Community Development Department

Jung-Han Chen, AICP –
Community Development Director
Sam Perry - Planner
Lynn Taylor – Administrative Assistant

Board of Zoning Appeals

Annual Report - 2013

<u>2013 BZA Members</u>
Michael Schnipper
Gary Meyer
Paul Brady
John Barnhart
Prue Dana
Todd Hollenbaugh

2013 BOARD OF ZONING APPEALS CASES

BZA-01-2013 15 N. Poplar, variance to Section 1141.01(c)(4)B1 fence height in the Uptown District, **Tom Kacachos, Applicant Withdrawn by Staff 1/8/2013**

BZA-02-2013 28 Gardenia, variance to Section 1149.04(b)(6)driveway width at the right-of-way, **Ashford Homes, LLC, Applicant, Agent Approved 1/16/13**

BZA-03-2013 304 Bishop Street, variances to Section 1143.05 R2MS Single- and Two-Family Mile Square Residential District, specifically 1143.05 (c) Site Development Regulations related to lot coverage; lot area; lot width; front setback, side setback, rear setback; and variance to Section 1149 Vehicle Management specifically 1149.03 parking regulation related to number and location of parking spaces for a two-family dwelling, **Scott Webb, Architect, Applicant, Agent Approved 3/20/13**

BZA-04-2013 215 University, variance to Section 1143.05 R2MS Single- and Two-Family Mile Square Residential District, specifically 1143.05(c)(1)(B) minimum lot width for a two-family dwelling, **Scott Webb, Applicant, Agent Approved 4/17/13**

BZA-05-2013 5174 College Corner Pike, Chaco Credit Union, variance to Sections 1151.05(c) directional signage size and message; and 1151.05(e)(4) self-service facility sign location, **Triangle Sign, Applicant, Agent 2 Approved; 1 Denied 5/15/2013**

BZA-06-2013 5642 College Corner Pike, Great Clips, variance to Section 1151.05(a)(3)A.2.a., multi-tenant wall signs, no more than one wall sign per tenant, **Holthaus Signs, Applicant, Agent Denied 6/19/2013**

BZA-07-2013 222 E. Vine Street, variance to Sections 1141.03(b) principal entrance upon a street, 1143.03(c)(2)B minimum rear yard depth, and 1143.03(c)(3)(D)(3) front yard requirement for lots with no access from a public street, **Dave Kellems, Applicant Approved 6/19/2013**

BZA-08-2013 120 S. Beech Street, variance to Section 1137.04(b)(3)(2)a, 30% occupancy reduction for a reconfigured non-conforming use, **Scott Webb, Applicant, Agent Approved 6/19/2013**

BZA-09-2013 6 E. Sycamore Street, Best Western Sycamore Inn, variance to Section 1143.13(c)(2)A minimum front yard depth, **Scott Webb, Applicant, Agent Approved 7/17/2013**

BZA-10-2013 212 S. Poplar Street, variance to Sections 1143.05(c)(1)A minimum lot area, 1143.05(c)(1)B minimum lot width in an R2MS District **Scott Webb Applicant, Agent Denied 4-1-0 8/21/13**

BZA-11-2013 318 S. Main Street, variance to Section 1149.03(e) number of parking spaces, **Scott Webb Applicant, Agent Approved w/Conditions 9/18/2013**

BZA-12-2013 711 & 711-1/2 S. College Avenue, Appeal of Administrator's Decision
Patrick O'Neill, Esq, Petitioner, Agent **Tabled 12/18/2013**

BZA-13-2013 30 Josie Drive, variance to Section 1143.02(c)(2)B rear yard setback
John DeVore, Petitioner, Agent **Approved 12/18/2013**

BZA-14-2013 29 N. Beech Street, variance to Sections 1151.03(b) freestanding signs in the Uptown (UP) District, and 1141.03(f) use of the vacated right of way, **Matthew Troy, Petitioner, Agent** **Approved w/Condition 12/18/2013**

BZA-15-2013 311 & 311-1/2 W. Church Street, variance to Sections 1143.05(c)(2)B, rear yard setback; 1143.05(c)(4)A.1, total lot coverage; 1143.05(c)(4)A.2, building coverage **Terry Dudley, Petitioner, Property Owner** **Approved 12/18/2013**

OTHER NOTES:

BZA Training – July 17, 2013, and August 21, 2013 by Steve McHugh, Legal Counsel

BZA-08-2012 201 E. Chestnut Street, Miami Village, Variance to Sections: 1137.08(e) occupancy reduction; 1141.03(a) multiple buildings on a lot; 1143.06(c)(2)(A) front yard setback; 1143.06(c)(4)(A)(1) lot coverage; 1149.03(e) parking spaces; 1149.04(3) parking setback; 1149.05(e)(4)(F) parking islands; 1149.05(e)(5)(B)(1)(a) parking trees; 1149.05(e)(4)(B) perimeter screening, **Scott Webb, Applicant, Agent**
Postponed 8/15/2012; Approved and Denied 9/19/2012, Extension 6/19/2013 approved 180 days

BZA-04-2013 Extension Request at 9/21/2013 meeting BZA-04-2013 215 University Variance to Section 1143.05 R2MS Single- and Two- Family Mile Square Residential District, specifically 1143.05(c)(1)(B) minimum lot width for a two-family dwelling, **Scott Webb, Applicant, Agent**
Approved 4/17/13 Extension Approved 9/18/2013

Memo

CITY OF OXFORD
HOME OF MIAMI UNIVERSITY

To: BZA

From: Sam Perry, Planner SP

Date: 1/10/2014

Re: Potential Revisions to Rules of Procedure

The beginning of the year is a good time to review Rules of Procedure for any desired revisions. Attached are a copy of the current Rules, originally approved by the City Council in February of 2009, upon review and recommendation of the BZA. Staff has embedded two revised sections on page 3 of the Rules enclosed. The BZA may suggest any other revisions to the City Council that it feels appropriate. The suggested revisions are summarized below:

- A new section limiting the applicant's testimony to 10 minutes. Currently, a meeting procedure disclaimer on the face of each BZA agenda, states that there is a 15 minute limit, however no such limit is outlined in the official Rules of Procedure. There may have been a limit in an earlier set of rules, however, none officially exists at this time. In recent years, applicant's testimony time has exceeded 30 minutes. The board may wish to have an official limit in order to encourage efficient meetings and relevant evidence.
- A new section requiring 7 days lead time before a scheduled hearing can be postponed. In recent years, there have been times that hearings were requested to be postponed only a very short time before the actual hearing. In a case where there is only one hearing scheduled, this could mean a wasted evening of gathering volunteer board members to meet and then have no discussion. In times where there are multiple cases, it simply aids the staff and BZA in planning adequate meeting time, staff and facilities for this public service. The BZA may wish to insert this new section to ensure more predictability about the meeting schedule. Or it may wish to shorten the lead time required, to accomplish the same result but allow more convenience for the applicant.

RULES OF PROCEDURE
OF THE BOARD OF ZONING APPEALS OF OXFORD, OHIO –
Last revised and approved by City Council February 2009
With proposed revisions highlighted in yellow and underlined – January 2014

ARTICLE I – MEMBERSHIP

The Board of Zoning Appeals is established by Section 8.08 of the Oxford Charter. Membership consists of five citizens serving three-year, staggered terms.

ARTICLE II - JURISDICTION AND FUNCTION

According to Section 8.09 of Oxford's Charter, "The Board shall have the power to hear and determine appeals from refusal of building permits and to permit exceptions to and variations from the zoning regulations in individual cases as may be required to afford justice and avoid unreasonable hardships to property owners. The standards in all instances to be applied by the Board shall be established by Ordinance of Council."

The Decision Standards have been enacted by Council, and they appear as Section 1139.02(c)(2) of Oxford's Code of Ordinances. A copy of Section 1139.02 (c)(2) appears as Appendix "A" to these Rules and Procedures.

ARTICLE III – OFFICERS

Section 1 - At the first meeting of each year, the Board shall elect one of its members as Chair, one as Vice-Chair, and one as Executive Secretary.

Section 2 - The Chair shall preside at meetings of the Board, call special meetings, and perform such other duties commonly prescribed to such office.

Section 3 - The Vice-Chair shall perform the same duties as the Chair in his/her absence.

Section 4 - In the event the Chair and Vice-Chair are absent from a meeting, the three remaining members shall select a Chair Pro-Tem who shall perform the same duties as the Chair for the balance of the meeting.

Section 5 - The Executive Secretary shall present the minutes of each meeting for approval at the next meeting and attest to the Board's approval of the minutes.

ARTICLE IV – MEETINGS

Section 1 - The regular meetings of the Board will be held in the Oxford Courthouse at 7:30 p.m. on the third Wednesday of each month on the call of the Chair. The regular meeting date may occasionally change at the direction of the Board with public notice of the meeting. Special meetings may be called by the Chair, or by two (2) members of the Board, provided that special meetings must be called by the delivering of a written notice thereof to each Board member, or the residence of each member, and to those news media that have requested notification, at least twenty-four (24) hours prior to the time set for the special meeting. Said notice shall contain information as to the date, time, place and purpose of the meeting. No action shall be taken by the Board at a special meeting upon any matter not listed upon said special meeting notice (See appendix "B").

