfully disagree because, again, the number of Bob Evans parking spaces in that right-of-way is nowhere near the 20 or so that we have in that same right-of-way, so the impact on us compared to them is very dramatic, over 20 spaces.

MS. NEWELL: I think we have some agreement, although we have not taken an official vote, that we saw some support of the parking variance but not to the setback. Mr. Hart, what would you like to do? Do you want to present your additional evidence and table this case for this evening?

MR. HART: I'll make the request to table the application.

MS. NEWELL: I will make a motion based upon the applicant's request to table this application.

MR. PAGE: Second. (Vote taken; motion passed unanimously.)

The meeting was adjourned at 8:44 p.m.

As approved by the Board of Zoning Appeals.



CITY OF DUBLIN.

**Land Use and
Long Range Planning**
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/ TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

City of Dublin Board of Zoning Appeals

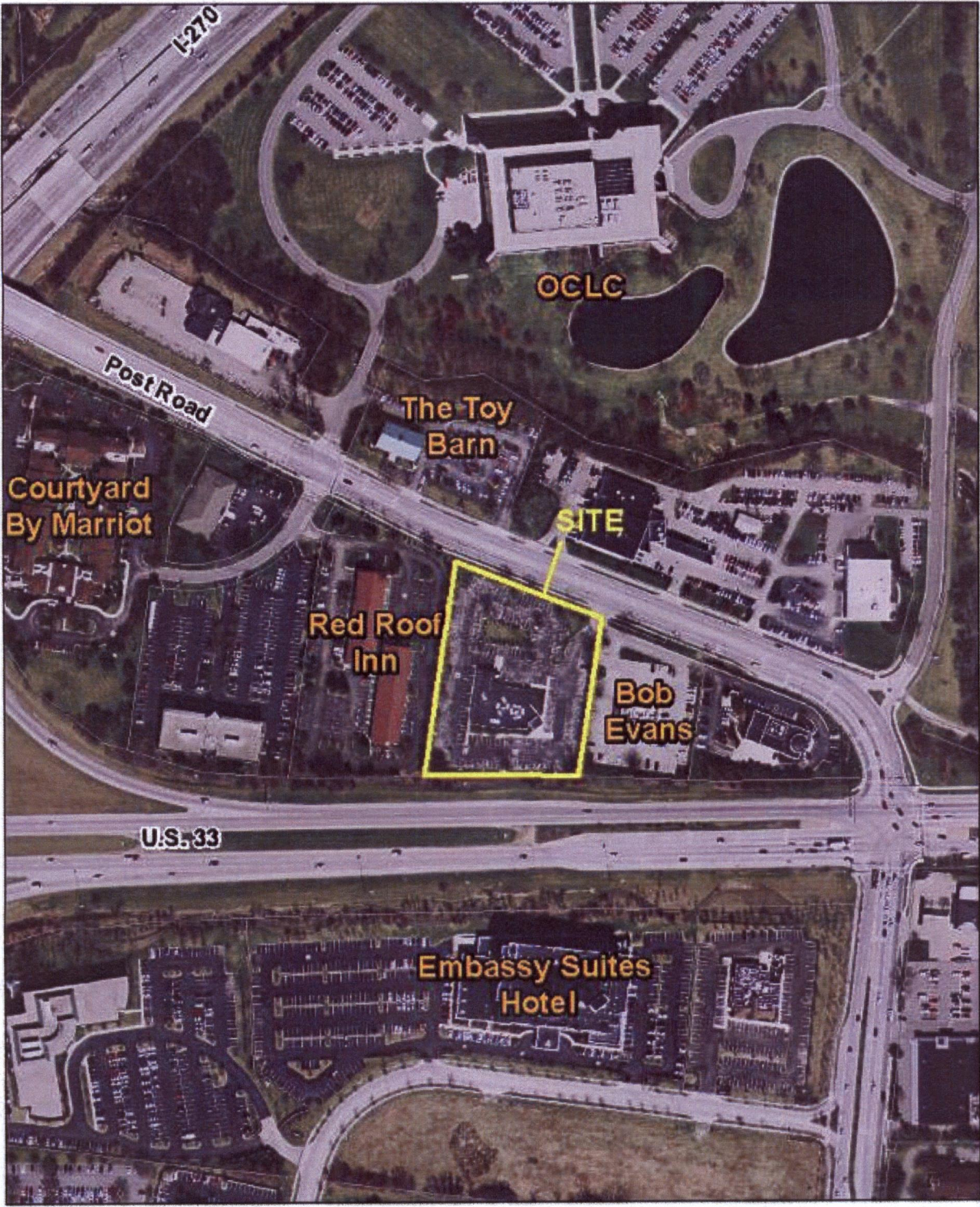
Planning Report

Thursday, April 28, 2011

5105 Post Road – Crown Fiat – Parking and Setback Variances

Case Summary

Agenda Item	1
Case Number	11-022V
Proposal	Non-use (area) variances to permit vehicular use areas to encroach the required 50-foot setback from US 33/State Route 161 by 40 feet and to permit 15 fewer parking spaces than required by the Zoning Code for an automobile dealership, for vehicle service and display areas.
Request	Non-Use (Area) Variance Review and approval of variances to Zoning Code Sections 153.072(E) and 153.212 under the provisions of Zoning Code Section 153.231. If approved, next steps include building permitting and Certificate of Zoning Plan Approval.
Site Location	5105 Post Road The site is a 2.5-acre parcel, zoned CC, Community Commercial District, located on the south side of Post Road approximately 600 feet west of the intersection with Frantz Road.
Applicant	Crown Automotive Group.
Representative	Mike Close and Tom Hart, Wiles, Boyles, Burkholder & Bringardner Co., LPA.
Case Manager	Claudia D. Husak, AICP, Planner II (614) 410-4675 chusak@dublin.oh.us
Planning Recommendation	<i>Disapproval of the two requested variances.</i> Based on Planning's analysis the requested variances do not meet the required non-use (area) variance standards.



 <p>City of Dublin Land Use and Long Range Planning</p>	<p>11-022V Non-Use (Area) Variances Crown Fiat -Parking and Setback Variances 5105 Post Road</p>	 <p>0 200 400 Feet</p>
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Facts

Site Description

- 2.5-acre parcel
- Through lot (frontage on two parallel public rights-of-way)
- Frontage: 300 feet - US 33; 305 feet - Post Road
- Lot depth: approximately 365 feet

Zoning

CC, Community Commercial District

Surrounding Zoning and Uses

East, West and South, across US 33: CC, Community Commercial District; developed as commercial uses including hotels and restaurants.

Site Features

North: SO, Suburban Office and Institutional District; developed with auto dealerships (nonconforming uses).

- Full vehicular access to Post Road through a shared driveway with the Bob Evan's site to the east.
- Vacant 10,000-square-foot, one-story building previously used as a restaurant and an auto dealership.
- 200 parking spaces on three sides of the building.
- The site currently does not meet pavement setbacks and lot coverage.
- No natural features.

Case Background

Subdivision

The parcel was platted as part of the Post Road Subdivision in 1984 and the site was developed in the mid-1980s with a restaurant as a permitted use.

Conditional Use

The Zoning Code allows vehicle sales as a permitted use in the Community Commercial District, but requires approval of a conditional use for vehicle repair operations. On April 7, 2011, the Planning and Zoning Commission approved a conditional use only for vehicle repair use for this site. As part of the conditional use approval, the Commission waived two development requirements approving parking at a rate of three spaces per service bay and a drive aisle encroachment of 20 feet into the required US 33 setback. (The Commission is granted the authority to waive certain Zoning Code provisions directly related to the conditional use in accordance with the provisions of Code Section 153.236(C)(2).)

While the drive aisle encroachment was directly related to the conditional use for vehicle service, the parking spaces along the US 33 frontage have no relationship to this operation. Therefore, a setback variance is required to allow these spaces to continue to encroach within the 50-foot setback.

Proposal

The applicant is proposing to use this vacant site as a dealership for the Fiat brand and to bring the site into compliance with the Zoning Code, including removing pavement along the Post Road frontage to meet setback and lot coverage requirements.

The applicant is proposing 54 customer parking spaces and 62 inventory display spaces, which must be parked at one parking space per 1,000 square feet of vehicular sales use area. The applicant is also proposing to convert the 20 existing parking spaces along the US 33 frontage within the 50-foot setback to display spaces.

Details

Variance Request: Setback

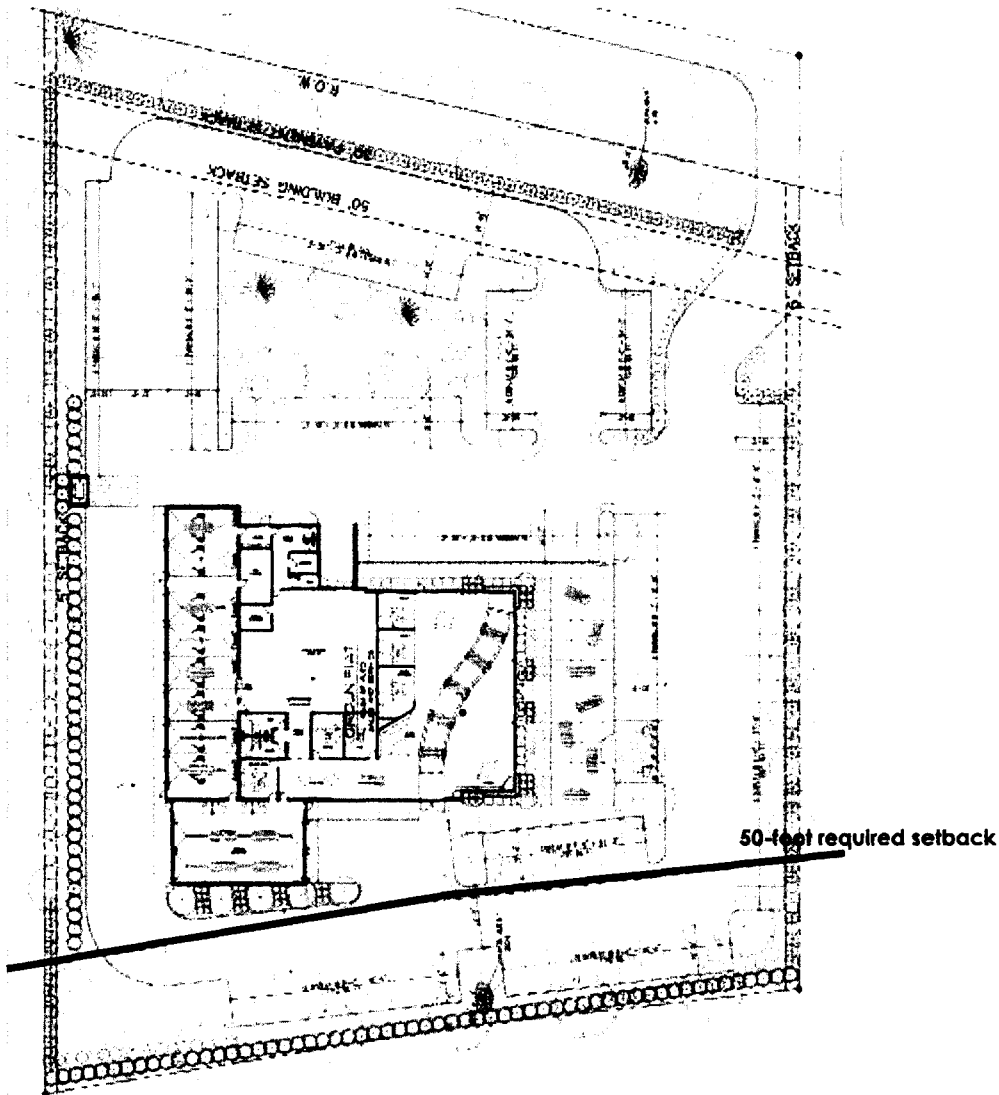
Process

Zoning Code Section 153.231(C)(3) allows the Board of Zoning Appeals to review variances where there are practical difficulties conforming to the strict requirements of the Zoning Code.

Applicable Code Requirements

Zoning Code Section 153.072(E) requires a minimum 50-foot setback for buildings and vehicular use areas (parking, driveways) along all freeways and expressway rights-of-way.

Proposed Site Plan



Details

Variance Request: Setback

Variance Request: Setback 153.072(E)

This site has frontage along US 33 and must adhere to the 50-foot setback requirement. When the parcel was platted, the plat included a 10-foot pavement setback along the freeway frontage and the site was developed in accordance with the plat, but not in compliance with the Zoning Code. The Zoning Code requires a 50-foot minimum building and pavement setback from freeways and expressways. Because the applicant is proposing to conduct a business from the site and is making significant site improvements, Section 153.004(C)(2) requires the site to be brought into compliance with all applicable Zoning Code requirements.

With the approval of the conditional use, the Planning and Zoning Commission permitted the existing drive aisle to encroach into the required setback along the US 33 frontage for the service bays, since the use of the drive aisle is necessary for the use of the service bays.

The applicant is requesting a variance to allow vehicular sales use area to encroach 40 feet into the required setback along US 33. According to the applicant, the setback variance request is based on the increased vehicle display needs of the business.

Analysis

Variance Request: Setback

Review Standards Non-Use (Area) Variances

Upon application, the Board of Zoning Appeals shall only approve a request for a non-use (area) variance only in cases where there is evidence of a *practical difficulty* present on the property in the official record of the hearing, and that the findings required in (a) and (b) have been satisfied with respect to the required standards of review (refer to the last page of this report for the full wording of the review standards).

ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET

(1) Special Conditions

Standard Not Met. There are no special conditions peculiar to the site that are relevant to the request to permit parking within a required setback. The topography and shape of the site have no bearing on the parking or display needs of the business.

(2) Applicant Action/Inaction

Standard Not Met. While the applicant did not develop the site with the existing parking in the setback, the requested variance is a result of the applicant's desire for vehicle display spaces. Display area could have been permitted on the south side of the site with exposure to US 33. However, the applicant chose to arrange the site to require service access on the south side, taking away the potential for using this area outside of the setback for display.

Analysis

Variance Request: Setback

(3) No Substantial Adverse Effect/Intent and Purpose

Standard Not Met. The extent of the site improvements require it be brought into compliance with the Zoning Code. Previously these were used as parking spaces, and only occupied for relatively short periods during the day and early evening. The proposal would create this area as vehicle display area with around the clock occupancy. Therefore, the character of the site would shift from occasional use to full-time use for display purposes.

AT LEAST TWO OF THE FOLLOWING FOUR STANDARDS MUST BE MET

(1) Special Privileges
(2) Recurrent in Nature
(3) Delivery of Governmental Services
(4) Other Method Available

One Standard Met. The request meets Standard 3. The proposed parking encroachment is necessitated by the increased need for vehicle display spaces and could be eliminated by carrying less inventory. The request will not affect the delivery of governmental services.

- (1) A special privilege is being requested that is not available to other similarly situated sites. The variance request is based on the applicant's desired number of display spaces and could be avoided by decreasing the amount of display (see also (4) below).
- (2) Setbacks along US 33 have been carefully planned to ensure that adequate space is available between the roadway and development. The Bob Evans site to the east was constrained by the shape of the site and by the access drive for the neighboring site to the east. This site has no similar constraint. If it is determined that this setback could be violated, the City would be obliged to look at the Code requirement for this setback and determine if it is still valid.
- (4) The applicant could reevaluate inventory needs and the allocation of inventory throughout the site.

Details

Variance Request: Parking

Process

Zoning Code Section 153.231(C)(3) allows the Board of Zoning Appeals to review variances where there are practical difficulties conforming to the strict requirements of the Zoning Code.

Applicable Code Requirements

Zoning Code Section 153.212 requires vehicle sales facilities to provide 1 parking space per 1,000 square feet of display area and either 1 parking space per 100 square feet of vehicle repair area or three spaces per each service bay, whichever is greater. The Planning and Zoning Commission, in approving the conditional use request, permitted the applicant to provide parking at the three spaces per bay ratio.

