

Understanding and Regulating Non-Conformities

Presented by: David Hartt and Mike Lucas

**NE Ohio Planning and Zoning Workshop
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Description and Definitions

- When a use or site condition legally exists but is not in compliance with the current regulations.

Description and Definitions

- These can be non-conforming:
 - **Uses**
 - **Building location** — *setback, height, size, coverage*
 - **Site conditions** — *location of parking, no. of parking spaces, landscaping, buffering, etc.*
 - **Lot conditions** — *lot size, lot width*

Description and Definitions

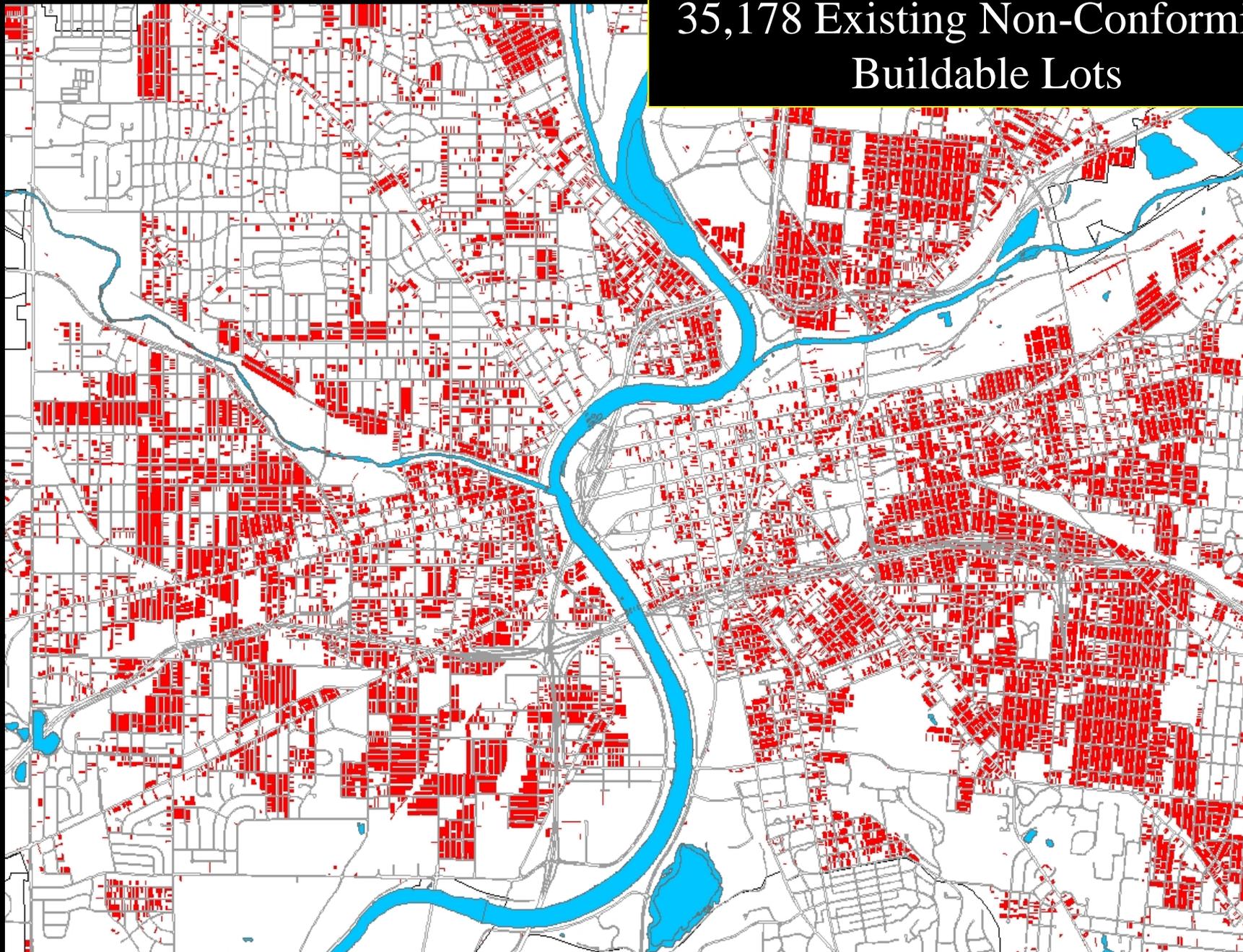
- Remember...