ARTICLE V – VOTING

Section 1 - No motion to over-rule the decision of an administrative office of the City shall be adopted except by the affirmative vote of three members of this Board (Section 8.08 of Oxford Charter).

Section 2 - A majority vote of those members present shall be necessary to carry out all other regular business of the Board and a quorum of three members shall be necessary to conduct business and to constitute on official meeting of the Board.

Section 3 - The Chair shall vote in all matters under consideration by the Board.

Section 4 - No Board member shall participate in the discussion or vote in any matter in which the member has a personal interest. That person shall recuse themselves from the Board for that portion of the meeting in which the member has an interest.

Section 5 - A record shall be made in the minutes showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact.

Section 6 - The Board of Zoning Appeals shall base its decision only upon Section 1129.11 or the Decision Standards in Chapter 1139. A copy of Section 1139.02(c)(2) appears as Appendix A to these Rules of Procedures.

ARTICLE VI - APPEALS PROCEDURE

Section 1 - (By Whom)

(a) An appeal and supporting documentation as provided for in Chapter 1129 and 1139 of the Planning & Zoning Code may be made to the Board by any person who has been denied a building permit, or who desires an exception to or variance from the Planning and Zoning Code, or by any officer, department, board or bureau of the City of Oxford affected by a decision of the Zoning Administrator within 30 days of the date of the Zoning Administrator decision.

(b) If the appellant represents the owner or occupant authority of the premises under consideration, the appellant shall document on the appeal that authority to represent that owner or occupant.

(c) The application for an appeal shall be submitted pursuant to Chapter 1129 and 1139 of the Planning & Zoning Code. The Board will not hear any appeal on an application the Board deems incomplete under Section 1139.02

(d) Instruction sheets may be prepared and approved by the Board for the guidance of appellants and copies of these Rules of Procedure shall be available to the public without charge at all times in the office of the Zoning Administrator.

Section 2 - (Action on Application)

(a) The Zoning Administrator shall notify by regular mail the appellant and all owners of property within 200 feet of the property in question as to the date, time, place and purpose of the hearing at least 10 days prior to the hearing. The notice shall provide a form on which comments may be submitted to the Board of Zoning Appeals. This notice is not jurisdictional and is provided for only as a matter of courtesy. Failure by the Zoning Administrator to mail such notice or failure by a land owner described above to receive such notice shall not invalidate any action resulting from the public hearing.

The Administrator shall also cause an official legal notice, which is jurisdictional, containing the date, time, place and purpose of the hearing to be published once in a local newspaper of general circulation at least 7 days prior to the hearing. At least 7 days prior to the public hearing, the applicant shall post a sign on the site, provided by the City, along each, but not in, the public right-of-way that abuts the site and at other locations or intersections near or leading to the site in the right-of-way, at the discretion of the Zoning Administrator. The signs shall state that the site is the subject of a public hearing and shall list the type, time, and place of the hearing, and shall be legible from the public right-of-way. This is a courtesy notice. Failure by the Zoning Administrator to provide such signs as described shall not invalidate any action resulting from the public hearing. Removal of such signs, once set, shall be a violation of this Code in addition to any other laws against their removal that may apply.

(b) The Zoning Administrator shall transmit to the Board, approximately one week prior to the meeting or as soon thereafter as possible, the appeal application and all papers or information required or necessary for proper hearing of the appeal, and copies as required shall be sent to all Board members.

(c) An appellant may, at his or her request, postpone an application that has been submitted, but not yet been heard, if a hard copy letter stating such request is submitted to and acknowledged by the Zoning Administrator at least seven (7) days prior to the scheduled meeting. This allows adequate time for rescheduling meetings and/or amending agendas as appropriate.

Section 3 - (Hearings)

(a) The Board of Zoning Appeals shall base its review of a variance application upon the complete application, upon any staff report, and upon any relevant and credible public testimony and evidence presented during the adjudication hearing. If the Board of Zoning Appeals finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.

(b) All meetings and hearings shall be open to the public, provided, however, that hearings are adjudicative in nature and are not a forum open to public comment and discussion. Public participation in meetings will be limited as set forth in subsection (o), below.

(c) The Applicant shall limit his/her testimony to ten (10) minutes including any information presented by his/her duly appointed agent or attorney.

(d) For the purposes of these Rules of Procedure, a person has standing to testify at an adjudication hearing before the Board, with or without counsel, if that person has a substantial right that will be directly affected, in a manner that is different from the effect on the general public, by the determination under consideration by the Board.

(e) All interested parties with standing shall be permitted to appear and be heard in person, or by his/her agent or attorney, in opposition to the final order, adjudication, or decision. The Board shall have the right to dismiss the appeal if the appellant or his/her agent or attorney is not present at the hearing.

(f) The interested party with standing shall present his/her position, arguments, and contentions.

(g) The interested party with standing shall be allowed to cross-examine witnesses purporting to refute his/her position, arguments, and contentions.

(h) The interested party with standing shall be allowed to offer evidence to refute evidence and testimony offered in opposition to his/her position, arguments, and contentions.

(i) The interested party with standing shall be allowed to proffer any such opposing evidence and testimony into the record, if the admission of it is denied by the officer or body appealed from.

(j) All testimony adduced shall be given under oath.

(k) The Zoning Administrator will present and explain the case, setting forth the reasons for the Board.

(l) The Board of Zoning Appeals shall have prepared minutes of the proceedings containing a report of all evidence admitted or proffered by the Board.

(m) Any person with standing shall have the right to ask questions about the subject of the appeal.

(n) At the request of the appellant or the Zoning Administrator and/or on the motion of the Board, the hearing may be postponed for further evidence or information. Such postponement shall be granted or denied in the sole discretion of the Board, and any postponement of a hearing, once commenced, shall be for more than 45 days, except with a written permission of both the Zoning Administrator and the appellant.

(o) The Zoning Administrator or Board shall file with the minutes, conclusions of facts supporting the final order, adjudication, or decision appealed from.

(p) At the conclusion of the hearing or hearings the Board will discuss and vote on each appeal and conduct the business section of the meeting to take care of items on the agenda. The public may not participate in this section of the meeting except upon request of the Chair or any member of the Board.

(q) The Board shall keep a record of its proceeding. Findings of Fact shall be included in the minutes of each case of a requested variation or appeal, and the reasons for approving or denying such variation or appeal shall be specified. All records of proceeding findings, determinations and actions of the Board shall be filed immediately in the Zoning Administrator's office and shall be retained for one year.

Section 4 - (Following Hearing)

(a) The Board of Zoning Appeals shall grant, grant with conditions, or deny a variance application as presented and shall clearly state the findings of fact upon which its decision is based.

(b) The Zoning Administrator and/or the Zoning Administrator's Assistant shall inform the appellant by letter as soon as possible following the hearing of the decision of the Board. The Board's decision shall not become final until the expiration of five (5) days from the date such decision is made unless the Board shall certify otherwise.

(c) The Zoning Administrator shall issue permits to permit the action for which a variance was sought per Chapter 1139.

(d) No order of the Board permitting erection or alteration of a building or the use of a building or premises shall be valid for a period longer than six (6) months, and upon the expiration of such period shall automatically be deemed revoked, unless a building permit for such erection or alterations is obtained and the work is started within such period, or, where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board.

(e) No application for a variance that is substantially similar to an application that has been denied or granted, wholly or in part, or revoked, shall be submitted to the BZA for a decision per Chapter 1139.

APPENDIX "A"

1139.02(c)(2) Decision Standards.

Variances shall be granted only upon a determination that practical difficulties exist with respect to the property in question that would render strict application of the Planning and Zoning Code inequitable. This determination shall be made without regard to the existence of variances and nonconformities on other land, sites, or structures not presently under consideration.

In determining whether practical difficulties exist sufficient to warrant a variance, the Board shall consider and weigh the following factors:

a. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;
b. Whether the variance is substantial;
c. 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;
d. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);
e. Whether the property owner purchased the property with knowledge of the zoning restriction;
f. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;
g. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
h. Any other relevant factor.

APPENDIX "B"

RULES AS REQUIRED BY R.C. 121.22, COMMONLY KNOWN AS THE SUNSHINE LAW

SECTION 1: All meetings of the Board of Zoning Appeals, other than authorized Executive Sessions, shall be open to public attendance.

SECTION 2: The Board will fully comply with both the letter and the spirit of R.C. 121.22.