Details

Variance Request: Parking

Variance Request:
Parking
153.212

The table below shows the Zoning Code requirements for parking for a vehicle sales facility with vehicle service bays, the requirements particular to this business, and the variance request.

	Zoning Code Parking Requirement	Parking Spaces Required	Proposed Parking Spaces to be Provided
Vehicle Sales	1 per 300 sq. ft.	33	33
Display Parking	1 per 1,000 sq. ft.	14	7
Vehicle Repair	3 per service bay	24	16
Total		71	56

The Zoning Code does not *require display spaces* to be provided, but requires parking spaces to accommodate customers related to the area used for display. The applicant is requesting a variance to the number of parking spaces per service bay beyond that relief already provided by the Planning and Zoning Commission, and the number of parking spaces for the vehicle display area, for a total variance of 15 parking spaces.

Analysis

Variance Request: Parking

Review Standards
 Non-Use (Area)
 Variances

Upon application, the Board of Zoning Appeals shall only approve a request for a non-use (area) variance only in cases where there is evidence of a *practical difficulty* present on the property in the official record of the hearing, and that the findings required in (a) and (b) have been satisfied with respect to the required standards of review (refer to the last page of this report for the full wording of the review standards).

ALL THREE OF THE FOLLOWING STANDARDS MUST BE MET

(1) *Special Conditions*

Standard Not Met. The site has no unusual features that limit the ability to place parking or display areas. It could easily accommodate the required parking or reduce the size of the variance request by a decrease in the area used for vehicle display.

(2) *Applicant Action/Inaction*

Standard Not Met. The requested variance is a result of the applicant's desired amount of display area. The Zoning Code does not require any specific number of display spaces to be provided for vehicle sales uses.

(3) *No Substantial Adverse Effect/Intent and Purpose*

Standard Not Met. While there would be no adverse visual impact to granting the requested parking variance as vehicles will be parked on the site due to the proposed use, granting the variance would violate the intent and purpose of the Code-required parking provisions by providing inadequate spaces for customers visiting the site.

Analysis

Variance Request: Parking

AT LEAST TWO OF THE FOLLOWING FOUR STANDARDS MUST BE MET

- (1) Special Privileges
- (2) Recurrent in Nature
- (3) Delivery of Governmental Services
- (4) Other Method Available

One Standard Met. The request meets Standard 3. The request will not affect the delivery of governmental services.

- (1) Approval of the variance for reduced parking would confer a special privilege on the applicant. The proposal to reduce parking is necessitated by the desire for increased display spaces and could be eliminated by carrying less inventory on the site.
- (2) The Zoning Code requires parking spaces to be provided in accordance with the use of the property. This requirement is the same for similar uses and for all properties. The lack of area available for parking is not a recurrent issue, but directly relates to the applicant's specific plans for vehicle display.
- (4) The applicant could eliminate the need for this variance by adjusting the amount of inventory displayed on the site.

Recommendation

Disapproval

Variance Request:
50-foot Setback

Planning has reviewed the application with respect to the non-use (area) variance standards of Zoning Code Section 153.231 and determined that the variance requested to encroach the required 50-foot setback from US 33 by 40 feet does not meet the required standards. *Disapproval is recommended.*

Variance Request:
Parking Reduction

Planning has reviewed the application with respect to the non-use (area) variance standards of Zoning Code Section 153.231 and determined that the variance requested to permit 15 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership does not meet the required standards. *Disapproval is recommended.*

NON-USE (AREA) VARIANCES

Section 153.231(H)(1) Variance Procedures

On a particular property, extraordinary circumstances may exist making a strict enforcement of the applicable development requirements of this Code unreasonable and, therefore, the variance procedure is provided to allow the flexibility necessary to adapt to changed or unusual conditions that meet the standards of review for variances. In granting any variance, the Board of Zoning Appeals shall prescribe appropriate conditions and safeguards to maintain the intent and spirit of the zoning district in conformity with the Zoning Code.

Non-Use (Area) Variances. Upon application, the Board of Zoning Appeals shall only approve a request for a non-use variance only in cases where there is evidence of practical difficulty present on the property in the official record of the hearing, and that the findings required in (a) and (b) have been satisfied with respect to the required standards of review (refer to the last page of this Report for the full wording of the review standards):

(a). That all of the following three findings are made:

(1) That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this Chapter would involve practical difficulties. Special conditions or circumstances may include: exceptional narrowness, shallowness or shape of a specific property on the effective date of this Chapter or amendment; or by reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or by reason of the use or development of the property immediately adjoining the property in question.

(2) That the variance is not necessitated because of any action or inaction of the applicant.

(3) Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this Chapter.

(b) That at least two of the following four findings are made:

(1) That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this Chapter.

(2) The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable.

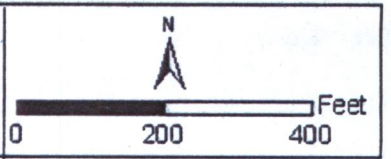
(3) The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage).

(4) The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve.

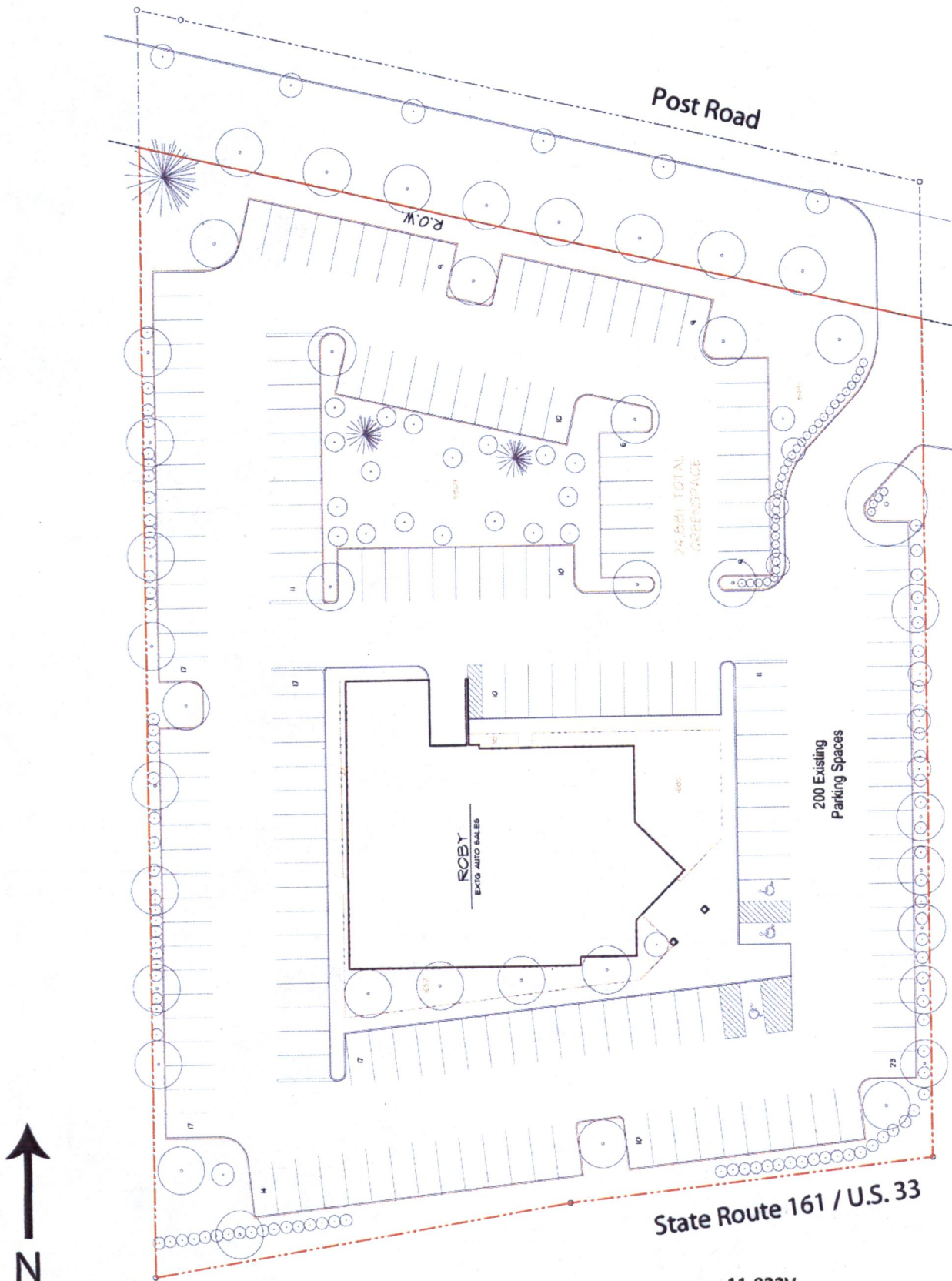



 City of Dublin
 Land Use and
 Long Range Planning

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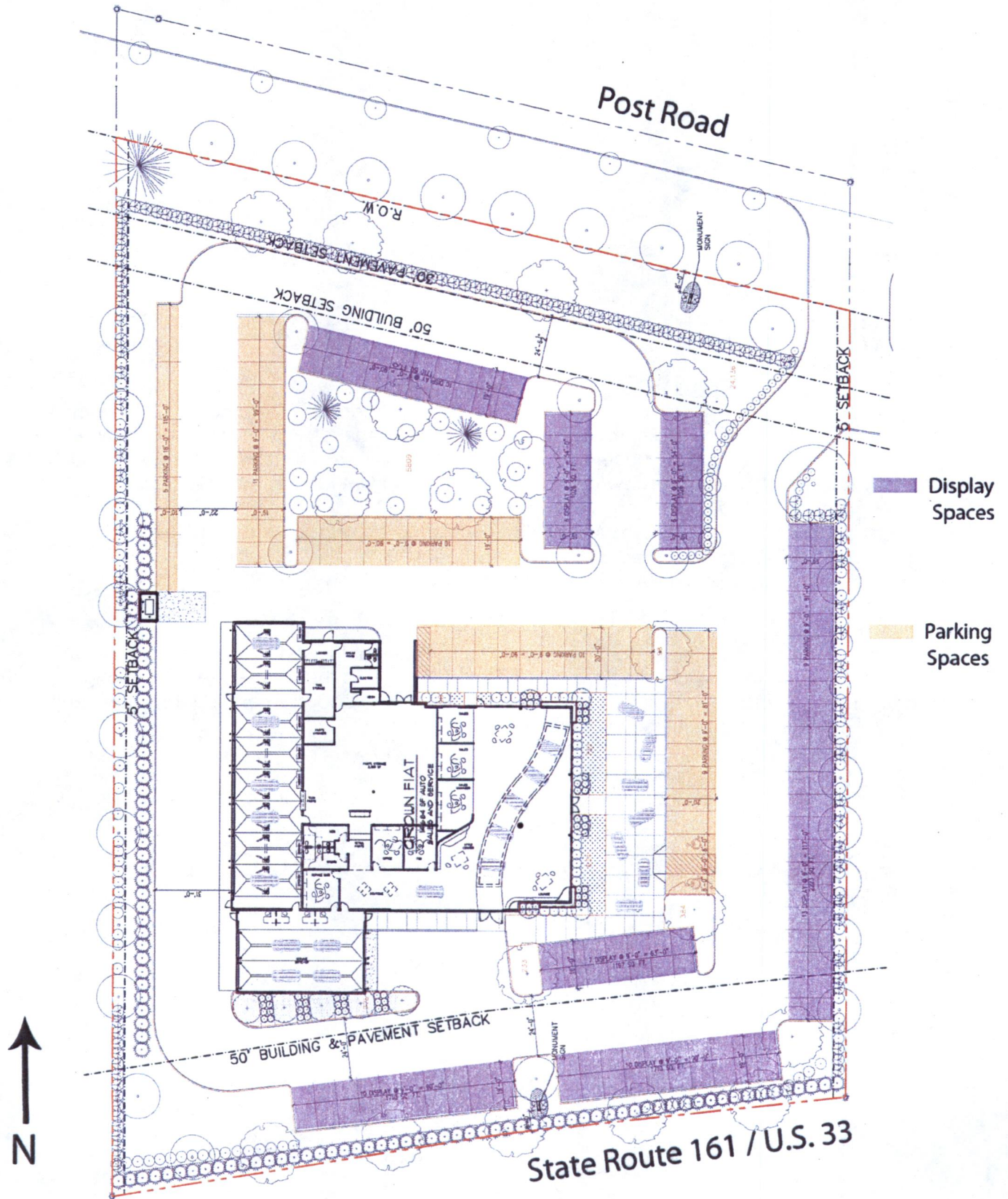


Existing Site Plan



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Proposed Site Plan



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Non Use (Area) Variances

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CITY OF DUBLIN

Land Use and Long Range Planning
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

Creating a Legacy

PLANNING AND ZONING COMMISSION

RECORD OF ACTION

APRIL 7, 2011

The Planning and Zoning Commission took the following action at this meeting:

4. **Crown Fiat
11-008CU**

**5105 Post Road
Conditional Use**

Proposal: An eight-bay vehicle service facility in association with a car dealership for a 2.5-acre site zoned CC, Community Commercial District, located on the south side of Post Road, approximately 1,000 feet west of the intersection with Frantz Road.

Request: Review and approval of a conditional use under the provisions of Zoning Code Section 153.236.

Applicant: Crown Automotive Group; represented by Michael Close.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

MOTION: To approve this conditional use and grant relief of the service parking at the lower Code requirement and the 20-foot drive aisle encroachment into the required setback along US 33 because it complies with all applicable review criteria and the existing development standards within the area, with two conditions:

- 1) That the safety bollards be painted black; and
- 2) That the applicant work with Planning to ensure that the screening for service doors address noise concerns.

* Tom Hart, Wiles, Boyles, Burkholder and Bringardner Company, LPA., agreed to the above conditions.

VOTE: 7 - 0.

RESULT: This conditional use application was approved with the relief of two development standards.

STAFF CERTIFICATION

Claudia D. Husak, AICP
Planner II

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Non Use (Area) Variances
Crown Fiat-Parking and Setback Variances
5105 Post Road

**4. Crown Fiat
11-008CU****5105 Post Road
Conditional Use**

Richard Taylor requested to pull this application from the consented items to make comments.

Chris Amorose Groomes introduced this conditional use application involving an eight-bay vehicle service facility in association with a car dealership for a 2.5-acre site zoned CC, Community Commercial District, located on the south side of Post Road, approximately 1,000 feet west of the intersection of Frantz Road. She swore in those intending to address the Commission in regards to this case, including City representatives and Tom Hart, Wiles, Boyles, Burkholder and Bringardner Company, LPA, representing Crown Automotive Group.

Claudia Husak presented this request for a conditional use which stemmed from service being a conditional use in the CC District. She explained that a car dealership is a permitted use within this district. She said the existing building is currently vacant and the site has many non-compliance issues in terms of setbacks and landscaping. She said that Planning has been working with the applicant to bring the site into compliance.

Ms. Husak explained that the conditional use request consists of approximately 5,000-square-feet of service area to the rear of the building on the west side. She said proposed are eight service bays, a four-vehicle write-up area on the south side, and screening of the service doors per Code along the western property line. She said the applicant has provided the hours the service area will be open. She said the reliefs that are being requested, as part of this application, include service bay parking and an encroachment of the drive aisle on the south side into the US 33 setback which is required to be 50 feet. Ms. Husak pointed out that currently on site, there is parking and pavement within ten feet of that rear property line. She said the site is coming into compliance, but the drive aisle is proposed to encroach 20 feet.

Ms. Husak said that Planning reviewed this application, and based on the criteria and is recommending approval with one condition:

- 1) That the proposed yellow safety bollards be black to match the building and follow the Commission's preference.

Mr. Taylor asked how the relief requests were documented for the record since they were not conditions. He noted that there was nothing included except a letter to indicate the requests.