...the difference between a **non-conforming** condition and an **illegal** condition.

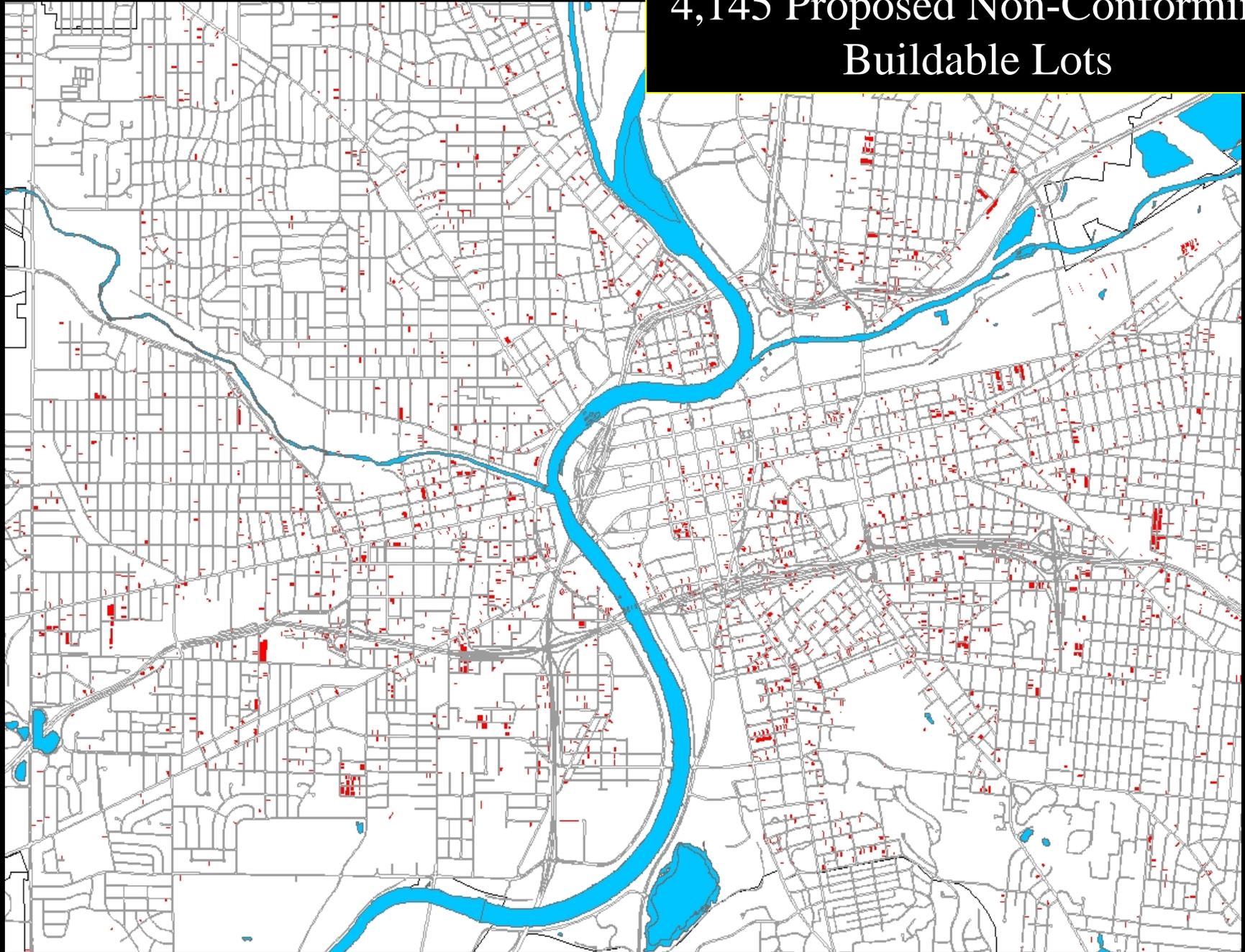
Understanding Purposes and Planning Realities

- **Why is the non-conformity intended...or...in the public interest.**
 - **Take seriously**
 - **Times, conditions, and needs change**
 - **Are community objectives the same as when code was adopted**
 - **Consistent with investment aspirations**
 - **Implications of requiring variances**