SECTION 3: The regularly scheduled meetings of this body shall be held on the third Wednesday of each month in the Oxford Courthouse, commencing at 7:30 p.m. The regular meeting date may occasionally change at the direction of the Board with public notice. Within the context of this rule, a special meeting is deemed to be any meeting scheduled or called for a date or place or time other than as herein above specified. Such special meeting, as so defined solely for the purpose of this rule, may be for the purpose of:

(1) Continuing or commencing a regular meeting of the Board in discussing and acting upon all such business as may come before the Body; or
(2) A true Special Meeting within the context of parliamentary definition wherein the purpose of the meeting shall be to consider only specific and enumerated matters, and in which action will not be taken on matters unrelated to the matter, or matters, for which such a meeting is held. No special meeting, as defined herein, shall be held unless the Zoning Administrator shall have given at least 24 hours advanced notice of the date, time and place and purpose of such meeting, to those news media that have requested notification except in the event of an emergency. An emergency exists when immediate official action is necessary and in that event the member, or members, calling such a meeting shall immediately notify such news media as have requested notification of the date, time, place and purpose of such meeting.

(3) Any person may determine the date, time and place of regularly scheduled meetings by phoning or contacting the Zoning Administrator at the City Building.

(4) Any person may determine the date, time, place and purpose of special meeting, as defined herein, by making such a request, in writing, to the Zoning Administrator and sending forth their name, address and telephone number. The Zoning Administrator shall notify such person of the date, time, place and purpose of special meetings, either by mail or telephone and will in any case endeavor, with all reasonable effort and dispatch, to make such notification immediately.

When time permits reasonable anticipation of timely mail delivery, the Zoning Administrator may notify such person by mail. When, in the judgment of the Zoning Administrator, it seems reasonable to believe mail notification will not be timely, the Zoning Administrator will make all reasonable efforts to contact such person by telephone. Long distance calls will only be placed collect.

SECTION 4: Any person desiring information as to any specific business to be discussed at a meeting, may obtain advance notification of the proposed discussion by securing a copy of the meeting agenda by any or all of the following methods:

(1) Agendas for regularly scheduled meetings will be available, without charge, at the Police Department Dispatcher's office on the Saturday, Sunday, Monday or Tuesday preceding the regularly scheduled meeting.

(2) Agendas for special meetings will be available immediately upon their preparation at the Police Department Dispatcher's office, without charge.

(3) Persons paying an annual fee of $10.00 to the Zoning Administrator, and providing said Zoning Administrator with self-addressed business-size envelopes (approximately 9" x 4"), with sufficient first class postage affixed thereto, will be mailed all Board agendas upon their preparation, for so long as the Zoning Administrator has a supply of the required envelopes. It shall be the sole obligation of the person requesting such mailings, to determine that the Zoning Administrator has sufficient envelopes to continue mailing agendas for so long as such person desires to receive agendas. The fee required hereunder shall be a calendar year fee and shall be due once each calendar year regardless of the date upon which the request for such mailings is filed.

SECTION 5: This Resolution promulgating the foregoing Rules of Procedure shall be effective immediately.

Memo

CITY OF OXFORD
HOME OF MIAMI UNIVERSITY

To: BZA

From: Sam Perry, Planner

Date: 1/10/2014

Re: Continuation of Appeal of Administrator's Decision, requested by Patrick O'Neil

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This memo will serve as a follow up staff report to my previous report. As I have stated, this matter is an appeal of the administrator's decision per Oxford Zoning Code Section 1129.11. At this time the BZA's decision is limited to whether I made the correct decision in denying the application for a variance on this property. The Board's decision is not whether the requested variance should be granted, but whether the application for a variance can even be accepted for review. It is my opinion that this request to operate as a multi-family is a request for a use variance. I have consulted with the City's legal counsel and received an opinion stating that the request to operate a multi-family home in a single-family district does constitute a use variance. Additionally, both myself and legal counsel have reviewed the 16 pages of supplemental documentation provided by applicant as discussed at the last meeting. The documents do nothing to alter the evaluation of this matter as a use variance. The documents do not have any bearing on the decision in denying the review of the application for a use variance for this property. Based on these reasons and on my consultation with legal counsel, the decision denying the application review for a request for a use variance still stands.

City of Oxford
Community Development Department
STAFF REPORT

Previous Staff Report

Board of Zoning Appeals

Case # BZA-12-2013 **Date – December 18, 2013**

APPLICATION

Applicant:	Patrick O'Neill / Benjamin, Yocum & Heather, LLC
Location:	711 South College Ave
Owner:	Brad Fread
Action Requests:	Approve Appeal of Administrator's Decision

INTRODUCTION

Typically, the Board of Zoning Appeals considers requests for variances from the Zoning Code requirements. However, occasionally, a decision is made by city staff that is alleged to be made in error. Section 1129.11 contains provisions for a person to appeal such a decision to the BZA. The appeal procedure is different than a variance, in that there are not codified decision criteria. Therefore, the BZA will need to consider all the circumstances as well as understand the zoning codes in question. Excerpted below is the complete code relating to the appeal process.

1129.11 APPEALS OF ADMINISTRATOR'S DECISION.

The aggrieved party may appeal the decision of the Zoning Administrator to the Board of Zoning Appeals.

(a) The Board of Zoning Appeals shall have the power to hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance. In exercising its powers to review administrative decisions, the Board may, in conforming with the provisions of the statute and of this Zoning Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as the Board of Zoning Appeals determines, and to that end shall have all powers of the office from whom the appeal is taken. The appeal shall:

(1) Cite specific provisions of this Zoning Ordinance that are alleged to have been interpreted in error of the specific decisions or action being appealed and the grounds on which the appeal is being made;

(2) Include any required application fee in an amount set by the City;

(3) Include such other information as the City or the Board may reasonably require; and

(4) Include a statement as to why the appellant has standing to pursue the appeal from the administrative action by a statement of the way in which the administrative action adversely affects the appellant

BACKGROUND

A related appeal was heard in 2011 for this same property. This was BZA case 2011-06. In that case, the staff denied the right of a three-family use of the property, because the use had not maintained continuity as required by nonconforming use codes. Therefore it had lapsed and was required to comply with the current land use requirement of single-family. The denial of the three-family use was ultimately upheld by the BZA. This decision did not get appealed to a higher court.

Below is a timeline of recent events for the particular case at hand:

July 19, 2013 – Variance application received from Mr. O'Neill requesting a hearing at the BZA to allow a three-family use in a single-family zone
August 14, 2013 – City staff sent a refund and notice to Mr. O'Neill that the requested variance could not be considered because the request was considered a "use" variance, which is strictly prohibited by Section 1139.01(a).
September 23, 2013 – Mr. O'Neill submitted an Appeal of Administrator's Decision to be placed on a BZA agenda.
September 30, 2013 – City staff notified Mr. O'Neill that the appeal application did not cite the specific code believed to have been interpreted in error. Therefore it was incomplete.
October 10, 2013 – Mr. O'Neill submitted a supplementary letter explaining his rationale and specifying the code in question, followed up by a phone conversation.

ANALYSIS
The code regarding the general requirements for Variances is excerpted below. The code section in question is bolded and underlined.

> **1139.01 GENERAL .**
> (a) Purpose. A variance permits variation from the strict interpretation of this Code so that no specific provision prevents development of a specific site that would otherwise not be possible and that would satisfy the general intent of the Code. **<u>Use variances are prohibited.</u>**
> (b) Variance Requirement. Each variance shall be granted according to the provisions of this chapter.
> (c) Effect of Variance.
> (1) A variance shall be valid only for the specific use, site, location, and provision for which it is granted and changes to the use and site that change the facts upon which it was granted shall be strictly interpreted.
> (2) A variance does not expire, but becomes invalid if the use, site, or location is changed in some way that changes the facts upon which it was granted.
> (3) An action or construction that is undertaken following the granting of a variance does not create a nonconformity. A variance actually changes the specific provisions of the Code as they pertain to a specific use, site, and location.

Staff comments: In discussion with the applicant, the applicant believes that the variance request is not a change of use, because it is still within the broad category of "residential." Consequently, the use is not requested to change from residential to commercial, or residential to industrial, etc.

Based on the history of administering the Oxford Zoning Code, since the single, two and three family uses are listed separately in the zoning district use lists, throughout all residential districts; staff believes that the correct decision was already made and that the decision to not consider the requested variance, should be upheld.

SUMMARY

Please note that this is not a public hearing and the focus of the BZA should be on the interpretation of the code.