Ms. Husak explained that based on the minutes it would be reflected that they were made. However, she said a separate motion could be entertained as has been done for text modifications in the past, if the Commission preferred. Ms. Husak said for recordkeeping that would probably be the preferred option.

Mr. Taylor said he visited the site, and he had a mild concern about eight vehicle bays potentially being open with noisy activities. He wanted Planning to be certain that the screening is adequate to address the potential noise issue.

Mr. Taylor said he thought the building was neat looking, and this would certainly be better than what exists there now. He said for the record, that this was the second automobile facility in this general area that this architectural firm has put forth recently and he wanted to commend the firm for the fine work they were doing on these kinds of facilities in Dublin.

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5105 Post Road

Amy Kramb clarified that the pavement was not in the right-of-way, just the setback and that nothing was changing. Ms. Husak explained that the pavement exists today.

Tom Hart, Wiles, Boyles, Burkholder and Bringardner Company, LPA, representing Crown Automotive Group wanted to clarify that their application requested a relief to allow three parking spaces per service bay.

Ms. Husak said she the two requirements in the Zoning Code were for having service bays parked per square footage, which in this case would require 50 parking spaces, and the other, having three spaces per bay. She said the difference was 24 spaces. She explained that the Code stated whichever was greater, so 50 spaces would always end up being greater and the applicant was asking to allow the 24 to be provided. She clarified that the Planning Report correctly reflected that.

Mr. Hart said that they had discussed a different process to go to two spaces, but this request was for 3 spaces and 24. He said they felt they had adequate parking on the site, but allocation of what they can use for display parking versus general parking was an issue that they were going to pursue with a variance.

Mr. Taylor requested that the new condition be provided.

Ms. Husak proposed a second condition that the applicant work with Planning to ensure that the screening of service doors addresses any potential noise concerns. She suggested that regarding the two reliefs the applicant is requesting, 1) that they be allowed to parking the service bays at three spaces, and 2) the setback encroachment for the drive aisle, they made be part of the motion.

Motion and Vote

Mr. Taylor made the motion to approve this conditional use and grant relief of the service parking at the lower Code requirement and the 20-foot drive aisle encroachment into the required setback along US 33 because it complies with all applicable review criteria and the existing development standards within the area, with two conditions:

- 1) That the safety bollards be painted black; and
- 2) That the applicant work with Planning to ensure that the screening for service doors address noise concerns.

Mr. Hart, on behalf of the applicant, agreed to the above conditions.

Mr. Zimmerman seconded the motion.

The vote was as follows: Ms. Kramb, yes; Ms. Amorose Groomes, yes; Mr. Budde, yes; Mr. Hardt, yes; Mr. Fishman, yes; Mr. Zimmerman, yes; and Mr. Taylor, yes. (Approved 7 - 0.)



CITY OF DUBLIN.

Land Use and
Long Range Planning
5800 Shier-Hings Road
Dublin, Ohio 43016-1236
Phone/ TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us
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BOARD OF ZONING APPEALS

BOARD ORDER

FEBRUARY 26, 2009

The Board of Zoning Appeals took the following action at this meeting:

- 1. **Jelly Bean Junction Learning Center** **5105 Post Road**
09-005V **Use Variance**

Proposal: Permit day child care and tutoring services for 150 children within an existing building that are not permitted in the CC, Community Commercial District. The site is located on the south side of Post Road, approximately 560 feet west of the intersection with Kilgour Place.

Request: Request for review and recommendation of a use variance to the City of Dublin Zoning Code Section 153.028 under the provisions of Section 153.231(H).

Applicant: Jeffery Roby, Roby Holding Co. L.L.C.

Planning Contact: Steve Langworthy, Director and Ryan Pilewski, Planning Assistant.

Contact Information: (614) 410-4600, slangworthy@dublin.oh.us or rpilewski@dublin.oh.us.

MOTION: Keith Blosser made a motion, seconded by Drew Skillman, to recommend approval of this use variance to City Council.

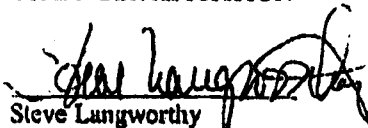
VOTE: 0 - 5.

RESULT: This Variance application was disapproved.

RECORDED VOTES:

Drew Skillman	No
Bangalore Shankar	No
Keith Blosser	No
Sean Cotter	No
Victoria Newell	No

STAFF CERTIFICATION


Steve Langworthy
Director

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Non Use (Area) Variances
Crown Flat-Parking and Setback Variances
5105 Post Road



DUBLIN BOARD OF ZONING APPEALS

MEETING MINUTES

FEBRUARY 26, 2009

CITY OF DUBLIN,

Land Use and
Long Range Planning
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

Case:

**1. Jelly Bean Junction Learning Center
09-005V**

**5105 Post Road
Use Variance**

Bangalore Shankar called the meeting to order at 7:00 p.m. Other members present were Keith Blosser, Sean Cotter, Drew Skillman, and Victoria Newell. City of Dublin representatives were Steve Langworthy, Tammy Noble-Flading, Rachel Swisher, and Flora Rogers.

Administrative Business

Motion and Vote

Bangalore Shankar made a motion, seconded by Keith Blosser to accept the documents into the record. The vote was as follows: Mr. Skillman, yes; Ms. Newell, yes; Mr. Cotter, yes; Mr. Blosser, yes; and Mr. Shankar, yes. (Approved 5 - 0.)

Motion and Vote

Mr. Shankar made a motion, seconded by Mr. Cotter to approve the January 22, 2009, meeting minutes as corrected. The vote was as follows: Mr. Skillman, yes; Mr. Blosser, yes; Ms. Newell, yes; Mr. Cotter, yes; and Mr. Shankar, yes. (Approved 5 - 0.)

Mr. Shankar presented resigning member Keith Blosser with a plaque acknowledging his service and contribution as a member of the Board from April 2004 until February 2009.

Mr. Blosser thanked the Board members and Planning for their support and said that he hoped that through the years his efforts had done a little good.

**1. Jelly Bean Junction Learning Center
09-005V**

**5105 Post Road
Use Variance**

Mr. Shankar swore in those who intended to speak in regard to this case, including the applicant, Jessica Roby of Roby Holding Company LLC, and City representatives.

Steve Langworthy explained that a use variance by definition, would permit a use not otherwise allowed in the zoning district in which the property is located. He said if approved, this application would permit a commercial childcare and tutoring facility with the capacity of up to

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Non Use (Area) Variances

Crown Fiat-Parking and Setback Variances

5105 Post Road

150 children. He said the Board will, as a result of the action tonight, submit a recommendation to City Council for its final action.

Mr. Langworthy pointed out that a memo from the Law Director's office had been provided which indicated that while City Council may consider both the recommendation of the Board and the use variance review standards in the Code, they are not bound by them; that they may make the decision based upon factors that they deemed to be reasonable. He said unlike the non-use variance, where some standards can be met and others must be met, all review standards for a use variance must be met in order to recommend approval to City Council.

Mr. Langworthy presented photographs showing the Bob Evans restaurant located to the east of this site; the Red Roof Inn to the west, Embassy Suites across SR 161, and the MAG and the Toy Barn dealerships across the street. He said the site is zoned CC, Community Commercial, as are the surrounding sites. Mr. Langworthy stated the site has a shared drive off Post Road. He said the playground area is located on the side of the building which borders the Red Roof Inn. Mr. Langworthy said Planning was not concerned about the playground location near the Red Roof Inn, because typically, in the daytime when the children would be outside not many guests are in their rooms sleeping. He presented plans of the proposed drop-off and playground areas.

Mr. Langworthy said Planning in evaluating this use variance application, analyzed the review criteria and found that:

1. The site was flat and had suitable accessibility and that there are no existing physical conditions that would preclude its use as zoned.
2. The proposed use would not alter the character of the area and was appropriate because it had no effects that would disrupt the surrounding use of the property, given the comment about the Red Roof Inn.
3. The land could be used for a wide range of uses otherwise allowed in the zoning district.
4. The request as submitted is not based on the inability of the applicant to use the property as permitted in the CC District but is based solely on the applicant's desire to not wait on the outcome of a proposed zoning amendment.

Mr. Langworthy explained that there was a little 'mca culpa' because a Code amendment that would permit this use through a conditional use process was reviewed by the Planning and Zoning Commission (PZC) and briefly before City Council. He said it was expected that the Code amendment may be approved at the Council meeting in March or the first meeting in April and if approved, the applicant could submit for a conditional use request. Mr. Langworthy said that Planning felt that the better process would be for the applicant to wait for the amendment to be approved, and then apply for the conditional use. He said it had been indicated to the applicant that based on the conditional use criteria that Planning would probably support this use in this location when reviewed by the PZC.

Mr. Langworthy said that it is Planning's opinion that the application does not meet the criteria provided in Section 153.231(H)(3) of the City of Dublin Zoning Code and therefore recommends that the Board recommend disapproval of this application to City Council.

Mr. Shankar asked how 'school' was defined in the Code. Mr. Langworthy explained that a school had to be certified by the State, and there were different varieties of schools. He said that

was separate and apart from a daycare operation. Mr. Langworthy said that Planning had made the determination that this was not a school.

Jessica Roby, the applicant, said she did not understand why they had to go through this process because she knows they are not going to meet criteria A, C, and D. She said they had been working on this since November and been delayed from getting on the City Council agenda for months. She said they were sitting with a vacant lot which looked horrible for the City of Dublin. She said they are losing money because they have nothing there. She said when it goes to City Council, they will have to do another conditional use application which was another \$2,200 or more to add to their expense. She said it was crazy that they could put a strip club on the site which was a permitted use as it was currently zoned, but they could not have a childcare center. She asked for sympathy and understanding that they want to fill this building, but the building needs a lot of interior work, and they did not want to begin it until they are approved. She asked for the Board's assistance.

Victoria Newell said she appreciated Ms. Roby's honesty and realized that she was in a tough position; however, the Board had to abide by the regulations that are in place. She said even in Ms. Roby's own testimony, she realized that there was not a case for requesting this variance.

Ms. Roby reiterated that they did not understand why they were told to pay the \$2,200 by Planning, when Planning knew that the Board had to disapprove the request.

Ms. Newell said although she could not speak for Planning, she thought they probably felt an obligation to inform the applicant what the options were. She said in asking for the variance, Planning must inform them of that option and Planning would be amiss if they did not provide the application information on all of the courses of options that would be available.

Mr. Shankar said the Board can only make recommendations based on what had already been stipulated. He said he did not feel comfortable with a childcare center use on this site unless there was screening for safety and protection because it was surrounded by SR 161 and businesses.

Sean Cotter asked if the use variance case would be placed on the next City Council Agenda.

Mr. Langworthy explained the use variance could go to City Council on the second March agenda. He said City Council is also reviewing a Code amendment to allow childcare as a conditional use in the Community Commercial District. He said if Council passes the amendment, then a condition use application will go to the PZC for review and approval.

Mr. Blosser asked if the Board were to recommend disapproval on the use variance tonight, and City Council would disapprove it, would that shut the door on them.

Mr. Langworthy said although the use variance process is one that is available to everyone should they choose to take advantage of it, Planning is not encouraging applicants to take that route. He said Planning was indicating that they are or should be difficult to get approved. He said that Planning would make the point to City Council that they did not have a particular objection to the use, this is largely procedural in nature, and they were not interested in having everyone bypass the ordinance to come to City Council, when a rezoning or amendment to the

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Crown Fiat-Parking and Setback Variances
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zoning code to allow uses would be an available procedure. He said Planning is trying to reserve use variances for those properties in a difficult situation, and there was not a good district they could be placed that would make sense.

Mr. Skillman asked if Mr. Langworthy was confident that City Council would install a Code amendment to allow a conditional use.

Mr. Langworthy explained that the Code amendment was delayed at the City Council level and had not yet been back to them.

Mr. Cotter asked if City Council could forgo the Board's recommendation where was that included in the Code.

Mr. Langworthy said there was actually no guidance in the Code whatsoever for City Council, and they do not have to follow the same criteria that the Board does, but can use whatever criteria they deem as long as it is reasonable. He said the amendment does not depend on this application.

Mr. Shankar asked if the Code was not changed, but this use variance was approved by City Council, would it set a precedent.

Mr. Langworthy explained that the precedent would only apply if the standards were ignored and some other criteria were used. He said then, the applicants would have the right to have that criteria applied to their request as well. He said by using a consistent set of criteria each individual case can be looked at in different circumstances, locations, or other situations and a different decision can always be reached.

Mr. Skillman said after studying the Code, he knows the Board is obligated to follow the Code and not issue a use variance, however he wished he could.

Mr. Blosser reiterated that he agreed with Mr. Skillman and Mr. Shankar in that the Board was bound by the Code. He said the project had merit and he would love to see it happen and he had the feeling that it would.

Motion and Vote

Keith Blosser made the motion to recommend approval of this use variance to City Council. Mr. Skillman seconded the motion.

The vote was as follows: Ms. Newell, no; Mr. Cotter, no; Mr. Skillman, no; Mr. Shankar, no; and Mr. Blosser, no. (Motion failed 0-5).

Mr. Shankar and the other Board members wished Mr. Blosser the best for the mission he was undertaking.

The meeting was adjourned at 7:34 p.m.


Libby Farley
Administrative Assistant

RECORD OF PROCEEDINGS
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Ms. Salay stated that perhaps additional space can be added on either side to store the receptacles without changing the garage door size.

Ms. Brautigam stated that in the pilot project, staff has been very flexible in regard to the kind of trash containers used. They have worked with residents to accommodate their needs with 23, 64, or 96-gallon containers. Not fitting in the garage has not been a problem for either of the pilot areas.

Mr. Reiner moved for passage of the amended Ordinance 59-03.

Ms. Salay seconded the motion.

Vote on the motion: Ms. Salay, yes; Mr. Lecklidor, yes; Mr. Reiner, yes; Mr. Keenan, yes; Mayor Chinnici-Zuercher, yes; Mr. McCash, yes; Mrs. Boring, yes.

REZONINGS

The Clerk read the titles of Ordinances 84-03 (Amended), 108-03 (Amended), 109-03 (Amended) and 119-03 into the record.

Mr. Gunderman stated that, for the most part, these are area rezonings and involve corrections to the zoning map. He showed a map delineating the various rezonings. He noted that there have been few difficulties encountered in the review process of informal meetings with area residents. As is the case with other area rezonings, they are principally composed of land that either showed up on the previous zoning maps of the City as a City zoning classification, but where research did not demonstrate proper records supporting the zoning classification. In other cases, the areas were shown as township zonings, and based upon the recommendation from the Law Department, the desire is to assign City zoning classifications closest to the existing township zoning classification.

Ordinance 84-03 (Amended)

Establishing Dublin Zoning for 83 Parcels Comprising an Area of Approximately 142 Acres as Annexed from Perry Township in 1961 and 1972, South of I-270, West of Sawmill Road and East of the Scioto River, to R-1, Restricted Suburban Residential, R-2, Limited Suburban Residential, or R-4, Suburban Residential Districts. (Case No. 08-080Z - CDD, Residential Area Rezoning).

Mr. Gunderman stated that most of these are areas that showed up as City zoning districts, with a couple of exceptions. Some locations had shown up as R-4, permitting multi-family. The neighborhood meetings indicated a desire not to retain the R-4 which permits single family and multi-family. While this is somewhat of a discrepancy from the policy followed in other areas, based on the neighborhood's desire, staff did not see any reason not to assign the R-2 zoning.

Ordinance 108-03 (Amended)

Rezoning 50 Parcels Comprising an Area of Approximately 400 Acres as Annexed from Washington Township between 1965 and 1969, Southeast of I-270, West of Dublin Road, North of Rings Road, to: CC, Community Commercial, OLR, Office, Laboratory and Research, SO, Suburban Office and Institutional, and LI, Limited Industrial Districts. (Case No. 03-099Z - Inner Circle I-270, Commercial Area Rezoning)

Mr. Gunderman stated that this is the inner circle commercial area. There was no particular discussion on these, except for the LI district. It was pointed out that if changes were considered to this, much of the development pattern in the area would be non-conforming.