35,178 Existing Non-Conforming
Buildable Lots



4,145 Proposed Non-Conforming Buildable Lots



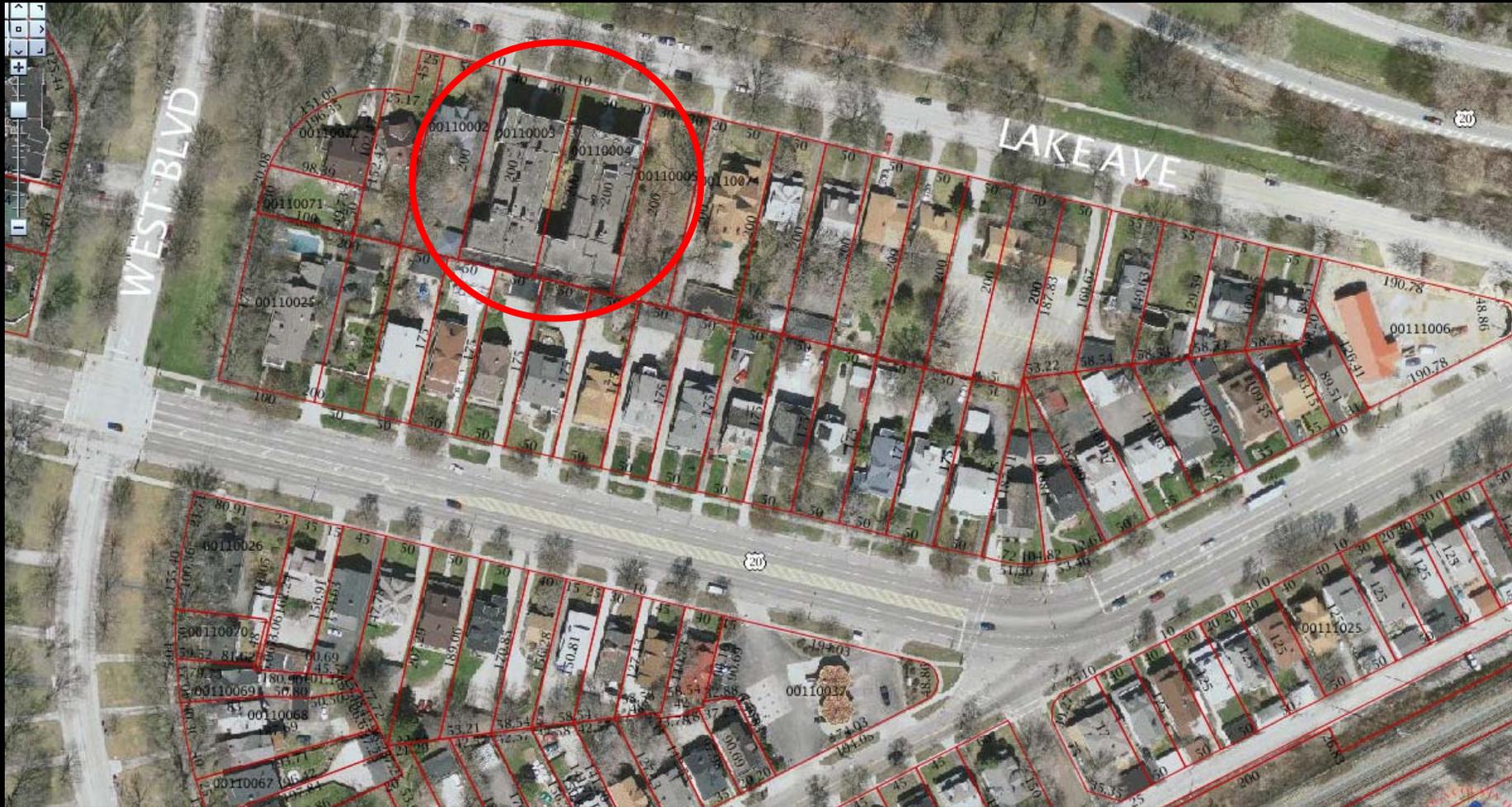
Understanding Purposes and Planning Realities