SUBMITTED BY: Sam Perry

Sam Perry, Planner
Community Development Department

DATE: December 10, 2013

iasWorld | SIGN IN |

BUTLER COUNTY, OH
AUDITOR'S OFFICE

Home Property Records

Owner Name Address Parcel Advanced Sales

- Profile
- Sales
- Residential
- OBY
- Commercial
- Permits
- Land
- Photos
- Property
- Tax Detail 2006
- Tax Detail 2005
- Tax Detail 2004
- Tax Detail 2003
- Tax Detail 2002
- Tax Detail 2001
- Sketch
- Levy Information
- Value History
- Map
- Special Assessments

PARID: H4000105000065
FREAD RANDY G &

711 COLLEGE ST S

Return

Owner

Owner 1	FREAD RANDY G &
Owner 2	BRAD

Parcel

Parcel Id	H4000105000065
Address	711 S COLLEGE ST
Class	RESIDENTIAL
Land Use Code	530, R - THREE FAMILY DWELLING, PLATTED LOT
Neighborhood	00003016
Total Acres	
Taxing District	H40
District Name	OXFORD CORP TAL CSD
Gross Tax Rate	66.73
Effective Tax Rate	

Legal

Legal Desc 1	515 W 90 FT
Legal Desc 2	
Legal Desc 3	

Tax Mailing Name and Address

Mailing Name 1	RANDY G FREAD
Mailing Name 2	
Address 1	711 S COLLEGE ST
Address 2	
Address 3	OXFORD OH 45056 2232

Taxes Due

Delq Taxes	$.00
1st Taxes	$.00
2nd Taxes	$912.58

Sales

Sale Date	Sale Amount
01-SEP-85	$25,000
13-MAY-99	$0

Dwelling

Stories	2
Square Feet	3,382
Construction	MAS&FRAME
Total Rooms	9
Bedrooms	4
Year Built	1912

Current Value

Land (100%)	$26,520
Building (100%)	$147,780
Total Value (100%)	$174,300
CAUV	$0

Data Copyright iasWorld Last Updated: 28 Feb 2007

Utility records are set up the same as this. (Not sure why rental is 5F+2F.) Utility records show minimal usage.

RECEIVED JAN 02 2014 CITY OF OXFORD

1 of 16

16 pages of supplemental info Submitted to Legal Counsel

http://propertysearch.butlercountyohio.org/butler/Forms/Datalets.aspx?mode=PROFILE... 03/13/2007

P44

O.R. 6361 PAGE 2023

Quit Claim Deed

JAN R. FREAD, married,

of Butler County, Ohio, for valuable consideration paid, grant(s) to

RANDY G. FREAD

whose tax-mailing address is:

JAN 02 2014

CITY OF OXFORD

2 of 16

the following REAL PROPERTY:

Situate in the City of Oxford, in the County of Butler and State of Ohio, to-wit:

An undivided one-half interest in:

Situate in the Village (now City) of Oxford, County of Butler, State of Ohio, and being a strip of ground ninety (90) feet in width taken off the west side of Inlot Numbered Five Hundred Fifteen (515). Said property being subject to the annual ground rent payable to the Treasurer of Miami University.

TRANSFERRED
DATE 5-13-99
CONVEYANCE # -0-
FEE $ -0-
EXEMPT 1918 CMP.
Kay Rogers, Butler Co. Auditor
This conveyance has been examined and the grantor has complied with section 319.202 of the revised code.

9900038391
Filed for Record in
BUTLER COUNTY, OHIO
JOYCE B THALL
On 05-13-1999 At 11:57:46 am.
DEED 14.00
OR Book 6361 Page 2023 - 2023

MIAMI UNIVERSITY
OXFORD, OHIO
TRANSFERRED FOR LAND RENT AND APPROVED FOR RECORD.
Fred G. Wall
SECRETARY, BOARD OF TRUSTEES
Date 5/11/99 Fee 1.25 pd

Prior Instrument Reference: Vol. 1476 Page 125 of the Deed Records of Butler County, Ohio.
JAN R. FREAD and KAREN A. FREAD, husband and wife, ~~wife/husband~~ of the Grantor s releases all rights of dower therein.
WITNESS their hand this 31st day of March, 1999.

Signed and acknowledged in the presence of:

Wayne Staton
WAYNE STATON

Mary E. Bevilacqua
MARY E. BEVILACQUA

Jan R Fread
JAN R. FREAD

Karen A Fread
KAREN A. FREAD

STATE OF OHIO COUNTY OF BUTLER, SS.

The foregoing instrument was acknowledged before me this 31st day of MARCH 1999, by JAN R. FREAD and KAREN A. FREAD.

Notary Public

Notarial Seal
Peter E. Kanrazin, Notary Public
Houston Boro, Washington County
My Commission Expires Nov. 29, 2002
Member, Pennsylvania Association of Notaries

This Instrument Prepared By:
WAYNE STATON
ATTORNEY AT LAW
110 N. BEECH STREET
OXFORD, OH 45056
(513) 523-7722

P45

CITY OF OXFORD
101 EAST HIGH STREET
OXFORD, OH 45056-1887

TEMP - RETURN SERVICE REQUESTED

ACCOUNT NUMBER 7-510-6	
SERVICE ADDRESS 711 S COLLEGE	
AMOUNT DUE IF PAID BY	AMOUNT DUE IF PAID AFTER
74.07 09/18/2013	$81.48 09/18/2013

BRAD FREAD 15 108
5591 WINDERMERE LN
FAIRFIELD OH 45014-3745

WATER USAGE HISTORY

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
0	0	0	0	0	0	0	0	0	0	0	0

MESSAGE CENTER

** MOVING ? **

Submit a move out form at www.cityofoxford.org or stop by the Utility Department at 101 East High to submit a move out form

Extreme Wolf Encounter (6th-12th grade)
October 12, 2013 10:30 AM to 3:00 PM
Register by October 5, 2013

Oxford City Council Meetings
1st and 3rd Tuesday each month
Starting at 7:30 PM

Use the following link to sign up for online statement viewing and paperless billing:

https://smartbillcorp.com/oa/frmLogin.aspx?ws=oxford

READING DATE FROM: 07/08/2013
READING DATE TO: 08/07/2013

Meter Readings ACTUAL

PREVIOUS	CURRENT	CONSUMPTION	SERVICE TYPE	AMOUNT
1019	1019	0	WATER CHARGE	8.64
			SEWER CHARGE	3.63
			REFUSE CHARGE	61.80

AMT DUE IF PAID BY DUE DATE

TOTAL DUE
74.07

ACCOUNT NUMBER: 7-510-6
SERVICE ADDRESS: 711 S COLLEGE
CUSTOMER NAME: BRAD FREAD

9-18-13
GB09TCRJ ek

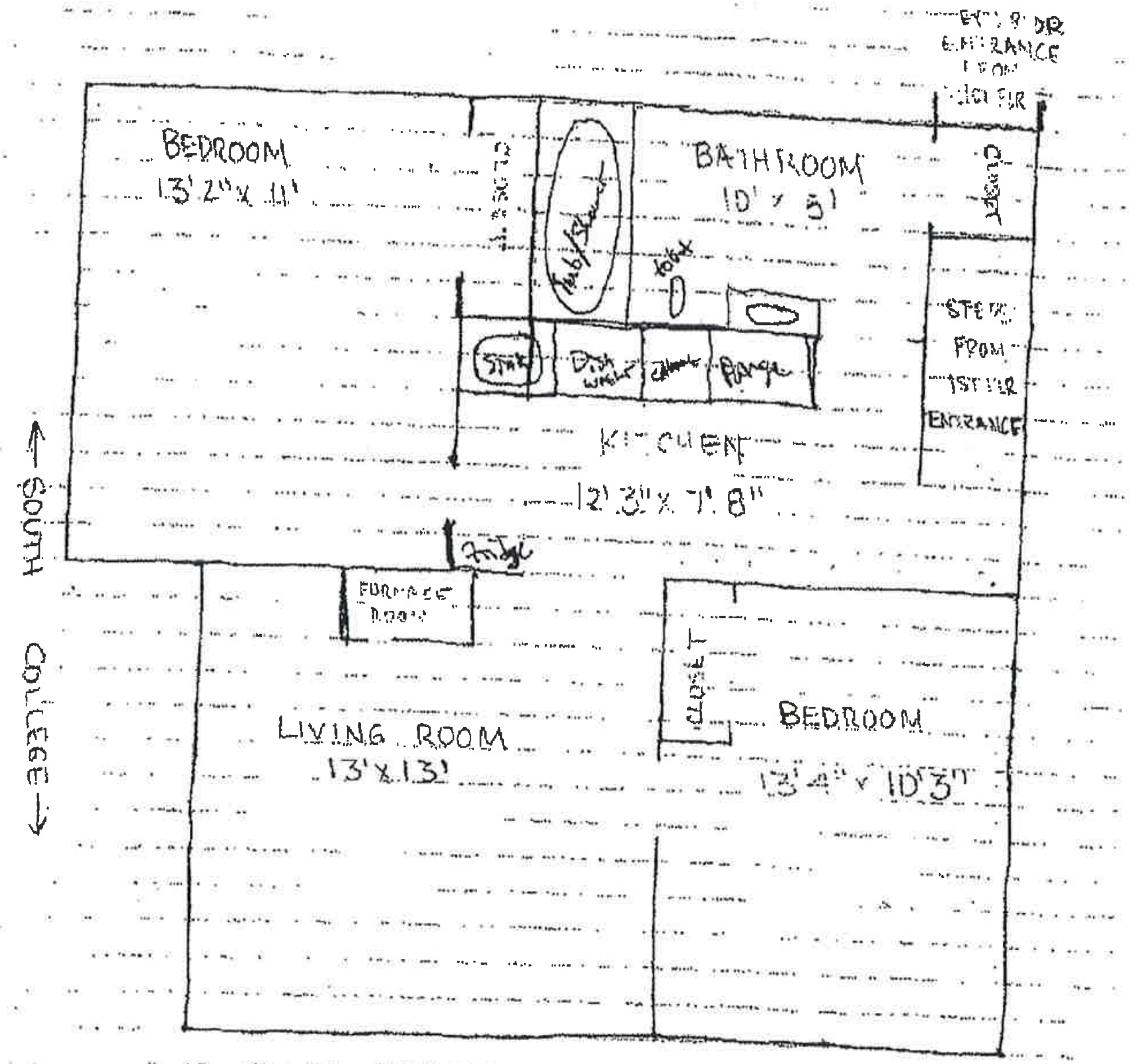
AMOUNT DUE BY DUE DATE	74.07	09/18/2013
AMOUNT DUE IF PAID AFTER	$81.48	09/18/2013