Ordinance 109-03 (Amended)

Rezoning 75 Parcels Comprising an Area of Approximately 136 Acres as Annexed from Franklin County and Washington Township between 1980 and 1999, Southeast of I-270, West of the Scioto River, North of Hayden Run Road, to: Dublin R-1, Restricted Suburban Residential District. (Case No. 03-105Z - Inner Circle I-270, Residential Area Rezoning - South Dublin Road)

Mr. Gunderman noted that these were fairly straightforward and had shown up as R-1 on the zoning map.

Ordinance 119-03

Rezoning Approximately 29 Parcels Comprising an Area of Approximately 43 Acres as Annexed from Washington Township between 1961 and 2001 South of Brand Road, North of West Bridge Street, East of Coffman Road, West of th

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considering downzoning or rezoning land to fit what the City wants it to be, this did not occur with the other area rezonings. Those would need to be redone also. Mr. Gunderman responded that the difficulty arises with some of the oldest annexation areas. Staff tried to ascertain the City action on every parcel ever annexed to the City. The difficulty with the older annexations is the lack of records at the township for zoning. Therefore, staff then reviewed how the properties were treated in terms of zoning since the time they were annexed. For these tracts, the City administered zoning as though they had these categories - whether it was OCLC or other business. This is the only logical direction staff could take, once it was determined that the township zoning classification could not be verified in their records.

Mr. McCash stated that if the City cannot determine what the zoning was in the township records, how much active dialogue took place with the residents or property owners to see if they would have any records regarding the zoning of their properties?

Mr. Gunderman responded that some property owners have come to a hearing with this type of information about their township zoning. Staff has then investigated further. But for the most part, that has not happened, and the ownership of the properties has changed several times since the time of annexation.

Mr. McCash stated that there was an adopted 1980 zoning map that listed the zoning classifications on these properties. In essence, then, weren't these properties rezoned with the adoption of that zoning map including the classifications on that map? How is the City then down zoning various pieces of property?

Mr. Gunderman responded that he does not believe the City is down zoning any properties, other than the few residential properties pointed out. What is being presented is generally consistent with any of the maps staff has uncovered, and if staff had found a particular map that was adopted as a map, he does not believe it is being dealt with at this particular time.

Mayor Chinnici-Zuercher called for a vote on the ordinances.

Vote on Ordinance 94-03(Amended) - Mrs. Boring, yes; Mr. Keenan, yes; Mr. Reiner, yes; Ms. Salay, yes; Mayor Chinnici-Zuercher, yes; Mr. Lecklider, yes; Mr. McCash, no.

Vote on Ordinance 108-03(Amended) - Mayor Chinnici-Zuercher, yes; Mr. Keenan, yes; Mr. Reiner, yes; Mr. McCash, no; Ms. Salay, no; Mr. Lecklider, no; Mrs. Boring, yes.

Vote on Ordinance 109-03(Amended) - Mr. Keenan, yes; Ms. Salay, yes; Mr. Lecklider, yes; Mr. McCash, no; Mrs. Boring, yes; Mr. Reiner, yes; Mayor Chinnici-Zuercher, yes.

Vote on Ordinance 119-03 - Mr. Keenan, yes; Mr. Reiner, yes; Mayor Chinnici-Zuercher, yes; Mr. McCash, no; Mrs. Boring, yes; Ms. Salay, yes; Mr. Lecklider, yes.

Ordinance 146-03

Rezoning Approximately 43.55 Acres Located on the East Side of Riverside Drive and the South Side of Hard Road, Approximately 900 Feet from the Riverside Drive and Hard Road Intersection, from: R-1, Restricted Suburban Residential District, to: PUD, Planned Unit Development District. (Case No. 03-155Z - Riverside Woods).

Mr. Gunderman stated that this rezoning is located on the east side of Dublin, close to the corner of Hard and Riverside Drive. It is proposed as a PUD, and is surrounded by residential PUD to the east, the high school PUD, and a PCD zoning for the fire station at the intersection of Hard and Riverside. The site plan in the packet reflects the current tree patterns on the property. The site consists of 43.5 acres and is proposed for 54 single-family lots of 90 feet in width. It was reviewed by Planning Commission on February 5 and approved by a vote of 8-0 with 17 conditions. He has another suggested condition which is related to the tree waiver listed on the agenda tonight.

Mayor Chinnici-Zuercher asked if Council would like to review the tree waiver at this time. Mrs. Boring stated that, legally, the zoning should be considered prior to consideration of any tree waiver for the site.

Mr. Gunderman responded that the reason he has suggested this is that if staff's recommendation for the tree waiver is adopted, a correction would be needed to the text which would then become Condition #18.

Mrs. Boring stated that she would not want to grant a tree waiver to the developer before having the zoning approval for the land.

11-022V

Non Use (Area) Variances

Crown Fiat-Parking and Setback Variances

5105 Post Road



CITY OF DUBLIN.

Division of Planning
5800 Shier-Rings Road
Dublin, Ohio 43016-1236

Phone/TDD: 614-410-4600
Fax: 614-410-4747
Web Site: www.dublin.oh.us

PLANNING AND ZONING COMMISSION

RECORD OF ACTION

JANUARY 8, 2004

The Planning and Zoning Commission took the following action at this meeting:

3. **Area Rezoning 03-099Z - Inner Circle I-270 Commercial Area Rezoning**
Location: 46 parcels comprising an area of approximately 411 acres as annexed from Washington Township between 1965 and 1969, southeast of I-270, west of Dublin Road, north of Rings Road.
Request: Review and approval of ordinance to establish Dublin CC, Community Commercial, OLR, Office, Laboratory, and Research, SO, Suburban Office and Institutional and LI, Limited Industrial Districts.
Property Owners: (To the LI District) OCLC Online Computer Library Center Inc., 6565 Frantz Road; OCLC Online Computer Library Center Inc, 5000 Post Road; Midwestern Enterprises LLC, 6540 Frantz Road; **(To the OLR District)** Delphineus Associates LLC, 5151 Blazer Parkway; Ashland Oil & Refining Tax Dept., P.O. Box 14000, Lexington, Kentucky 40512; Metro Medical LLC Bradford Investment Co, 5050 Blazer Parkway; William and Lujean Bay, 5178 Paul G. Blazer Parkway; City Of Dublin, c/o Jane S. Brautigam, 5200 Emerald Parkway; Great Lakes Reit L P, 655 S. Metro Place Road; Great Lakes Reit L P, 823 Commerce Drive, Suite 300, Oakbrook, Illinois 60523; Randal Garvey, 5142 Paul G. Blazer Parkway; Susan Park, 5158 Paul G. Blazer Parkway; Kendall-Dublin LLC, 5100 Rings Road; Pizzuti Properties, 2 Miranova Place, Suite 800, Columbus, Ohio 43215; Duke Construction LP, 5600 Blazer Parkway, Suite 100; Tugys Ltd.; and National Tax Search LLC, PO Box 81290, Chicago, Illinois 60681-0290. **(To the CC District)** Dublin Plaza LP, 225 W. Bridge Street; Dublin Plaza LP, 221 W. Bridge Street; Heartland Bank, 6500 Frantz Road; Carolyn Nash, 220 Bridge Street; Carolyn Nash, 252 Monsarrat Drive; Host Restaurants, 5175 Post Road; NRS Equities, 5131 Post Road; Red Elm LLC, 5125 Post Road 43017; Realty Income Corp., P.O. Box 460069, Escondido, Ca 92046; West Bridge Street Associates, 200 W. Bridge Street; 5151 Post Road LLC, 5151 Post Rd.; Mid-America Properties, 5105 Post Rd.; Bef Reit Inc, 5067 Post Rd; Brentlinger Real Estate Company LLC, 5035 Post Rd.; Cooker Restaurant Corp, 5000 Upper Metro Place; Dublin Suites Inc, 5100 Upper Metro Place; Live Oak Properties Ltd, c/o Ohio Equities LLC, 605 S. Front St Suite 200, Columbus, Ohio 43215; Krisjal LLC, 9011 Fields, Ertel Road, Cincinnati, Ohio 45249; Richard Roby, 5200 Post Road; First American Tax L J Melody Co Inc., P.O. Box 560807, Dallas, Texas 75356-0807; and Sullivan Acquisition LLC, 218 W. Bridge

Page 1 of 2

11-022V

Non Use (Area) Variances

Crown Fiat-Parking and Setback Variances

5105 Post Road

**PLANNING AND ZONING COMMISSION
RECORD OF ACTION
JANUARY 8, 2004**

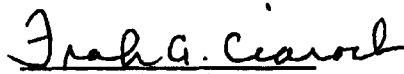
3. **Area Rezoning 03-099Z - Inner Circle I-270 Commercial Area Rezoning Street. (To the SO District) 250 Bridge Group. *All addresses are located in Dublin, Ohio 43017 unless otherwise noted.***
Applicant: City of Dublin, c/o Jane S. Brautigam, City Manager, 5200 Emerald Parkway, Dublin, Ohio 43017.
Staff Contact: Anne Wanner, Planner.

MOTION: To approve this area rezoning because it will provide an appropriate Dublin zoning classification for land within the City limits to provide for the effective administration of development standards, procedures, etc., and will maintain the established development pattern that has been in place for many years and establishes land uses consistent with those listed in the Community Plan.

VOTE: 7-0.

RESULT: This area rezoning was approved. It will be forwarded to City Council with a positive recommendation.

STAFF CERTIFICATION


Frank A. Ciarochi
Acting Planning Director

~~Mr. Messineo made a motion to approve this area rezoning because it will provide an appropriate Dublin zoning classification for land within the City limits to provide for the effective administration of development standards, procedures, etc., and will maintain the established development pattern that has been in place for many years, and establishes land uses consistent with those listed in the Community Plan. Mr. Zimmerman seconded the motion, and the vote was as follows: Mr. Gerber abstained, because his wife owned a property in this area for which he paid a mortgage; Ms. Boring, yes; Ms. Reiss, no; Mr. Sprague, yes; Mr. Sanemoltz, no; Mr. Zimmerman, yes; and Mr. Messineo, yes. (Approved 4-2-1.)~~

3. Area Rezoning 03-099Z - Inner Circle I-270 Commercial Area Rezoning

Anne Wanner said this area rezoning is comprised of 46 parcels totaling approximately 411 acres. Most of the parcels are located on the inside of I-270. Properties listed in this application include several commercial, retail, and office establishments, including Ashland Incorporated, Embassy Suites, and OCLC. She showed an aerial slide indicating the proposed zonings. The zones proposed for these properties are: OLR, Office Laboratory Research District; LI, Limited Industrial District; CC, Community Commercial District; and SO, Suburban Office and Institutional District. She said these parcels have been shown on the Dublin Zoning Map for the last 15 to 20 years and the parcels range in size from 0.5 acre to 40 acres. The Post Road properties that are being rezoning are located on the south side. She said the MAG Dealerships and the Field of Corn are also included in this application.

These sites were annexed into Dublin between 1965 and 1969. Ms. Wanner said an informational meeting was held and several property owners attended. She had also spoken to property owners by phone. Ms. Wanner said staff is recommending approval of this application.

Ms. Reiss asked why LI was wanted along the freeway. Mr. Gerber said for the same reason given for the previous case. She said if the Commission recommended this, someone could come in tomorrow and put light industrial there.

Ms. Wanner said those two parcels were fully developed with LI development standards as the OCLC Campus. The sideyards and rear yards are dictated by the building height and depth. She said the development standards are not as strict in the LI District as they are in SO or OLR Districts. If something different was assigned to these parcels, it could potentially create non-conformities for OCLC that do not exist today.

Mr. Gerber made the motion to approve this area rezoning because it will provide an appropriate Dublin zoning classification for land within the City limits to provide for the effective administration of development standards, procedures, etc., will maintain the established development pattern that has been in place for many years and establish land uses consistent with those listed in the Community Plan. Mr. Zimmerman seconded the motion, and the vote was as follows: Mr. Messineo, yes; Mr. Sanemoltz, yes; Mr. Sprague, yes; Ms. Boring, yes; Ms. Reiss, yes; Mr. Zimmerman, yes; and Mr. Gerber, yes. (Approved 7-0.)

11-022V

Non Use (Area) Variances
Crown Fiat-Parking and Setback Variances
5105 Post Road

RECORD OF PROCEEDINGS

Minutes of

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September 15, 2008

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Field

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of the next 120,000 square foot building. The second component relates to the future growth of Cardinal Health. Cardinal has been aggressive in terms of pursuing acquisitions and may have opportunities to bring additional employees to Dublin. These annual incentive payments are therefore designed to encourage them to direct that future growth in Dublin. Once Cardinal reaches established target income tax withholdings as outlined in the agreement, anything over and above will be provided to them in the form of incentive payments. The intent is that when Cardinal has the opportunity to expand, they will expand in Dublin based upon the incentives offered to the company for bringing additional employees to Dublin. This can potentially provide a significant increase in the local income tax revenues and accelerate their need to begin construction on the next building, providing additional service payments from the existing TIF and allowing acceleration of the construction of Emerald Parkway east of Riverside Drive.

Mr. Lecklider noted that the provisions indicate that these payments are to be made solely from non-tax revenues. He asked for further clarification.

Ms. Grigsby responded that in all of the City's economic development agreements, any incentives are made from non-tax revenues. This relates to certain restrictions placed upon tax revenues. Non-tax revenues include such items as interest income, building permits, fines and forfeitures from courts. Language is included regarding carry forwards or balances not paid to cover a situation where in a given year there are not sufficient non-tax revenues to fund the payments to Cardinal. At this time, such a situation is not anticipated, but this is a standard provision contained in economic development agreements for the City.

Mr. Lecklider asked if staff is comfortable then with adding this obligation.

Ms. Grigsby responded that the annual cap is a protection for the City as well. She does not anticipate any problems with available non-tax revenues, based upon the City's history.

There will be a second reading/public hearing at the October 6 Council meeting.

ZONING

Ordinance 107-03

Establishing Dublin Zoning for 119 Parcels Comprising an Area of Approximately 69 Acres as Annexed from Franklin County and Washington Township between 1861 and 1960, North of Rings Road, South of West Bridge Street, East of Frantz Road, West of the Scioto River To: Dublin R-2, Limited Suburban Residential and R-4, Suburban Residential Districts. (Case No. 03-098Z - Inner Circle I-270 Residential Old Dublin Area Rezoning)

Mr. Kranstuber introduced the ordinance and moved referral to Planning & Zoning Commission.

Mrs. Boring seconded the motion.

Vote on the motion: Mrs. Boring, yes; Mr. Kranstuber, yes; Mr. Reiner, yes; Ms. Chinnici-Zuercher, yes; Mayor McCash, yes; Mr. Lecklider, yes; Ms. Salay, yes.

Ordinance 108-03

Rezoning 46 Parcels Comprising an Area of Approximately 411 Acres as Annexed from Washington Township between 1965 and 1969, Southeast of I-270, West of Dublin Road, North of Rings Road, To: CC, Community Commercial, OLR, Office, Laboratory and Research, SO, Suburban Office and Institutional and LI, Limited Industrial Districts. (Case No. 03-099Z - Inner Circle I-270 Commercial Area Rezoning)

Mr. Kranstuber introduced the ordinance and moved referral to Planning & Zoning Commission.

Mr. Reiner seconded the motion.

Vote on the motion: Mr. Kranstuber, yes; Ms. Salay, yes; Mrs. Boring, yes; Mr. Lecklider, yes; Ms. Chinnici-Zuercher, yes; Mayor McCash, yes; Mr. Reiner, yes.