- **Non-conforming Uses don't easily go away...particularly in non-suitable building.**
 - **Vacancy**
 - **Disinvestment**
 - **Deterioration**

Example - Uses



Example - Uses



Understanding Purposes and Planning Realities

- **Importance AND implications of moving toward complying site conditions...i.e.**
 - **Parking**
 - **Landscaping,**
 - **Buffering,**
 - **Driveway locations,**
- **Financing more difficult if asset and revenue can't be restored once building is demolished.**

Understanding Purposes and Planning Realities

- **Should the regulations be amended to reduce non-conforming uses and conditions?**

The Legal Framework

The Regulations

- **Make regulatory distinctions among the various non-conformities.**
- **Permit substitution of non-conforming uses. *Exhibit A***
- **Consider permitting expansion of buildings with non-conforming uses**

The Regulations

- Permit expansion of use within existing building. *Exhibit B*
- Permit full redevelopment of property if destroyed by storm, fire, etc.

The Regulations

- Require non-conforming site conditions to be eliminated when site development is modified... but... can't happen...so...
 - Negotiate moving toward compliance
 - Be reasonable considering...
 - Size of investment
 - Importance of eliminating condition
 - Can't quantify “degree of upgrade” or “percentage” *Exhibit C*

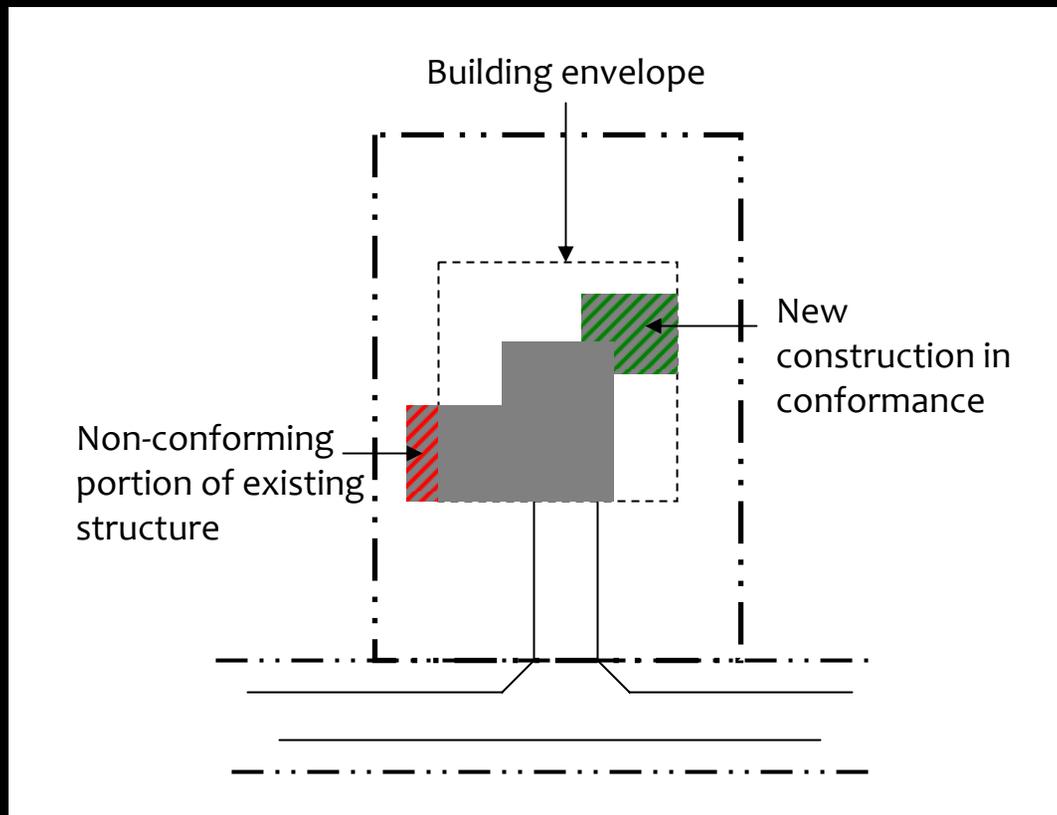
Example – Site Conditions



The Regulations

- Permit a **conforming** expansion even when other nonconforming conditions exist.
- Don't require variances to bless a non-conforming condition when...
 - A site plan is modified
 - A use is changed.
 - A property is rezoned