PLEASE MAKE CHECKS PAYABLE TO:

CITY OF OXFORD
101 E HIGH ST
OXFORD OH 45056-1887

3 of 16

3400



2 BEDROOM 1 BATHROOM

711 S. COLLEGE AVE
UNIT #2*(B)
SECOND FLOOR

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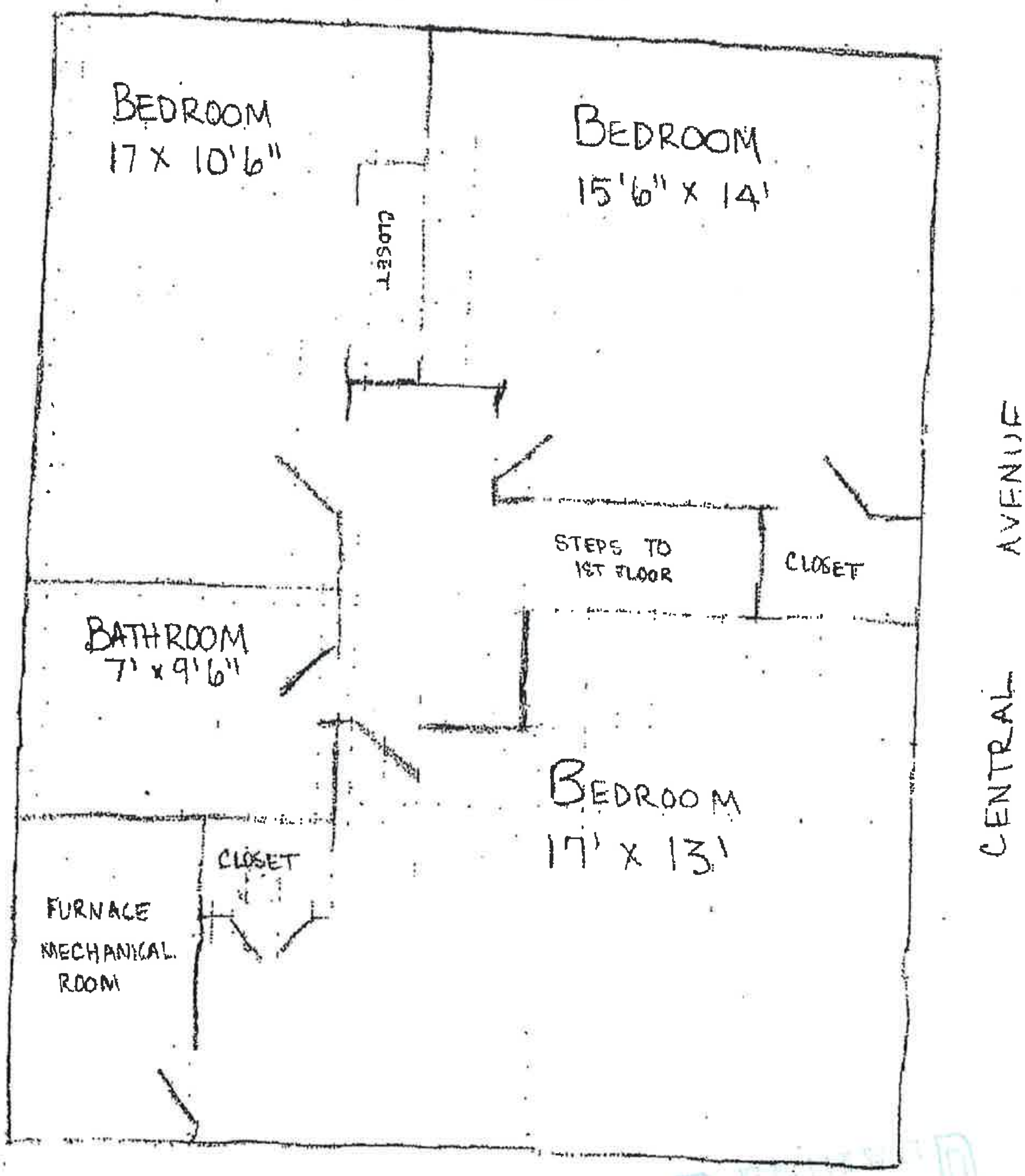
P38

100 West Central
2ND FLOOR



P36

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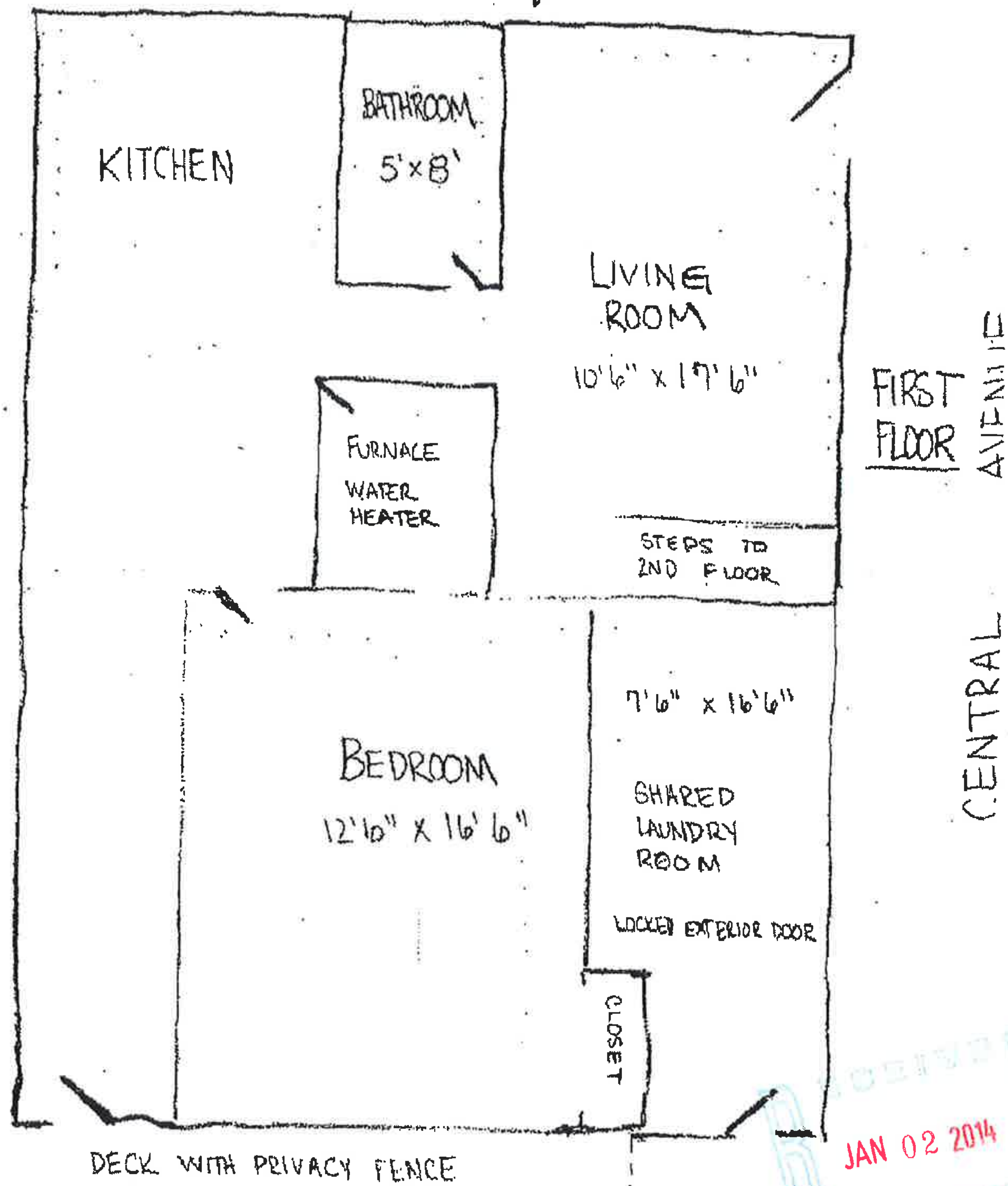
13_ West Central
4 BEDROOM 2 BATHROOM 7/25/11
APPROX. 1572 Sq. Ft.