Ordinance 109-03

Rezoning Parcels Comprising an Area of Approximately 136 Acres as Annexed from Franklin County and Washington Township between 1960 and 1969, Southeast of I-270, West of the Scioto River, North of Hayden Run Road, To: Dublin R-1, Restricted Suburban Residential District. (Case No. 03-105Z - Inner Circle I-270 Residential South Dublin Road Area Rezoning)

Mr. Kranstuber introduced the ordinance and moved referral to Planning & Zoning Commission.

Mr. Reiner seconded the motion.

Vote on the motion: Mrs. Boring, yes; Mayor McCash, yes; Ms. Salay, yes; Mr. Kranstuber, yes; Mr. Reiner, yes; Mr. Lecklider, yes; Ms. Chinnici-Zuercher, yes.

11-022V

Non Use (Area) Variances
Crown Fiat-Parking and Setback Variances
5105 Post Road



CITY OF DUBLIN

Office of City Manager

MINUTES OF MEETING

DUBLIN PLANNING AND ZONING COMMISSION

MARCH 8, 1990

1. Special Permit SP89-013 - Chi Chi's Restaurant
2. Special Permit SP90-003 - Just for Feet - Dublin Village Center Phase III
3. Conditional Use Application CU90-002 - Progressive Rent-A-Car - Wendy's International, Inc.
4. Rezoning Application Z90-002 - Sivad Investment Company
5. Development Plan - State Farm Insurance - Perimeter Center
6. Development Plan - McDonald's - Perimeter Center
7. Final Plat - Heather Glen, Section 2
8. Development Plan - Bank One - Perimeter Center

The meeting of the Dublin Planning and Zoning Commission was called to order at 7:35 p.m. by Vice-chairman Melvin. Other Commission members in attendance were Mr. Amorose, Mr. Berlin, Mr. Kranstuber, Mr. Leffler, and Mr. Manus. Staff members in attendance were Mr. Bowman, Ms. Clarke, Mr. Willis, Mr. Mack, Mr. Jones, Ms. Jordan, Ms. Leitzell and Mr. Banchefsky. Mr. Bowman introduced Mr. Terry Foegler, recently hired as Dublin's Development Director.

Mr. Banchefsky announced that Dublin is experiencing a sanitary sewer problem, and the Ohio Environmental Protection Agency has invoked a ban. He stated that the Commission could review and approve plans as usual; however, this approval does not entitle an applicant to connect into Dublin's sanitary sewer system. While the City is currently under a building ban, the specifics on the extent of the ban are being reviewed with the OSPA. Mr. Banchefsky assured everyone that the City is working to expediently resolve the issue.

Following the roll call, Mr. Manus moved for approval of the minutes of the February 8, 1990, Dublin Planning and Zoning Commission meeting. The motion was seconded by Mr. Kranstuber, and the vote was as follows: Mr. Berlin, yes; Mr. Kranstuber, yes; Mr. Leffler, yes; Mr. Manus, yes; Mr. Amorose, yes; Mrs. Melvin, yes. (Approved 6-0)

1. Special Permit SP89-013 - Chi Chi's Restaurant

Ms. Clarke presented slides of the site and surrounding area along with information regarding the proposal as contained in the Staff Report dated March 8, 1990. The proposal is to install an eight-foot diameter, satellite dish antenna on the roof of Chi Chi's Restaurant which is located on the south side of Post Road. The dish will be located inside the six-foot high parapet walls which serve to screen the rooftop area. The proposal appears to address both the spirit and the letter of Dublin's Special Permit regulation, and Staff recommended approval.

Mr. Anthony Goldberg of Multivisions, the applicant, stated that an engineering site drawing showing the elevation of the dish antenna and the height of the parapet has been prepared. He stated that the drawing represents that the dish will not be visible by someone sitting in a car on either US 33/SR 161 or Post Road.

Mr. Leffler asked about the proposed color of the dish antenna. Mr. Goldberg replied that it will be a black mesh material but noted that Chi Chi's has agreed that the dish could be painted to match the color of the parapet if the City so desires.

Mr. Amorose noted concern about the severe pruning of the Code required landscape screening materials at the Chi Chi's Restaurant. He stated that he had called Chi Chi's to request that a representative attend the meeting to address his concerns. Mr. Goldberg stated that he will have Chi Chi's manager deliver a letter which states Chi Chi's commitment to comply with Dublin's pruning ordinance.

Mr. Amorose moved for approval of the Special Permit subject to the condition that no pruning is to be done on the perimeter landscaping at the Chi Chi's site. The motion was seconded by Mr. Manus, and the vote was as follows: Mrs. Melvin, yes; Mr. Kranstuber, yes; Mr. Berlin, yes; Mr. Manus, yes; Mr. Leffler, yes; Mr. Amorose, yes. (Approved 6-0)

Discussion ensued among Commission members about code enforcement or development issues being tied to subsequent plan approvals.

~~2. Special Permit SP90-003 - Just for Feet - Dublin Village Center III~~

~~Ms. Clark presented slides of the site and surrounding area as well as information regarding the proposal as contained in the Staff Report dated March 8, 1990. The proposal is to erect a ground-mounted, ten-foot diameter, mesh-type dish antenna at Just for Feet within the recently approved Phase III of Dublin Village Center. The dish is to be painted the same beige accent color as the center, and it will be located behind the building along the west elevation within the proposed service area just south of the existing Office America Store. Staff supported the proposal with additional screening by either mounding or evergreen trees to improve views from Village Parkway into the service area.~~

~~Mr. Bill Adams, representing Drexel Development Corp., distributed to Commission members a reduced plan showing the placement of the satellite dish antenna. He stated that a proposed future retail building on Village Parkway will screen views into this service area. Mr. Adams stated his agreement with the condition that additional evergreens be placed along Village Parkway temporarily, however, plans for a future building will include mounding and landscaping along Village Parkway similar to that in place along Dublin Center Drive. Mr. Adams stated that the dish is necessitated by the lack of cable television service in this area to accommodate the store's merchandising program.~~

~~Mr. Berlin moved for approval of the Special Permit for Just for Feet with the condition that the existing screening is augmented by additional evergreen trees. Mr. Amorose seconded the motion, and the vote was as follows: Mr. Berlin, yes; Mr. Leffler, yes; Mr. Amorose, yes; Mr. Manus, yes; Mrs. Melvin, yes; Mr. Kranstuber, yes. (Approved 6-0)~~

V I L L A G E O F D U B L I N

6665 Coffman Road
Dublin, Ohio 43017

=====

PLANNING AND ZONING COMMISSION/RECORD OF ACTION

=====

MEETING DATE: October 2, 1984

CASE: McKittrick Plat - Post Road

- COMMISSION ACTION: Mrs. Headlee moved that the Plat be _____ Approved
 approved with the following conditions: _____ Disapproved
1. That the landscaping will be the same as the Red Roof Inn _____
 scheme on Post Road. _____
 2. That the setback at the corner of Frantz Road be extended _____ Approved
 15' for a total of 50'. _____ With Condition
 3. That the frontage treatment be consistent
 4. That the building setback on the S.R. 161 side of lot #3
 1. will be extended to 20'
 5. That the developers have agreed to construct one additional lane in the
 2. vicinity of the curb cut on Post Road
 6. That the recommendations of the Village Planner written in his Staff Report
 3. be included. Those recommendations are as follows:
 4. a. That the intersection be found to be able to bear the additional
traffic.
 - b. That the curb cut configuration be found adequate.
 - c. That the developer agree to make the temporary improvements needed
- AGREEMENTS: to make the roadway work.
- d. That the landscaping along the road frontages be made uniform with
 additional landscaping at the corner.
 - e. -That some measure of architectural continuity be demonstrated to sedate
 what is to be a very busy intersection.

Mr. Berlin seconded the motion.

VOTE:

2nd			
<u>Yes</u>	Berlin	<u>Yes</u>	Jezerinac
<u>Yes</u>	Callahan	<u>Absent</u>	Macklin
1st			
<u>Yes</u>	Headlee	<u>Yes</u>	Miller
		<u>Yes</u>	Reiner

Ronald M. Jones 10/2/84
 Chairman Date

11-022V
 Non Use (Area) Variances
 Crown Fiat-Parking and Setback Variances
 5105 Post Road

Minutes of Meeting
Planning and Zoning Commission
October 2, 1984

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Mr. Miller mentioned the extension of Muirfield Drive, and it was determined that no one can do anything about the Orr property except the Village of Dublin.

Mr. Callahan mentioned that this Plan is a drastic improvement and much superior to the approved plan that now exists, and the traffic flow has been addressed as best it can be.

Mr. Helman said that the cost of capital improvements of the old plan, with improvements, would exceed the cost of the new plan.

Counsel told Mr. Jezerinac that only portions of the P.U.D. could be approved until the road system(s) is/are developed. (The link between Muirfield Drive and Brand Road is made, e.g.).

Mr. Reiner moved to table the Earlington Subdivision request for 30 days, suggested that Mrs. Headlee discuss with Council the possibility of purchasing the piece of property to provide the link, and also the possibility of bike path underpasses be investigated. As part of the motion Mr. Smith and Mr. Helman agreed to meet with interested private citizens on Thursday, October 18, 1984 at 7:00 P.M. in Council Chambers. It will not be a meeting of the Commission. Mr. Miller seconded the motion. The vote was as follows: Mr. Berlin, no; Mr. Callahan, yes; Mrs. Headlee, yes; Mr. Jezerinac, yes; Mr. Miller, yes; Mr. Reiner, yes.

Mr. Reiner moved to table the Brandon Subdivision request for 30 days. Mr. Miller seconded the motion. The vote was as follows: Mr. Berlin, no; Mr. Callahan, yes; Mrs. Headlee, yes; Mr. Jezerinac, yes; Mr. Miller, yes; Mr. Reiner, yes.

There was a give minute recess.

Mr. Jezerinac announced that the next Planning and Zoning Commission Meeting will be held Wednesday, November 7, 1984 at 7:00 P.M. (Tuesday, November 6, 1984 is Election Day.)

McKitrick Plat - Post Road

The area is approximately 6.5 acres of a 22 acre tract bounded by Post Road, Frantz Road and U.S. 33/S.R. 161. The applicant is proposing to create three lots; the uses for the lots going west from the corner would be a bank, a Bob Evans Restaurant, and a Chi Chi's Restaurant. Mr. Bowman mentioned that because the remaining portion of the 22 acres has been split, Ohio Revised Code requires that for the three lot splits on the 6.5 acres the remaining ground must be platted.

Mr. Bowman made the following comments and observations regarding the plat:

1. An agreement was made some time ago with Mr. McKitrick (when some right-of-way was taken from Mr. McKitrick) that two curb cuts would be identified for the entire 20 acres.

11-022V

Non Use (Area) Variances

Crown Fiat-Parking and Setback Variances

5105 Post Road

Minutes of Meeting
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October 2, 1984

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2. At issue were the splits themselves; what operational needs will be required to make the intersection work as well as the curb cut; identifying some of the setbacks, some of the landscaping, and even some compatibility of building styles.
3. Lot #1 is to be used by Chi Chi's Restaurant.
Lot #2 is to be used by Bob Evans Restaurant.
Lot #3 will probably be a financial institution. The lot has been deed restricted against a future restaurant use.
4. The curb cut is located between lots 1 and 2.
5. The developers have agreed to construct a frontage road.
6. An engineering study has been done but was not available to be presented at the meeting.
7. The developers have agreed to build a lane that will be a through lane to accommodate a turn lane into these three uses.
8. As regards the traffic study from an operational standpoint two issues must be addressed:
 - a. what will it take to make the use work,
 - b. to take a larger look at the intersection itself - what improvements will have to be done to the intersection to accommodate future land uses. It will probably involve two more lanes on the Frantz Road intersection. Most of the traffic goes to the I-270 outerbelt. Eventually there will have to be two left turn lanes into Post Road as well as two right turn lanes out of Post Road.
9. Probably the worst configuration at the intersection is the loop of Frantz Road that goes north into the OCLC site.
10. In the short term the improvements suggested to the developers (which they have agreed to create) will be a temporary solution until Post Road is widened from at least 161 to the bridge.
11. Lot #3 is a peninsular lot, very difficult to develop.
12. The site plan submitted shows a 10' building parking setback line. Chi Chi's setback line is 95' and Bob Evans' is 70'. The parking, however, comes up to the 10' line.
13. Additional landscaping is being suggested on the 10' line to be consistent with the Red Roof Inn site around the corner, and be picked up at the corner with a hedge row. The developers have also agreed that there will be 25' of landscaping from the new right-of-way.
14. Red Roof Inn will not use the service road.

Mr. Harrison Smith said that he felt that mounding works better than hedge in landscaping because of the potential littering problems associated with hedges. Concern was raised regarding the diversity of architectural styles. Mr. Smith, at Mr. Bowman's request, said that the Bob Evans Restaurant will be built of brick.

Mrs. Headlee and other Commission members hoped that the structures would be compatible and offer some continuity of design.

Mr. Miller thanked Mr. Bowman for his work on the traffic pattern and said that he felt this was the best that can be done.

Mrs. Headlee moved that the Plat be approved with the following conditions:

1. That the landscaping will be the same as the Red Roof Inn scheme on Post Road.
2. That the setback at the corner of Frantz Road be extended 15' (feet) for a total of 50' (feet).
3. That the frontage treatment be consistent.
4. That the building setback on the S.R. 161 side of lot #3 will be extended to 20'.
5. That the developers have agreed to construct one additional lane in the vicinity of the curb cut on Post Road.
6. That the recommendations of the Village Planner written in his Staff Report to Commission members be included. Those recommendations are as follows:
 - A. That the intersection be found to be able to bear the additional traffic.
 - B. That the curb cut configuration be found adequate.
 - C. That the developer agree to make the temporary improvements needed to make the roadway work.
 - D. That the landscaping along the road frontages be made uniform with additional landscaping at the corner.
 - E. That some measure of architectural continuity be demonstrated to sedate what is to be a very busy intersection.

Mr. Berlin seconded the motion. The vote was 6-0 in favor.

~~CDD Review - Office Project - Emerald Point.~~

~~This is a 9.65 acre tract located on the south side of West Dublin-Granville Road across the street from David Road. Mr. Bowman made the following comments:~~

- ~~1. This was to be an informal review of the parcel. It was rezoned in two phases in April and June of 1984. At that time the service road concept was identified; the beginning of that service road concept into the office site now would be developed.~~
- ~~2. Mr. Bowman raised questions regarding how the service road would be built, by whom, and noted that there are also some storm drainage questions involved.~~
- ~~3. In some instances the Village has required developers to build appropriate streets and service drives; in other instances they have required only that developers set aside the land.~~
- ~~4. The developers were requesting a waiver of curb and gutter.~~
- ~~5. Mr. Bowman said that at issue at present is: 1) the overall concept of development, and 2) the disposition and building of the service drives.~~

RECEIVED

Variance Statement for Crown Fiat - 5105 Post Road APR 04 2011

April 4, 2011

**CITY OF DUBLIN
LAND USE &
LONG RANGE PLANNING**

11-022V

A. Explain the requested variance.

5105 Post Road has been zoned as a Community Commercial district under Dublin Zoning Code section 153.028 for many years. The site has supported restaurant and most recently automotive sales uses. The Crown Automotive Group (Crown) has chosen the site as the proposed location for a new Fiat dealership to sell cars as part of a national launch of Fiat's "Cinquecento" (500) model introduction in the United States. Along with car sales, at the date of this variance request, Crown is also seeking approval of a conditional use permit within the existing Community Commercial district to allow automotive service. This would entail significant upgrades to the existing building, including the addition of service bays, which in turn triggers code compliance based on current conditions.

Since the site was last zoned, the City updated its Thoroughfare Plan, and widened the applicable rights-of-way along US 33 and Post Road. This dramatically impacts the available parking on the property for the conditional use requested by Crown. Today 200 parking spaces exist on the site. Without the restrictions of the new rights-of-way, up to 145 parking spaces would be allowed if the Fiat service bays were added. The new rights-of-way, mean the southern and northern setback lines are moved significantly into the site. This means the site would lose 49 parking spaces if the current building is expanded, the site is rezoned, or as in this case, the applicant desires to add a new use. The new setback lines mean that the site would be limited to 96 total parking spaces.