Example – Building Location



Example 1 - Options

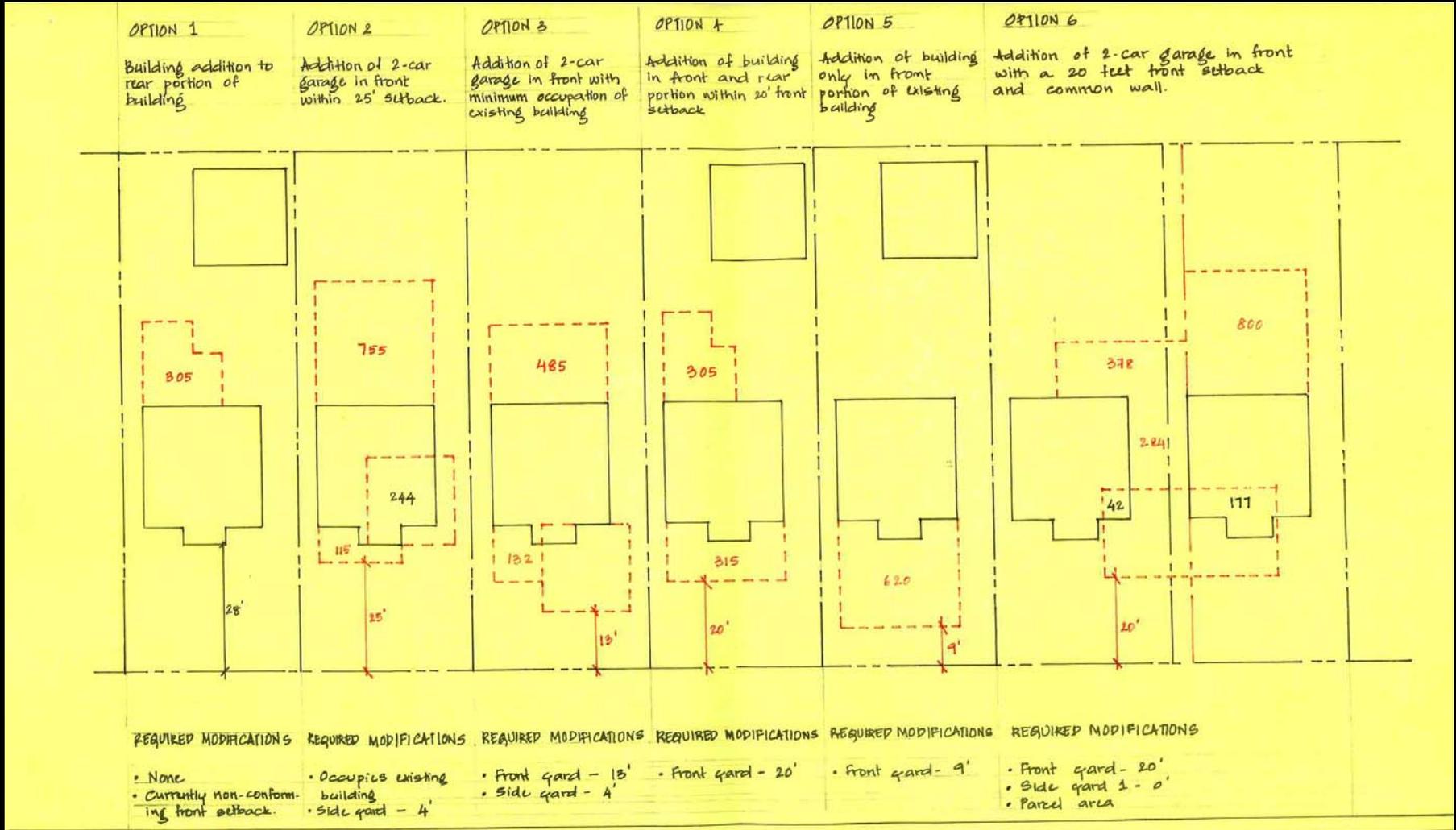


EXHIBIT 8 - R-40 AREA 2 - POSSIBLE BUILDING CONFIGURATIONS
PROMOTING HOUSING INVESTMENTS
SOUTH EUCLID.