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P35

Properties close to Brad Fread's properties.

101 W. Central – 4 BR, 2 BA - $1,850 per semester per tenant

103 W. Central – 3BR, 1BA - $1,650 per semester per tenant

114 ½ W. Central – 2BR, 1 BA - $1,600 per semester per tenant

520 S. College – 2BR, 1 BR - $1,900 per semester per tenant

525 S. College – 4 BR, 2 BA - $1,750 per semester per tenant

625 S. College – 2BR, 1 BA - $2,000 per semester per tenant

719 S. College – 3BR, 1 BA – 4 Limit - $2,400 per semester per tenant

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Online Services

Contact Us Message

DUKE

711 College St. Fl. 2

Account Number
5000-0095-48-3

Address
711 COLLEGE S FL: 2, OXFORD,

My Account Home

Billing & Payment

- Pay Bill
- View Bill
- Payment Activity
- **Bill History**
- Compare Bills
- Bill Inserts
- Billing FAQs
- Third Party Notification

My Bill Preferences

Energy Analysis

My Products & Services

Meter Reading

Outages

Customer Service

8 of 16

Billing History

Listed below is your recent bill history. If you're having t
the latest version of Adobe Reader.

Billing Date	Amount	Due Date	View Bill
9/9/2013	$ 14.71	10/1/2013	View Bill
8/8/2013	$ 44.60	8/30/2013	View Bill
7/10/2013	$ 29.45	8/1/2013	View Bill
6/10/2013	$ 11.59	7/2/2013	View Bill
5/9/2013	$ 10.35	5/31/2013	View Bill
4/10/2013	$ 11.79	5/2/2013	View Bill
3/11/2013	$ 11.69	4/2/2013	View Bill
2/8/2013	$ 12.61	3/4/2013	View Bill
1/10/2013	$ 15.14	2/1/2013	View Bill
12/7/2012	$ 10.90	12/31/2012	View Bill
11/6/2012	$ 9.87	11/28/2012	View Bill
10/8/2012	$ 9.24	10/30/2012	View Bill
9/7/2012	$ 9.22	10/1/2012	View Bill
8/8/2012	$ 9.12	8/30/2012	View Bill
7/10/2012	$ 9.43	8/1/2012	View Bill
6/8/2012	$ 8.02	7/2/2012	View Bill
5/9/2012	$ 8.12	5/31/2012	View Bill
4/10/2012	$ 8.12	5/2/2012	View Bill
3/9/2012	$ 9.34	4/2/2012	View Bill
2/9/2012	$ 9.83	3/2/2012	View Bill
1/11/2012	$ 11.89	2/2/2012	View Bill
12/9/2011	$ 41.99	1/3/2012	View Bill
11/8/2011	$ 43.22	11/30/2011	View Bill
10/10/2011	$ 42.98	11/1/2011	View Bill
9/9/2011	$ 69.26	10/3/2011	View Bill
8/10/2011	$ 54.59	9/1/2011	View Bill
7/12/2011	$ 9.72	8/3/2011	View Bill
6/10/2011	$ 8.73	7/5/2011	View Bill

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Online Services

Contact Us Message

DUKE

711 S. College St

Account Number 4000-0095-25-9

Address 711 COLLEGE S, OXFORD, OH 4

My Account Home

Billing & Payment

Pay Bill

View Bill

Payment Activity

Bill History

Compare Bills

Bill Inserts

Billing FAQs

Third Party Notification

My Bill Preferences

Energy Analysis

My Products & Services

Meter Reading

Outages

Customer Service

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Billing History

Listed below is your recent bill history. If you're having t
the latest version of Adobe Reader.

Billing Date	Amount	Due Date	View Bill
8/12/2013	$ 37.33	9/3/2013	View Bill
7/10/2013	$ 21.13	8/1/2013	View Bill
6/10/2013	$ 13.11	7/2/2013	View Bill
5/9/2013	$ 12.32	5/31/2013	View Bill
4/10/2013	$ 14.01	5/2/2013	View Bill
3/11/2013	$ 13.77	4/2/2013	View Bill
2/8/2013	$ 14.82	3/4/2013	View Bill
1/10/2013	$ 14.41	2/1/2013	View Bill
12/7/2012	$ 11.95	12/31/2012	View Bill
11/6/2012	$ 11.52	11/28/2012	View Bill
10/8/2012	$ 11.21	10/30/2012	View Bill
9/7/2012	$ 11.20	10/1/2012	View Bill
8/8/2012	$ 35.12	8/30/2012	View Bill
7/10/2012	$ 24.88	8/1/2012	View Bill
6/8/2012	$ 12.42	7/2/2012	View Bill
5/9/2012	$ 10.91	5/31/2012	View Bill
4/10/2012	$ 10.91	5/2/2012	View Bill
3/9/2012	$ 12.36	4/2/2012	View Bill
2/9/2012	$ 13.27	3/2/2012	View Bill
1/11/2012	$ 14.05	2/2/2012	View Bill
12/9/2011	$ 10.99	1/3/2012	View Bill
11/8/2011	$ 11.50	11/30/2011	View Bill
10/10/2011	$ 12.47	11/1/2011	View Bill
9/9/2011	$ 35.77	10/3/2011	View Bill
8/10/2011	$ 37.48	9/1/2011	View Bill
7/12/2011	$ 12.15	8/3/2011	View Bill
6/10/2011	$ 13.46	7/5/2011	View Bill
5/11/2011	$ 20.04	6/2/2011	View Bill
4/11/2011	$ 24.54	5/3/2011	View Bill

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135 W. Central

Account Number 6000-0095-35-7 40 06

For less detailed billing information on your monthly bill, check box on right

Due Date	Amount Due
Jun 2, 2011	$ 23.32

$ ______ HeatShare Contribution (for Customer Assistance)

$ ______ Amount Enclosed

#60Y0 Y0XK 35CM SE08#

0023421 01 AT 0.365 **AUTO T8 0 1094 45014-375189 -C01-P00000-11 34

pd

Brad Fread
5885 Windermere Ln
Fairfield OH 45014-3751

PO Box 1326
Charlotte NC 28201-1326

400 00000023329 60000095357 060220115 00000023671

PLEASE RETURN THE TOP PORTION WITH YOUR PAYMENT

Page 1 of 2

Name /Service Address	For Inquiries Call		Account Number
Brad Fread 135 Central W Oxford OH 45056	Duke Energy	1-800-544-6900	6000-0095-35-7

Mail Payments To	Account Information	
PO Box 1326 Charlotte NC 28201-1326	Payments after May 11 not included	Bill prepared on May 11, 2011 Next meter reading Jun 09, 2011

JAN 02 2014

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Meter	Number	Reading Date From	To	Days	Meter Reading Previous	Present	Usage
Elec	100087377	Apr 08	May 10	32	305	405	100

Electric - Residential	
Usage - 100 kWh	
Duke Energy - Rate RS	$ 18.43
Current Electric Charges	$ 18.43

Current Billing	
Amt Due - Previous Bill	$ 0.00
Prior Month(s) Charges:	
Electric Charges	4.89
Balance Forward	4.89
Current Electric Charges	18.43
Current Amount Due	$ 23.32

Order your FREE compact fluorescent light bulbs today! Call 1-800-943-7585 and choose option 1, or visit www.duke-energy.com/freecfls1 to see if you are eligible.

PRICE TO COMPARE: In order for an average residential customer to save money, an electric supplier must offer a price lower than 8.17 cents per kWh. Your Price to Compare may be different based on your usage. Visit www.duke-energy.com to calculate your individual Price to Compare or contact Duke Energy for a written explanation.

Customers who heat their home electrically may be able to reduce their heating costs with our Optional Residential Heating Rate. Call for details.