In addition, parking code allocations require that 66 spaces be available for general/business parking, leaving only 29 available for display parking. For the proposed conditional use, a required allocation of 66 spaces to general/business parking is excessive. In addition, Fiat USA requires that its dealers maintain at least 60 parking spaces for car display.

Without the requested variances to setback regulations along US 33 and parking requirements, the substantial investment in and upgrade of the site via the proposed auto sales and service uses would be lost. The requested variances would allow the site to keep and utilize a substantial portion of the existing parking for the proposed conditional use. The resulting parking spaces and ratios of general to display parking would be

adequate to meet parking needs based on the limited impact of this low volume, niche market dealership.

B. Identify the development text requirement or Code Section from which the proposal is varying.

The applicant specifically requests that variances from Section 153.072 and 153.212 of the Dublin Code be approved as follows:

- i. 153.072 (E): To allow up to 22 display spaces to remain within an approximate 40 foot encroachment into the required 50 foot pavement setback along US 33;
- ii. 153.212: To alter the code requirement that 1 parking space per 1000 square feet of outdoor display be required on site, so that 1 parking space per 2000 square feet of outdoor display space is allowed; And;
- iii. 153.212: To alter the requirement that 3 parking spaces per each service bay are required, so that 2 parking spaces per each service bay are allowed.

The resulting ratio of display spaces and general parking spaces shall allow at least 62 display spaces on the site.

C. Explain how the requested variance relates to the development standards applicable to the property.

- See (A) above.

D. If the applicant has been denied a Certificate of Zoning Compliance for the property in question, explain why the request was denied.

- Not applicable

E. Please provide any other information that would be helpful to the Board of Zoning Appeals in making their decision.

- See below

ADDRESSING OF REVIEW CRITERIA

A. The site is relatively small (2.5 acres) for many beneficial and/or potential future uses. The existing building is close to the end of its useful life and will need significant investment to support desirable uses. Any such upgrade, expansion or changes in use will likely face the same or similar challenges to overall viability based on the impact of parking and possible other code requirements based on the City's changes to rights-of-way and impact on setbacks. For this reason, there is a unique impact based on the property's location between two major thoroughfares. Other properties to the east between Post Road and US 33 are less impacted based on their ongoing stable and productive uses, and current occupancy. Similar properties to the west between Post Road and US 33 have more acreage to work with and thus more flexibility.

B. The special condition comes from the City's changing the rights-of-way along both Post Road and US 33. The existing site parking would be adequate for the applicant's requested conditional use but for the City' action.

C. If the proposed variances are granted the applicant will meet City Code requirements for open space, lot coverage, parking and will be Code compliant overall. (Outside of the variances requested.) No adverse impact to the property or vicinity will result as the essentially the current conditions, with less parking, will be allowed to continue. The City will gain jobs and positive investment in the property, with fewer parking spaces in service than exists today and less intensive traffic to the site compared to alternative uses that could keep and utilize all existing parking.

D. The applicant is only asking that the requested variances run with the proposed conditional uses, so it does not believe that a special privilege will be conferred on the property owner in comparison to other owners in the same zoning district.

E. The specific conditions that apply in this situation are unique and not likely to apply in general and be recurrent to make the formation of general regulation practical for other sites. First, few properties of this small size and without a stable and ongoing use exist between Post Road and US 33, where changes to both rights-of-way operate to restrict the maximization of the property's beneficial use. Second, the parking needs of this applicant are unique in that enough actual parking exists to support the proposed use, but the required allocation of parking spaces based on the code, in combination with new setbacks lines, operates in a manner that uniquely restricts this use without variances. Most commercial businesses do not need as many parking display spaces in relation to general/business parking. This is based on the applicant's need for a specific

number of display spaces (60) required by the manufacturers' specifications. Finally, the proposed dealership is low impact, and most appropriate for a smaller site based on low volume sales, and niche target market. The site and dealership will only support approximately 15 total employees. Most other new car dealerships would need much larger site acreage in order to support greater employee, customer, parking and display needs. Only larger properties could support such size, scale and need. In the case of large volume car dealerships, which involve large scale operations, employee numbers and car volume, variance requests for setback and display parking could not likely overcome the limitations of a smaller site.

F. There would be no impact of government service delivery from the grant of the variances.

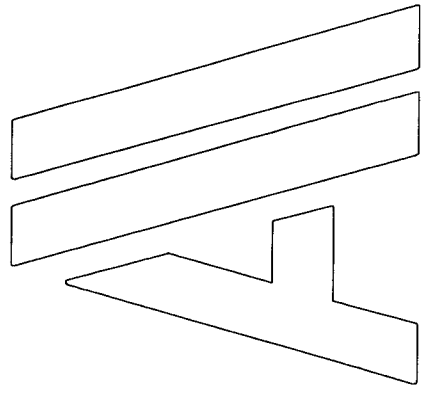
G. The practical difficulty of the proposed use cannot be overcome without a variance as the impact of the rights-of-way on setback lines and the required allocation of parking spaces operate to create noncompliance with parking code regulations. The variances requested are the only method to allow the proposed use to work on this site.



CROWN FIAT

BZA SUBMITTAL

4.4.2011



165 NORTH FIFTH STREET | COLUMBUS OHIO 43215
P. 614-498-7500 | F. 614-498-0500 | www.archall.com
ARCHITECTURAL ALLIANCE

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APR 04 2011

CITY OF DUBLIN
LAND USE &
LONG RANGE PLANNING

11-032 V

Drawings
 Preliminary 2.15.11
 Bid Set
 Permit
 Construction

Project Number
A10-075

Set

Revisions
△ 3.17.11
△ 3.31.11
△ 4.1.11
△
△

PROPERTY INFORMATION

Parcel No. 273-002458-00
 ROBY HOLDING CO LLC
 5105 Post Road
 Dublin, Ohio 43017-1115
 2.5 Acres

ADJACENT PROPERTY OWNERS

Parcel No. 273-002459
 BEF REIT Inc.
 5067 Post Road
 Dublin, Ohio 43017-1115

Parcel No. 273-000321
 CAR MAG LLC
 5002 Post Road
 Dublin, Ohio 43017

Parcel No. 273-003800
 Hinderer Family Realty LLC
 5100 Post Road
 Dublin, Ohio 43017

Parcel No. 273-002463
 R-Roof III LLC
 4001 International Parkway
 Carrollton, TX 75007

CROWN FIAT

5105 POST ROAD | DUBLIN, OHIO

Scale

- Change
- Preliminary
 - Bas Set
 - Permit Set
 - Construction

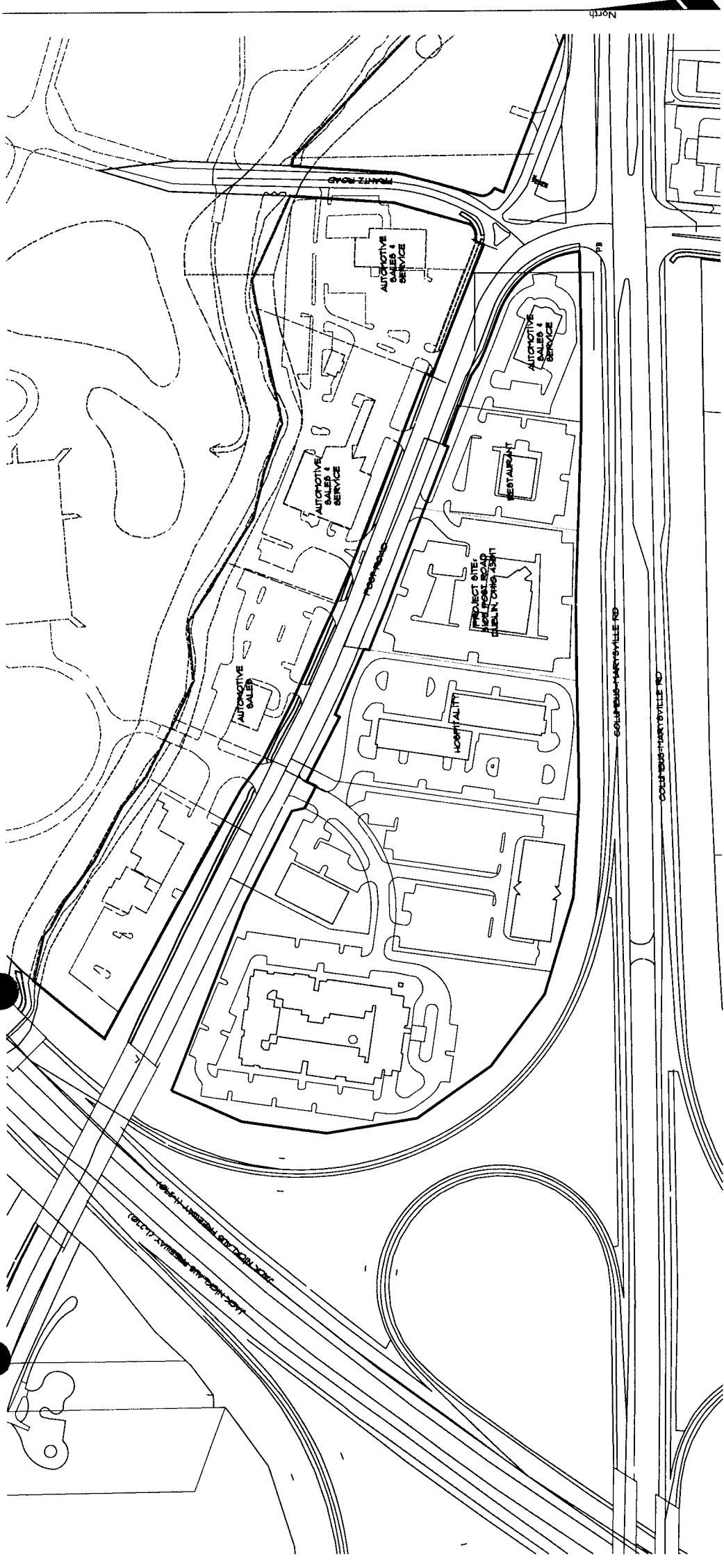
- Revisions
- △ 01.12.11
 - △ 02.22.11
 - △ 03.01.11
 - △ 04.01.11
 - △ 05.01.11
 - △ 06.01.11
 - △ 07.01.11
 - △ 08.01.11
 - △ 09.01.11
 - △ 10.01.11
 - △ 11.01.11
 - △ 12.01.11

Project Number
 A10_075

Sheet Title
 SITE INFORMATION

Sheet Number

0.01



LOCATION/VICINITY MAP
 SCALE: 1" = 100'

CC COMMUNITY COMMERCIAL
 SO SUBURBAN OFFICE
 LI LIMITED INDUSTRIAL

CROWN FIAT

5105 POST ROAD | DUBLIN, OHIO

Scale

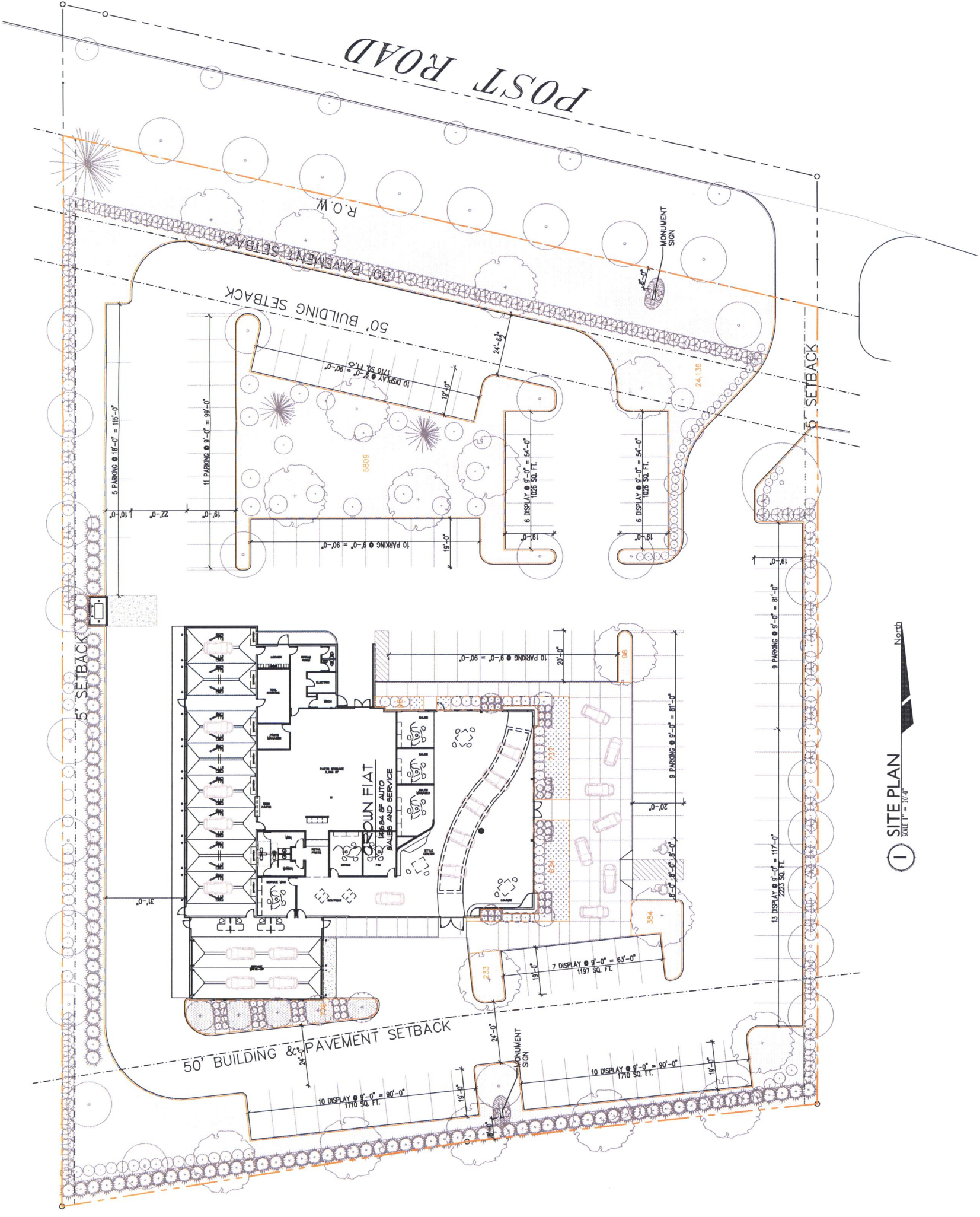
Drawings	Date
Final	02.15.11
Permit Set	03.31.11
Construction	04.04.11

Revisions	Date	Description
1	02.17.11	
2	03.31.11	
3	04.04.11	
4		
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8		
9		
10		

REQUIRED PARKING CALCULATION:

BUSINESS	9,175/260 = 32.4 + 33
SERVICE BAYS	4,950/100 = 50 or 82 + 16
DISPLAY AREA	15,054/2600 = 6.35 + 1
TOTAL	90% SPACES

PROVIDED SPACES	56
PARKING DISPLAY	62
TOTAL SPACES PROVIDED	118 SPACES
OUTDOOR DISPLAY AREA	10,602
INLAND SPACES AREA	2,482
PLAZA AREA	
TOTAL OUTDOOR DISPLAY AREA	13,084 SF.
LOT COVERAGE:	
TOTAL SITE	1,049,961 SF.
REQUIRED GREEN SPACE (MIN. 30% OF SITE)	326,984 SF.
ACTUAL GREEN SPACE	327,509 SF. (320.15% OF TOTAL SITE)



1 SITE PLAN
 SCALE 1" = 20'-0"
 North

City of Dublin Agenda

BOARD OF ZONING APPEALS

Dublin Municipal Building
5200 Emerald Parkway
Thursday, April 28, 2011
6:30pm

Our Mission...