PREPARED: D.B. HART INC.
SCALE: 20 FEET

The Use Variance

- May be **perfect** solution:
 - When existing or alternative zoning classifications are equally unacceptable.
 - Improving business obsolescence
 - Expansion of business; prevent new independent business
 - Existing building not suited for permitted uses
 - Expanded parking
 - Density increase
 - Permits relief and control greater than standard zoning.

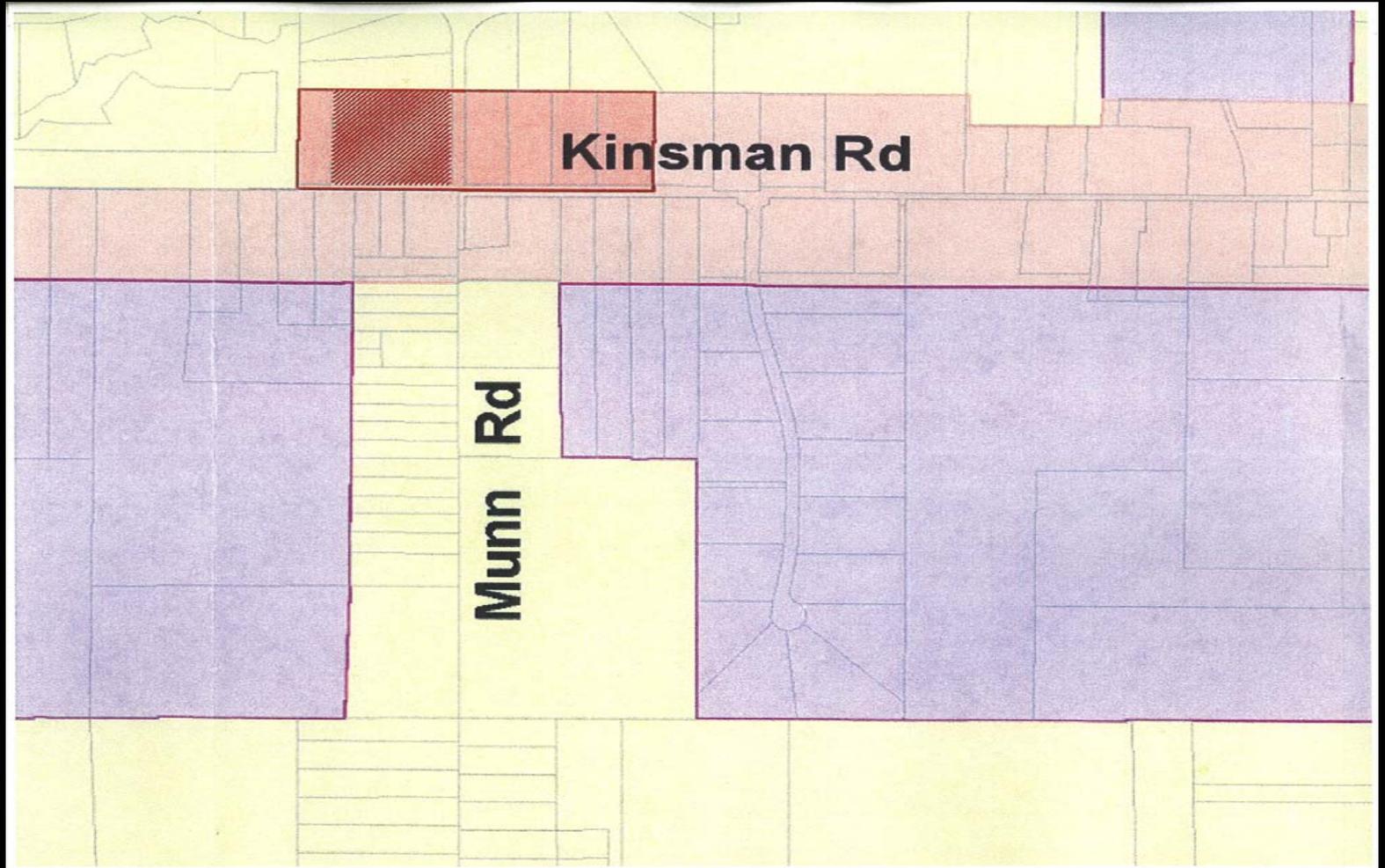
The Use Variance

- **Must be used sparingly.**
- **But, applying the “standard review criteria” will never result in relief. *Exhibit D***