Printed on recyclable paper.

pd 6-2-11

Due Date	Amount Due	After Jun 2, 2011
Jun 2, 2011	$ 23.32	$ 23.67

DukeEnergy

1094-01-00-0023421-0001-0046519

visit us at www.duke-energy.com

Name	Service Address	Page 2 of 2 Account Number
Brad Fread	135 Central W Oxford OH 45056	6000-0095-35-7

Explanation of Current Charges

Electric
Meter - 100087377
kWh Usage - 100

Apr 08 - May 10
32 Days

Duke Energy
Rate RS - Residential Svc-Winter

Distribution-Customer Chg	$ 5.50	
Delivery Charges		
Distribution-Energy Chg 100 kWh @ $ 0.02212600	2.21	
Delivery Riders	2.48	
Total Delivery Charges	$ 4.69	
Generation Charges		
Generation Energy Chg 100 kWh @ $ 0.04234500	4.23	
Rider FPP	2.50	
Rider AAC	0.89	
Rider TCR	0.62	
Total Generation Charges	$ 8.24	$ 18.43
Total Current Electric Charges		**$ 18.43**

Explanation of Prior Month(s) Charges

Electric
Meter - 100087377
Multipliers - 1
kWh Pres Read - 305
kWh Prev Read - 277
kWh Usage - 28

Apr 01 - Apr 08
7 Days

Duke Energy
Rate RS - Residential Svc-Winter

Distribution-Customer Chg	$ 1.33	
Delivery Charges		
Distribution-Energy Chg 28 kWh @ $ 0.02212600	0.62	
Delivery Riders	0.63	
Total Delivery Charges	$ 1.25	
Generation Charges		
Generation Energy Chg 28 kWh @ $ 0.04234500	1.19	
Rider FPP	0.70	
Rider AAC	0.25	
Rider TCR	0.17	
Total Generation Charges	$ 2.31	$ 4.89
Total Prior Electric Charges		**$ 4.89**

Printed on recyclable paper.

JAN 02 2014
CITY OF OXFORD

13 of 16

DukeEnergy.

1054-01-00-002421-0002-0046520

visit us at www.duke-energy.com

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc)
► Attach to Form 1040, 1040NR, or Form 1041.
► See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074
2007
Attachment Sequence No. **13**

Name(s) shown on return: Brad D & Karen L Fread
Your social security number: [redacted]

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

	1 List the type and location of each rental real estate property:	2 For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.)		Yes	No
A	711 S College, Oxford, Oh 711 S College		A		X
B	Indiana restaurant 301 Margaret Street		B		X
C	Hamilton single family 836 Mark Avenue		C		X

		Properties A	Properties B	Properties C		Totals (Add columns A, B, and C.)
Income:						
3 Rents received	3	2,400.	25,500.	4,431.	3	32,331.
4 Royalties received	4				4	
Expenses:						
5 Advertising	5					
6 Auto and travel (see instructions)	6					
7 Cleaning and maintenance	7					
8 Commissions	8					
9 Insurance	9					
10 Legal and other professional fees	10					
11 Management fees	11					
12 Mortgage interest paid to banks, etc (see instructions)	12		1,144.	4,902.	12	6,046.
13 Other interest	13					
14 Repairs	14		1,516.	1,611.		
15 Supplies	15					
16 Taxes	16			1,485.		
17 Utilities	17			428.		
18 Other (list) ►	18					
19 Add lines 5 through 18	19		2,660.	8,426.	19	11,086.
20 Depreciation expense or depletion (see instructions)	20	1,964.	3,709.	3,835.	20	9,508.
21 Total expenses. Add lines 19 and 20	21	1,964.	6,369.	12,261.		
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22	436.	19,131.	-7,830.		
23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23			-4,379.		
24 **Income.** Add positive amounts shown on line 22. **Do not** include any losses					24	19,567.
25 **Losses.** Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here					25	-4,379.
26 **Total rental real estate and royalty income or (loss).** Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2					26	15,188.

JAN 02 2014
CITY OF OXFORD
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BAA For Paperwork Reduction Act Notice, see instructions. FDIZ2301 11/07/07 Schedule E (Form 1040) 2007

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc)

► Attach to Form 1040, 1040NR, or Form 1041.
► See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2008

Attachment Sequence No. 13

Name(s) shown on return: Brad D & Karen L Fread

Your social security number: [redacted]

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

1 List the type and address of each rental real estate property:

		2 For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.)	Yes	No
A	711 S College, Oxford, Oh 711 S College	A		X
B	Indiana restaurant 301 Margaret Street Lawrenceburg, IN 47331	B		X
C	Hamilton single family 836 Mark Avenue	C		X

	Line	Properties A	Properties B	Properties C		Totals (Add columns A, B, and C.)
Income:						
3 Rents received	3	2,000.	25,500.	6,750.	3	36,650.
4 Royalties received	4				4	
Expenses:						
5 Advertising	5					
6 Auto and travel (see instructions)	6					
7 Cleaning and maintenance	7					
8 Commissions	8					
9 Insurance	9		1,125.			
10 Legal and other professional fees	10					
11 Management fees	11					
12 Mortgage interest paid to banks, etc (see instructions)	12			4,656.	12	8,636.
13 Other interest	13					
14 Repairs	14		1,500.	1,500.		
15 Supplies	15					
16 Taxes	16			1,515.		
17 Utilities	17			500.		
18 Other (list) ►	18					
19 Add lines 5 through 18	19		2,625.	8,171.	19	17,019.
20 Depreciation expense or depletion (see instructions)	20	1,963.	3,970.	3,917.	20	11,509.
21 Total expenses. Add lines 19 and 20	21	1,963.	6,595.	12,088.		
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22	37.	18,905.	-5,338.		
23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23			-1,818.		

24 **Income.** Add positive amounts shown on line 22. **Do not** include any losses	24	18,942.
25 **Losses.** Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here	25	-2,952.
26 **Total rental real estate and royalty income or (loss).** Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26	15,990.

JAN 02 2014

OXFORD

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BAA For Paperwork Reduction Act Notice, see instructions. FDIZ2301 11/08/08 Schedule E (Form 1040) 2008

SCHEDULE E (Form 1040)

Department of the Treasury Internal Revenue Service (99)

Supplemental Income and Loss

(From rental real estate, royalties, partnerships, S corporations, estates, trusts, REMICs, etc)

► Attach to Form 1040, 1040NR, or Form 1041.
► See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2006

Attachment Sequence No. **13**

Name(s) shown on return: Brad D & Karen L Fread

Your social security number: [redacted]

Part I **Income or Loss From Rental Real Estate and Royalties** **Note.** If you are in the business of renting personal property, use **Schedule C** or **C-EZ** (see instructions). Report farm rental income or loss from **Form 4835** on page 2, line 40.

1	List the type and location of each rental real estate property:
A	711 S College, Oxford, Oh 711 S College
B	Indiana restaurant 301 Margaret Street
C	Hamilton single family 836 Mark Avenue

2 For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:
- 14 days, or
- 10% of the total days rented at fair rental value?

(See instructions.)

	Yes	No
A		X
B		X
C		X

			Properties A	Properties B	Properties C		Totals (Add columns A, B, and C.)
Income:							
3	Rents received	3	3,500.	25,500.	9,600.	3	38,600.
4	Royalties received	4				4	
Expenses:							
5	Advertising	5					
6	Auto and travel (see instructions)	6					
7	Cleaning and maintenance	7					
8	Commissions	8					
9	Insurance	9			410.		
10	Legal and other professional fees	10					
11	Management fees	11					
12	Mortgage interest paid to banks, etc (see instructions)	12			5,125.	12	6,552.
13	Other interest	13		1,142.			
14	Repairs	14		1,256.			
15	Supplies	15					
16	Taxes	16			1,292.		
17	Utilities	17					
18	Other (list) ►	18					
19	Add lines 5 through 18	19		2,398.	6,827.	19	13,845.
20	Depreciation expense or depletion (see instructions)	20	1,963.	3,418.	3,746.	20	11,233.
21	Total expenses. Add lines 19 and 20	21	1,963.	5,816.	10,573.		
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22	1,537.	19,684.	-973.		
23	Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23			-973.		

24	**Income.** Add positive amounts shown on line 22. **Do not** include any losses	24	21,221.
25	**Losses.** Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here	25	-7,699.
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26	13,522.

JAN 02 2014

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BAA For Paperwork Reduction Act Notice, see instructions. FDIZ2301 08/02/06 Schedule E (Form 1040) 2006

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, December 18, 2013

Call to Order

The Board of Zoning Appeals meeting was called to order at 7:30 p.m.

Those members present: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, and Michael Schnipper.
Those members excused: None.
Staff members present: Sam Perry, Amy Blankenship, Jung-Han Chen, and Steve McHugh.
Staff members excused: None.

<u>Mr. Brady made motion to approve the agenda. Mr. Barnhart seconded the motion. All were in favor.</u>

Administrator's Appeal

BZA-12-2013 711 & 711-1/2 S. College Avenue appeal of Administrator's Decision Patrick O'Neill, Esq, Agent

Mr. Steve McHugh, Law Director, City of Oxford, addressed the BZA stating that Mr. Patrick O'Neill, Agent, advised him that he had some additional relevant evidence (documents, tax bills, utility bills) that would show there being three units at the College Avenue address, and was asking for the appeal to be tabled so that he could submit the information to the BZA at a later date. Mr. McHugh stated that Mr. O'Neill wished to come back in 30 days. Mr. McHugh added that Mr. O'Neill wished to share a brief summary before the BZA at this meeting and then provide the additional documents in 30-days.