The City of Dublin strives to preserve and enhance the unique high quality offered to those who live and work in our community by providing the vision, leadership and performance standards which allow for managed growth and development. We endeavor to deliver our services cost-effectively, with an emphasis on quality and innovation. The City of Dublin seeks recognition in the field of local government as being responsive, cooperative, and culturally and environmentally sensitive, while embracing the highest standards of integrity and accountability to those we serve.

Victoria Newell, Chair
Patrick Todoran, Vice Chair
Brett Page
Kathy Ferguson
Brian Gunnoe



CITY OF DUBLIN™

- I. ROLL CALL
- II. ELECTION OF OFFICERS
- III. ACCEPTANCE OF DOCUMENTS
- IV. APPROVAL OF MINUTES – January 17, 2011
- V. COMMUNICATIONS
- VI. CASES

New Case:

- 1. **Crown Fiat – Parking and Setback Variances** **5105 Post Road**
11-022V **Non-Use (Area) Variances**

Proposal: Non-use (area) variances to permit vehicular use areas to encroach the required 50-foot setback from State Route 161 by 40 feet and to permit 15 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership. The site is zoned CC, Community Commercial District, and is located on the south side of Post Road approximately 600 feet west of the intersection with Frantz Road.

Request: Review and approval of variances to Zoning Code Sections 153.072(E) and 153.212 under the provisions of Zoning Code Section 153.231.

Applicant: Crown Automotive Group, represented by Mike Close and Tom Hart, attorneys.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

- VI. ADJOURNMENT



CITY OF DUBLIN.

NOTICE OF MEETING

DUBLIN BOARD OF ZONING APPEALS

DATE: Thursday, April 28, 2011
TIME: 6:30 p.m.
PLACE: Dublin Municipal Building
5200 Emerald Parkway

It is the policy of the Dublin Board of Zoning Appeals to notify the applicant and adjacent property owners of pending Variances, Special Permit applications and Administrative Appeals.

If you are unable to attend the meeting and want more information, please contact Rachel Ray, AICP, Planner I, at 410-4600. If you have any questions or comments concerning the pending case, please attend this meeting. The meeting starts promptly at 6:30 p.m. and it is advisable that you are present at that time. Meetings are held within the Council Chambers of the Municipal Building located at 5200 Emerald Parkway.

Crown Fiat – Parking and Setback Variances 11-022V

5105 Post Road Non-Use (Area) Variances

Proposal: Non-use (area) variances to permit vehicular use areas to encroach the required 50-foot setback from State Route 161 by 40 feet and to permit 15 fewer parking spaces for vehicle service and display areas than required by the Zoning Code for an automobile dealership. The site is zoned CC, Community Commercial District, and is located on the south side of Post Road approximately 600 feet west of the intersection with Frantz Road.

Request: Review and approval of variances to Zoning Code Sections 153.072(E) and 153.212 under the provisions of Zoning Code Section 153.231.

Applicant: Crown Automotive Group, represented by Mike Close and Tom Hart, attorneys.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

11-022V 5105 Post Road

Crown Fiat – Non-Use Variance

- Michael L. Close, Esq.
Wiles, Boyle , Burkholder &
Bringardner Co. LPA
300 Spruce Street, Suite 100
Columbus, OH 43215

R-Roof III LLC
4001 International Parkway
Carrollton, TX 75007

- Roby Holding Co. LLC
7100 Muirfield Drive
Dublin, OH 43017

BEF REIT Inc.
5067 Post Road
Dublin, OH 43017-1115

- Marc Wigler
Crown Automotive Group
6350 Perimeter Loop
Dublin, OH 43017

Hinderer Family Realty LLC
5100 Post Road
Dublin, OH 43017

1. **Crown Fiat – Non-Use Area Variance**
11-022V

5105 Post Road
Variance

Proposal: A variance to the required parking setback and parking requirements for a proposed automobile dealership on an existing site zoned CC, Community Commercial District, located on the south side of Post Road, approximately 600 feet west of the intersection of Frantz Road and Bridge Street.

Request: Review and approval of a variance application under the provisions of Code Section 153.231.

Applicant: Crown Automotive Group, represented by Marc Wigler.

Planning Contact: Claudia D. Husak, AICP, Planner II.

Contact Information: (614) 410-4675, chusak@dublin.oh.us

CASE NUMBER 11-022V **ORDINANCE NO.**

CASE/REVIEW TYPE

VARIANCE NON-USE AREA

PROJECT NAME

CROWN FIAT

DEVELOPMENT TEXT

STREET NUMBER 5105 **STREET NAME/INTERSECTION** POST ROAD **MAP ZONE** 3

PARCEL NO. 273-002458 **ACREAGE** 2.052 **CURRENTLY ZONED** CC

APPLICANT'S NAME CROWN AUTO GROUP **CONTACT PERSON** MARC WIGLER

TELEPHONE 614-761-2360 **FACSIMILE AND/ OR EMAIL** MWIGLER@CROWNCARS.COM

PLANNER HUSAK **DATE APPLICATION RECEIVED** 04/04/2011

RELATED CASE

ARB DATE **ARB ACTION** **ART DATE** **ART DECISION**

BZA DATE **BZA ACTION** **RECEIPT NO** 327824

P&Z DATE **P&Z ACTION** **AMOUNT OF FEE** 1800.00

COUNCIL DATE **COUNCIL ACTION** **AMOUNT OF FEE RECEIVED** 1800.00

LASERFICHD **STORAGE BOX**

Give a short two to three sentence description of the request. See application for details and refer to plans, if necessary. Thank You.

THIS IS A PROPOSAL FOR A VARIANCE TO THE REQUIRED PARKING SETBACK AND PARKING REQUIREMENTS FOR A PROPOSED AUTOMOBILE DEALERSHIP ON AN EXISTING SITE ZONED CC, COMMUNITY COMMERCIAL DISTRICT, LOCATED ON THE SOUTH SIDE OF POST ROAD, APPROXIMATELY 600 FEET WEST OF THE INTERSECTION OF FRANTZ ROAD AND BRIDGE STREET. THIS IS A REQUEST FOR REVIEW AND APPROVAL OF A VARIANCE APPLICATION UNDER THE PROVISIONS OF ZONING CODE SECTION 153.231.

DESIGN REVIEW SPECIALIST

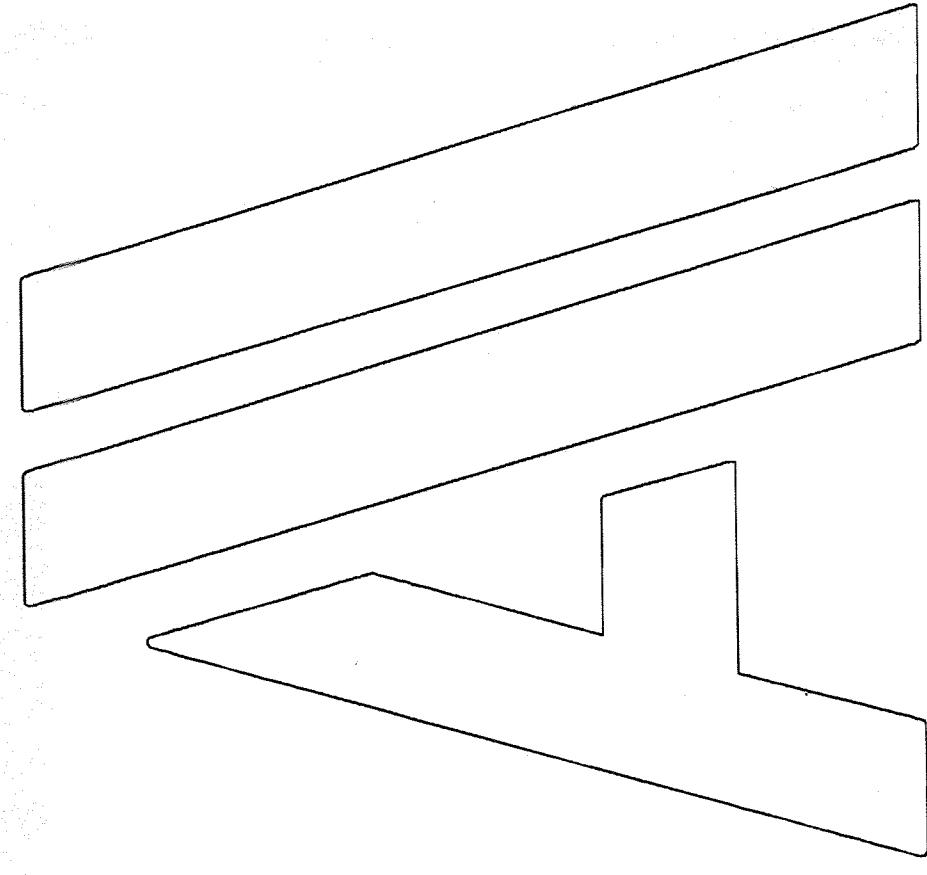
PLANNING INTERN RYAN CLARK



CROWN FIAT

BZA SUBMITTAL

5.5.2011



165 NORTH FIFTH STREET | COLUMBUS OHIO 43215
P. 614.469.7500 | F. 614.469.0500 | www.archall.com
ARCHITECTURAL ALLIANCE

Drawings
 Preliminary 2/18/11
 Bid Set
 Permit
 Construction

Project Number A10-075

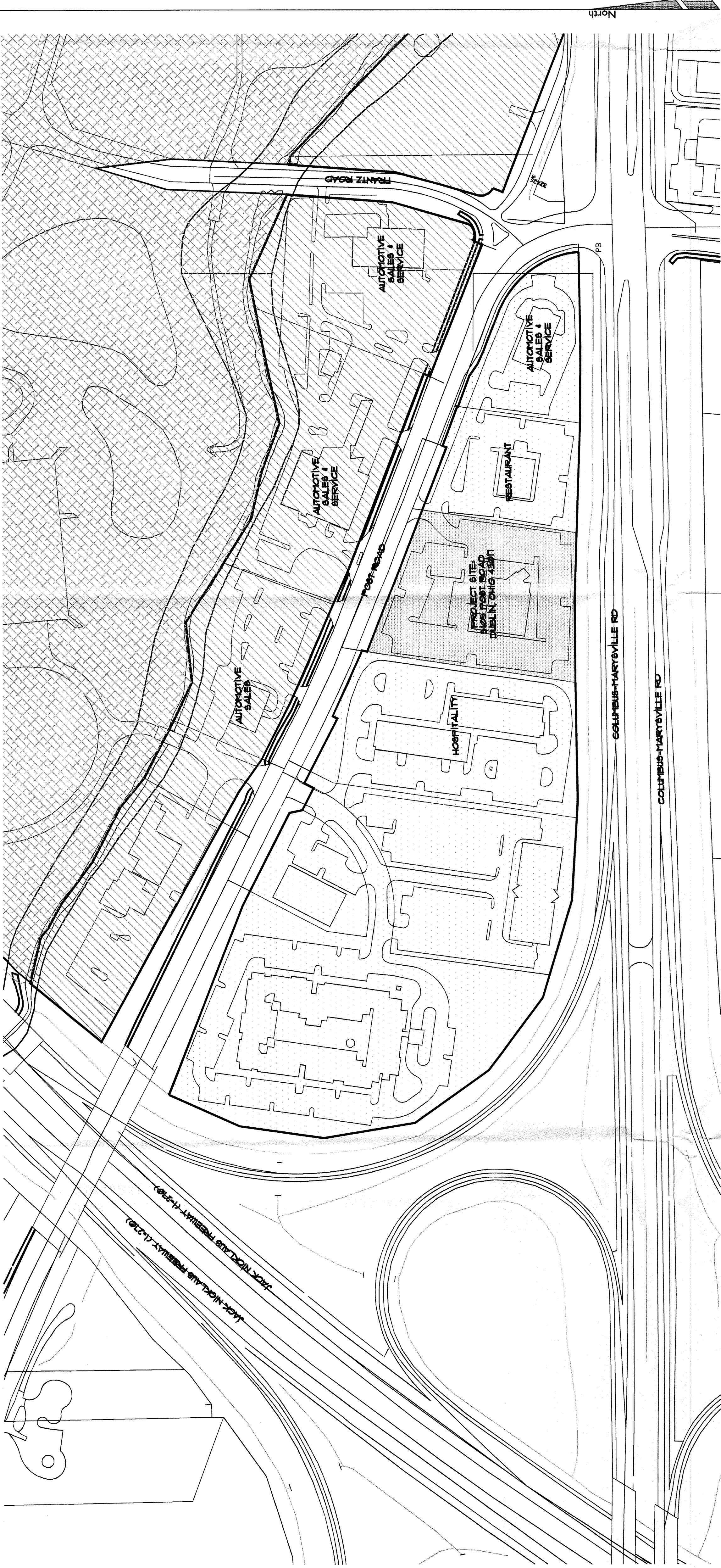
Revisions
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A 3/31/11
A 4/12/11
A 5/9/11
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Scale

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11-022V

MAY 05 2011
CITY OF COLUMBUS
PLANNING DEPARTMENT
LONG RANGE PLANNING



LOCATION/MICINITY MAP
SCALE: 1" = 100'

- PROPERTY INFORMATION**
- Parcel No. 273-002458-00
 - ROBY HOLDING CO LLC
 - 5105 Post Road
 - Dublin, Ohio 43017-1115
 - 2.5 Acres
- ADJACENT PROPERTY OWNERS**
- Parcel No. 273-002459
 - BEF REIT Inc.
 - 5067 Post Road
 - Dublin, Ohio 43017-1115
 - Parcel No. 273-000321
 - CAR MAG LLC
 - 5002 Post Road
 - Dublin, Ohio 43017
 - Parcel No. 273-003800
 - Hinderer Family Realty LLC
 - 5100 Post Road
 - Dublin, Ohio 43017
 - Parcel No. 273-002463
 - R-Roof III LLC
 - 4001 International Parkway
 - Carrollton, TX 75007

CROWN FIAT
5105 POST ROAD | DUBLIN, OHIO

Drawings

- Preliminary
- Set
- Permit Set
- Construction

Revisions

▲	03.17.11	
▲	03.21.11	
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Drawings

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□	Permit Set	
□	Construction	

Revisions

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△	02/21/11	
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REQUIRED PARKING CALCULATIONS:

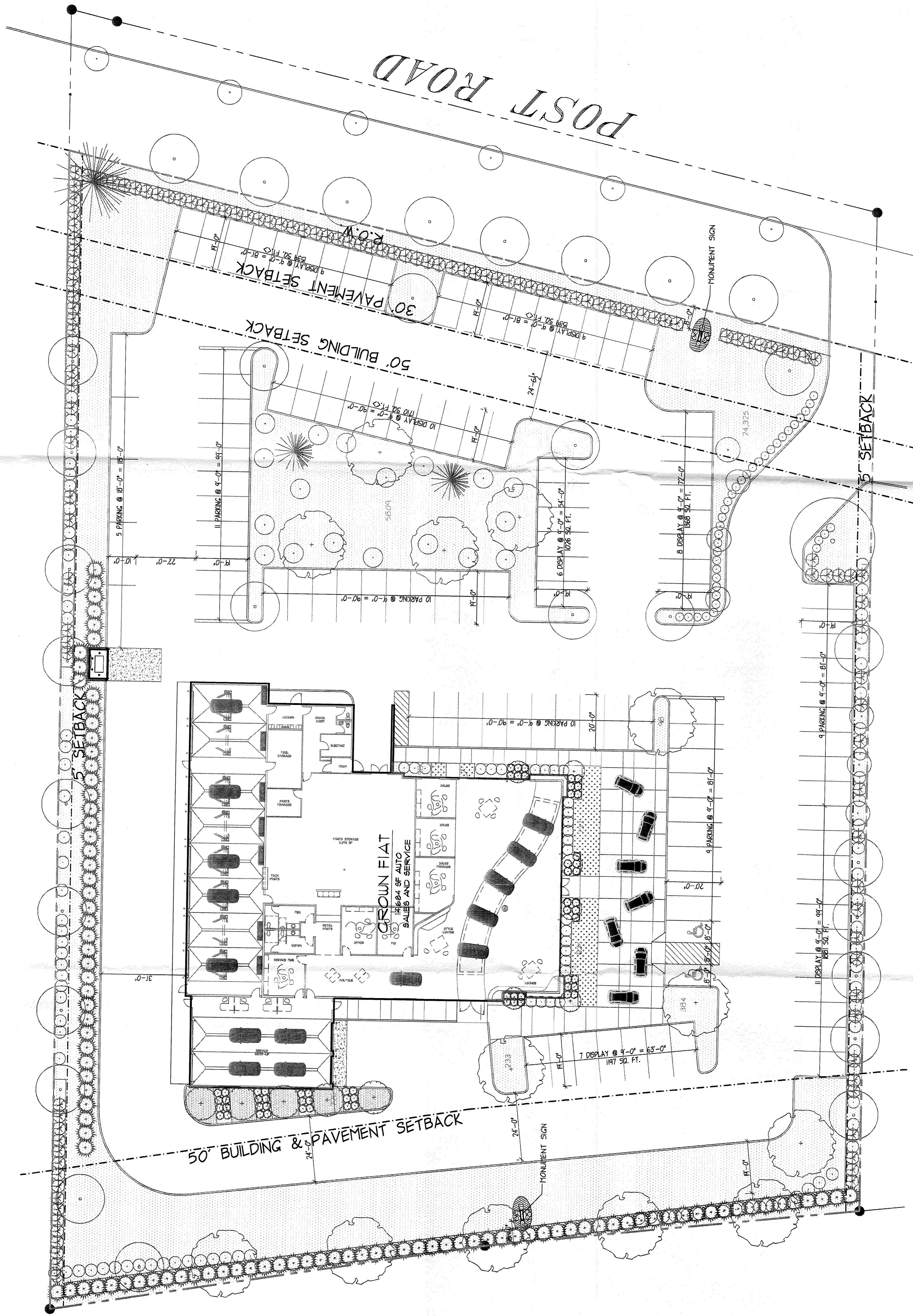
BUSINESS	9,125/200 = 32.4 + 33
SERVICE BAYS	4,555/100 = 50 + 82 = 16
DISPLAY AREA	12,602/2,451 = 5.14
TOTAL	30796 SPACES

PROVIDED SPACES

PARKING DISPLAY	56
TOTAL SPACES PROVIDED	116 SPACES

TOTAL SPACES PROVIDED: 116 SPACES

OUTDOOR DISPLAY AREA: 12,602
DISPLAY SPACE AREA: 2,451
TOTAL OUTDOOR DISPLAY AREA: 12,110 SF.
LOT COVERAGE:
TOTAL SITE = 102,981 SF.
REQUIRED GREEN SPACE (MIN. 30% OF SITE) = 33,894 SF.
ACTUAL GREEN SPACE = 33,024 SF. (30.36% OF TOTAL SITE)



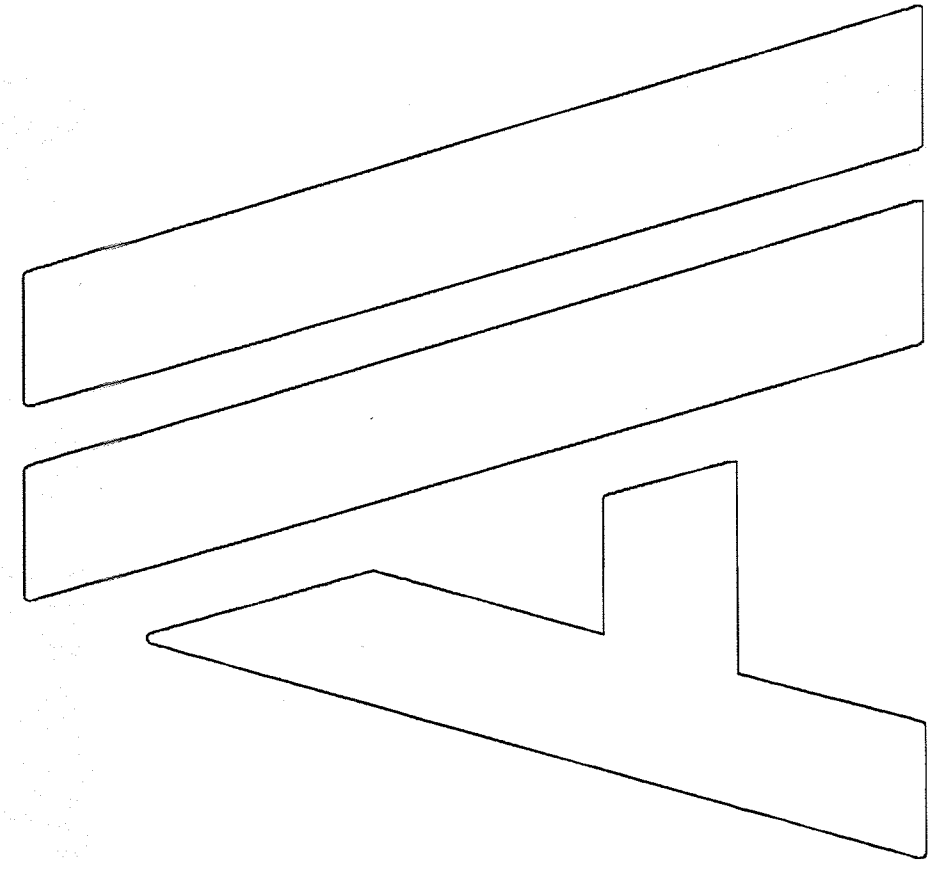
1 SITE PLAN
SCALE 1" = 20'-0"
North



CROWN FIAT

BZA SUBMITTAL

5.5.2011



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P. 614.469.7500 | F. 614.469.0500 | www.aarchall.com
ARCHITECTURAL ALLIANCE

Drawings
 Preliminary 2/15/11
 Bid Set
 Permit
 Construction

Project Number
A10-075

Revisions
A 3/17/11
A 3/18/11
A 4/14/11
A 5/16/11
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A

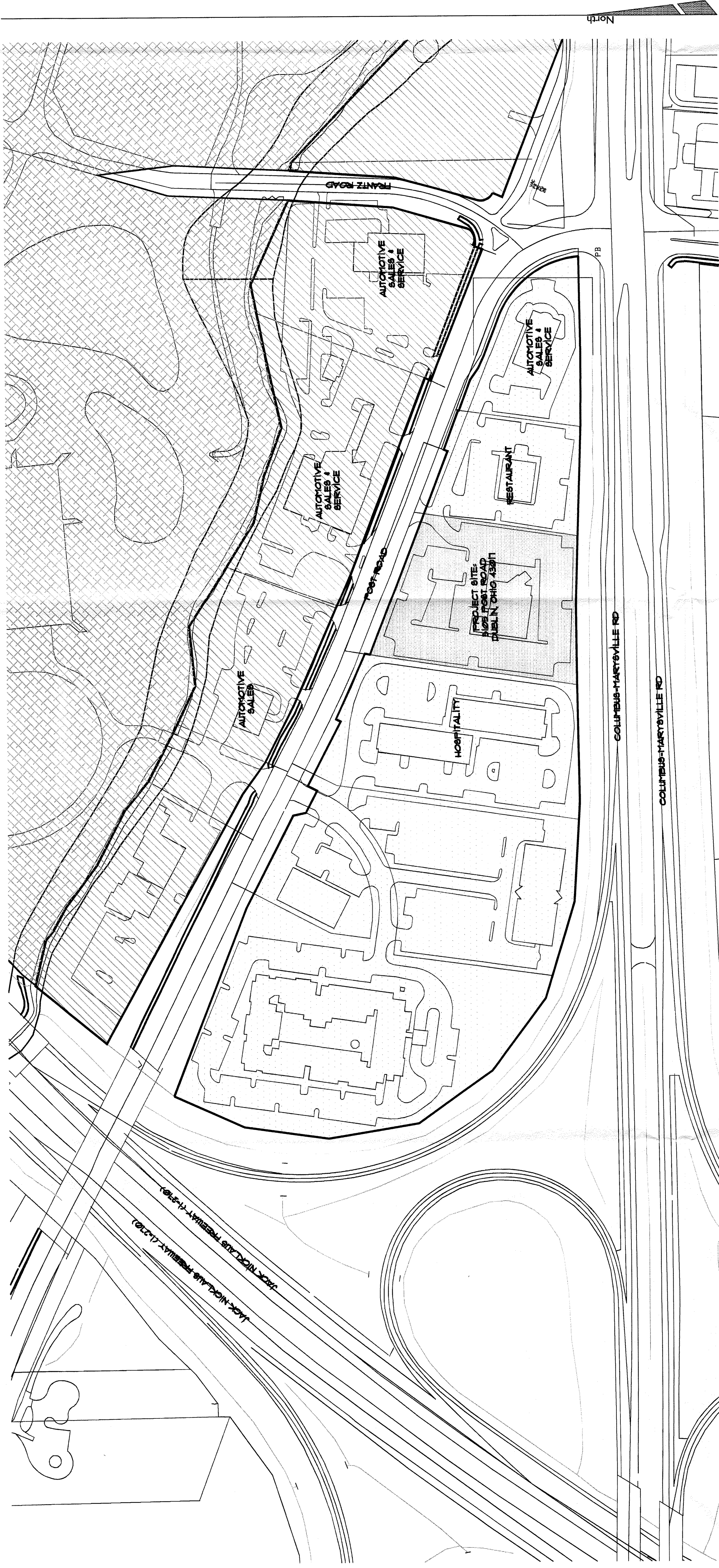
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11-033V
MAY 06 2011
CITY OF DUBLIN
LAND USE &
LONG RANGE PLANNING

Att 4 do not use



LOCATION/VICINITY MAP
SCALE: 1" = 100'

- CC COMMUNITY COMMERCIAL
- SO SUBURBAN OFFICE
- LI LIMITED INDUSTRIAL

PROPERTY INFORMATION

Parcel No. 273-002458-00
 ROBY HOLDING CO LLC
 5105 Post Road
 Dublin, Ohio 43017-1115
 2.5 Acres

ADJACENT PROPERTY OWNERS

Parcel No. 273-002459
 BEF REIT Inc.
 5067 Post Road
 Dublin, Ohio 43017-1115

Parcel No. 273-000321
 CAR MAG LLC
 5002 Post Road
 Dublin, Ohio 43017

Parcel No. 273-003800
 Hinderer Family Realty LLC
 5100 Post Road
 Dublin, Ohio 43017

Parcel No. 273-002463
 R-Roof III LLC
 4001 International Parkway
 Carrollton, TX 75007

CROWN FIAT
 5105 POST ROAD | DUBLIN, OHIO

Scale

Drawings	
<input checked="" type="checkbox"/> Preliminary	02.15.11
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<input type="checkbox"/> Permit Set	
<input type="checkbox"/> Construction	
Revisions	
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Drawings

- Preliminary 02.15.11
- 90% Set
- Permit Set
- Construction

Revisions

03.17.11	
03.21.11	
04.04.11BZA	
05.05.11BZA	

REQUIRED PARKING CALCULATIONS:

BUSINESS	11366/200-318 = 38
SERVICE BAYS	3085/200-31 = 82.16
DISPLAY AREA	13996/2000 = 7
TOTAL: 16/61 SPACES	

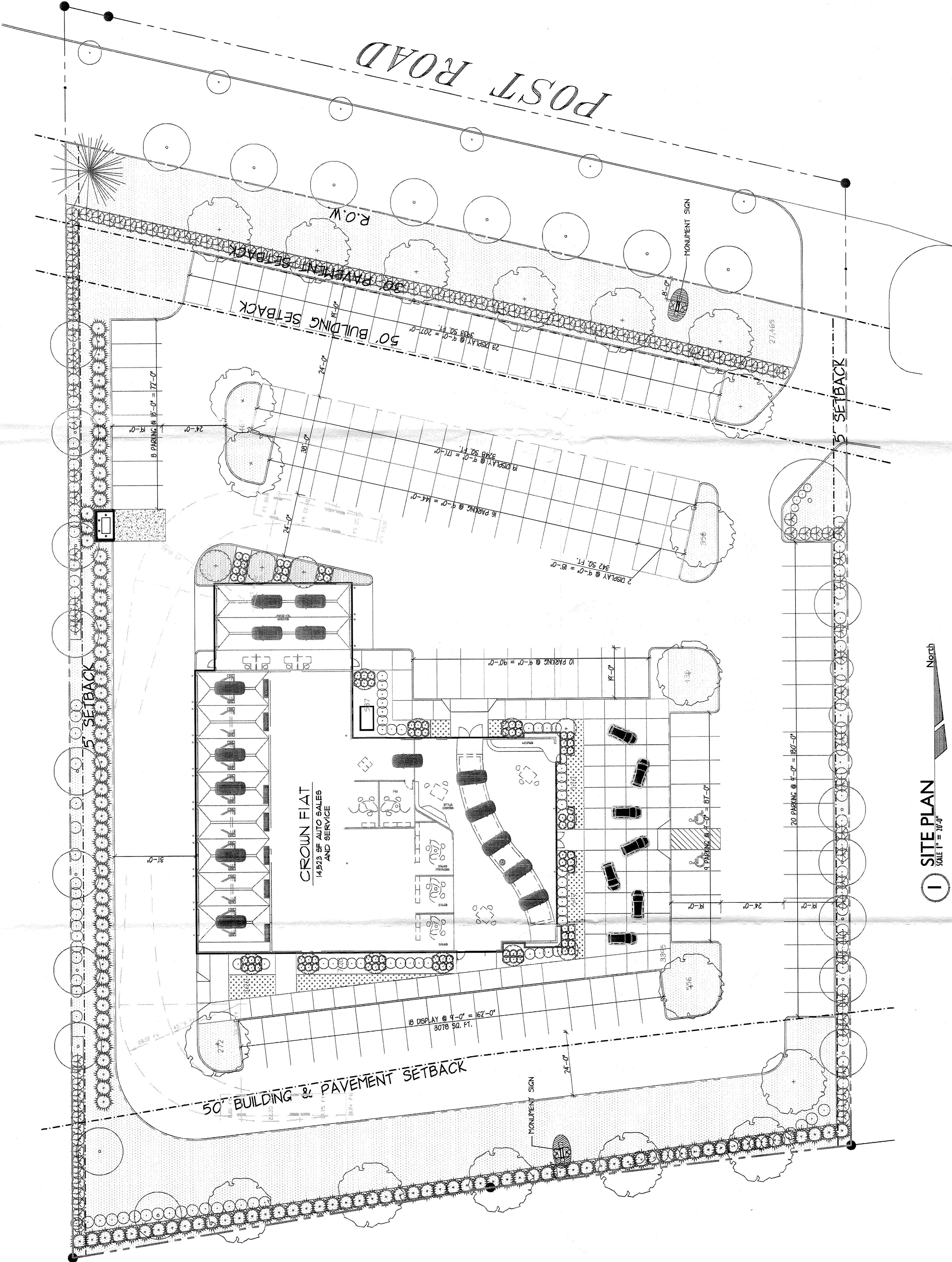
PROVIDED SPACES

PARKING DISPLAY	63
TOTAL SPACES PROVIDED: 125 SPACES	

OUTDOOR DISPLAY AREA
DISPLAY SPACE AREA: 10,600
PLAZA AREA: 3,335

TOTAL OUTDOOR DISPLAY AREA: 13,936 SF.

LOT COVERAGE:
TOTAL SITE = 102,930 SF.
REQUIRED GREEN SPACE (MIN. 30% OF SITE) = 32,654 SF.
ACTUAL GREEN SPACE
= 32,835 SF. (32.02% OF TOTAL SITE)



1 SITE PLAN
SCALE 1" = 30'-0"
North