Use Variances

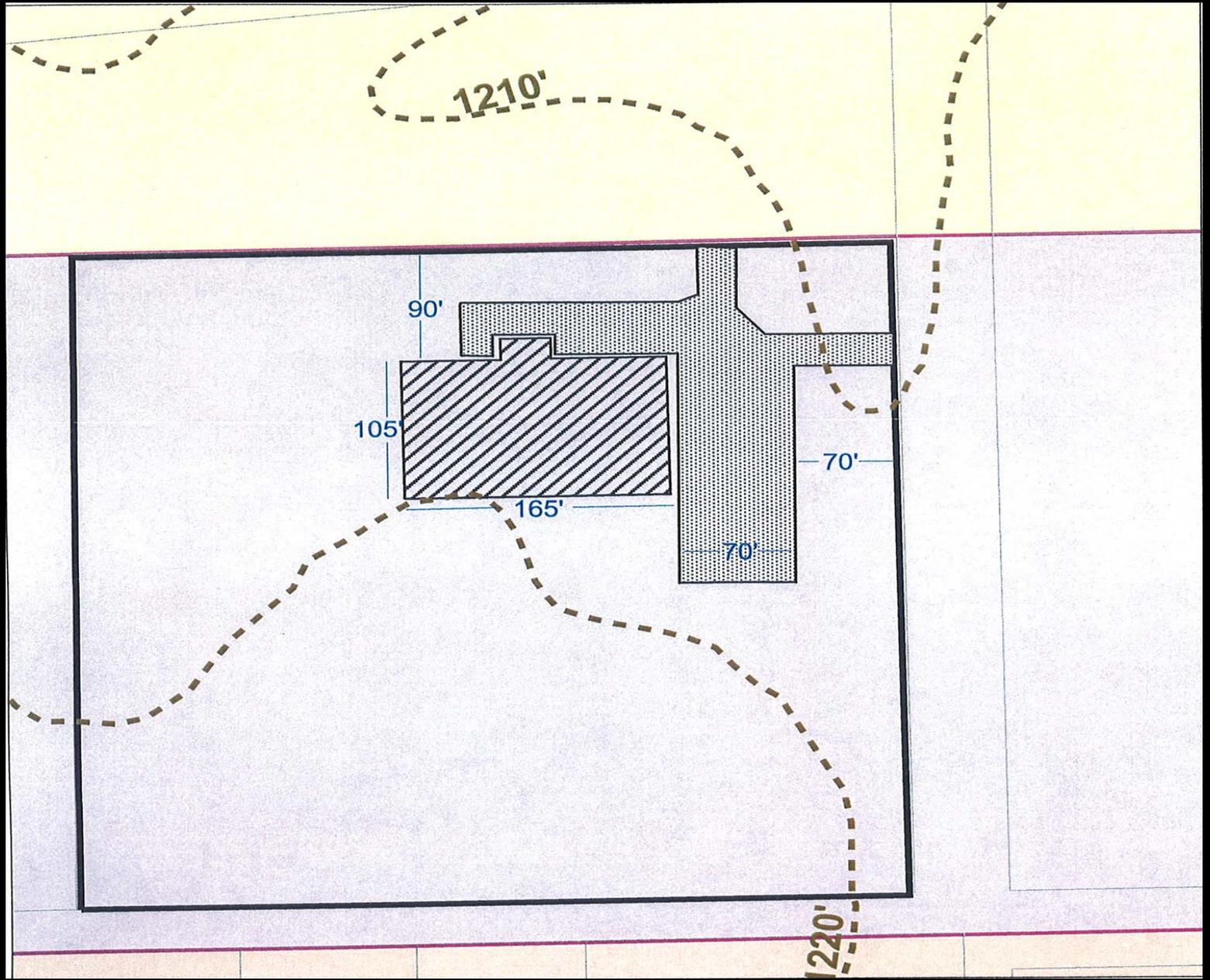
- **Possible applications:**
 - Existing building not suited for permitted uses
 - Expanded parking
 - Existing zoning unreasonable; variance less impact than rezoning
 - Density increase

Use Variance Example #1



Kinsman side of property, on south





Use Variance Example #2



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