Mr. Perry spoke. Mr. Perry stated that Mr. O'Neill was appealing the Staff decision to not allow a use variance application be heard. Mr. Perry continued stating that the R1MS District did not allow for a three-family use. Mr. Perry stated that Mr. O'Neill had originally requested a variance to allow for a three-family dwelling instead of a single-family dwelling. Mr. Perry stated that Staff interpreted the request as a use variance, which is prohibited. Mr. Perry stated that Mr. O'Neill disagreed with staff's interpretation saying that they believed it to be a same use. Mr. Perry stated that staff did not allow Mr. O'Neill to place the appeal on the October 2013 BZA agenda because use variances were not permitted. Mr. Perry stated that the code was very clear; however, Mr. O'Neill did have the right to appeal. Mr. Perry reminded the BZA that they were not hearing an appeal of the case.

Mr. O'Neill, Agent for the owner, provided an ownership history of the property. Mr. O'Neill added that the property has always been a three-family. Mr. O'Neill stated that the Fread's continue to lease as three units. Mr. O'Neill added that the property has been leased the entire time of ownership. Mr. O'Neill referred to the June 19, 2013 filed BZA petition with the City and having provided a narrative statement and documents at that time. Mr. O'Neill reviewed the decision standards of then, and that the petition was denied. Mr. O'Neill stated he has perfected the appeal and resubmitted in September, 2013. Mr. O'Neill referred to his letter of October 10, 2013 where he explained his rationale for the submittal. Mr. O'Neill stated that a use variance was not defined anywhere in the Oxford Zoning Code and that the City based their denial on this being a use variance. Mr. O'Neill felt that the City was treating the Fread's differently than others in the same exact district and that permitting this variance was not going to change anything. Mr. O'Neill concluded that he felt the City was interfering with their private property rights.

Mr. Schnipper inquired if the property had proof of continual rentals, since the City of Oxford required rental permits. Mr. O'Neill discussed family members living at the property.

Mr. Brady referred to Mr. O'Neill's definition of a use variance and inquired if what he was saying that there was no difference between a single family and a 12-family. Mr. O'Neill referred back to his earlier comment that Oxford does not define the term in the codified ordinances; therefore, it is not clear and the application was unconstitutional. Mr. O'Neill felt the City should define that term "use variance" and that if they did define it clearly that Oxford wouldn't have people coming here challenging it.

Mr. McHugh stated that the City does define a "use variance"; do we define it as a specific definition, no, but looking at the zoning code as a whole it is. Mr. McHugh referred to 1139.01(a) where it specifically says use variances are prohibited. Mr. McHugh referred to Supreme Court language discussion as well and also, that Section 1133.02(a) of the Oxford zoning code also spells it out. Mr. McHugh continued that the fact is the use that is allowed within the R1MS District was effectively one use with exception of the listed conditional uses (daycare and accessory uses). Mr. McHugh referred to several Supreme Court cases that referred to use variances: "that which is not permitted is prohibited".

Mr. McHugh reiterated to the Board that the reason this appeal was before them was the issue of use.

Mr. O'Neill added that the City was currently charging the property for three trash bins, so treating it as a three family.

Mr. Brady stated what this is about is if Administration made a correct decision would it or wouldn't it be a use variance; this is what the applicant applied for - for the BZA to overturn the Administrators Decision.

Mr. Perry noted that this was not advertised as a variance request.

Mr. Meyer made motion to defer BZA's decision until January 15, 2014 and to Table BZA-12-2013. Mr. Barnhart seconded the motion. All were in favor.

Adjudication Hearing(s)

BZA-13-2013 30 Josie Drive variance to Section 1143.02(c)(2)B rear yard setback John DeVore, Petitioner, Agent

Mr. Barnhart requested to be recused as he was a neighboring property owner.

Mr. Meyer made motion to adjourn to BZA-13-2013. Ms. Dana seconded the motion. All were in favor.

Mr. Perry provided an overview stating that the Petitioner was requesting a rear yard setback variance on behalf of the property owner. Mr. Perry referred to an existing open deck on the rear of the house and the plan to convert the open deck to a partially enclosed screen porch, thus allowing the porch to be built within 16.5 feet of the rear property line, rather than the 35 feet requirement in a R1B District.

Mr. Perry stated that when the home was built the uncovered deck/porch was allowed to encroach into the rear yard setback up to ten feet.

Mr. Perry provided overhead photography and a site plan and the submitted proposed drawings which showed a 3-D rendering.

Mr. Perry reviewed the Decision Standards. Regarding the variance yielding a reasonable return, Staff felt that the property could yield a return without a variance as the house has existed since 1995. Regarding if the variance was substantial, Staff felt the variance was substantial since the rear yard setback would be less than half of the required distance. Regarding the effect on the essential character of the neighborhood, Staff felt that it would not negatively alter the character. Regarding if the owner had knowledge of the zoning restriction, Staff referred to the earlier zoning code which permitted uncovered decks to encroach into the rear yard setback; however, the current deck extended 5.86 feet closer to the rear property line than would have been allowed at the time of construction; plan files show setback compliance; however, the as built condition did not. Regarding other options explored, Staff felt that the applicant made a conscious effort in considering other options. In regards to the spirit and intent of the variance, Staff noted that the rear yard setback had already been significantly reduced and that a further reduction was not consistent with the spirit and intent behind this requirement.

Mr. Perry concluded that Staff recommends that the BZA cite specific evidence in order to approve the variance request; however, at the time of Staff's reporting, they did not believe there was substantial evidence to support the variance request.

Mr. John DeVore, Petitioner was sworn in by Mr. Brady. Mr. DeVore reviewed drawings of the porch extension request versus the current footprint. Mr. DeVore described various design options he explored and his reasoning for the chosen submitted design. Mr. DeVore stated that the chosen design was the best viable, effective use of the space. Mr. DeVore reiterated that he looked at different options to minimize the variance request.

Discussion followed regarding the shape of the lot and surrounding properties. Ms. Dana referred to cul-de-sacs when developed the front yard setbacks are designed thus leaving the back yards oddly shaped.

<u>Mr. Meyer made motion to reconvene to Regular Meeting BZA-13-2013. Mr. Schnipper seconded the motion. All were in favor.</u>

Mr. Meyer noted that the variance involved just the corner of the deck.

<u>Prue Dana moved to approve BZA-13-2013 based upon Decision Standards c and f as the variance request was not substantial and that the shape of the lot was a practical difficulty. Gary Meyer seconded. The motion passed with the following roll call:</u>

AYE: Gary Meyer, Prue Dana, Paul Brady, Michael Schnipper (4)
NAY: None (0)
ABS: None (0)

BZA-14-2013 29 N. Beech Street variance to Sections 1151.03(b) freestanding signs in the Uptown (UP) District, and 1141.03(f) use of the vacated right of way Matthew Troy, Petitioner, Agent

Mr. Barnhart returned to BZA discussion for BZA-14-2013.

Ms. Dana made motion to adjourn to BZA-14-2013. Mr. Schnipper seconded the motion. All were in favor.

Mr. Perry provided an overview of this case to place a freestanding identification sign within the Beech Street front yard setback.

Mr. Perry provided photographs and referred to the HAPC's approval November 6, 2013 with conditions. Mr. Perry stated that the variances were not only for a free standing sign but also use of the vacated right of way for something not listed in the code.

Mr. Perry described the sign dimensions. Mr. Perry stated the sign would be 4.5 feet tall, 5 feet wide and be set back 7 feet from the right of way/sidewalk. The Oxford Zoning Code does not permit new freestanding signs in the Uptown District. Mr. Perry continued that also the Zoning Code does not specify any allowances for signs within the vacated right of way. Mr. Perry referred to the existing nameplates on the porch posts identifying the attorneys having offices in the building.

Mr. Perry referred to decision criteria reasonable return, stating that the setback of the buildings in the UP District should be considered and that the subject building is set back from Beech Street approximately 55 feet. Mr. Perry described surrounding property setbacks. Mr. Perry continued saying that the subject property could not yield a reasonable return without the variances since the building is the only commercial/office building in the Uptown District significantly set back from the street.

Mr. Perry also noted that the proposed new freestanding sign did not negatively impact the essential character of the neighborhood because it had been approved by the HAPC. Mr. Perry referred to conditions of the HAPC that the sign be shortened and the existing wall signs be removed and no future wall signs be installed unless approved by the HAPC.

Mr. Perry stated that at the time of his reporting that there was enough evidence to support the variance requests.

Mr. Brady inquired if the sign could sit outside of the 16-1/2 foot right-of-way would the sign serve the same purpose.

Mr. Matt Troy, Petitioner, was sworn in by Mr. Brady.

Mr. Troy described the variances. Mr. Troy stated that the reasoning for the sign was for business identification purposes. Mr. Troy described the surrounding properties mostly student rentals and that without the variances, identification was problematic. Mr. Troy continued that the only signage currently allowed was on the building and that the building was set so far back that clients often could not find the office. Mr. Troy referred to that by simply because of being located in the Uptown District they could only place a sign on the building whereas across the street, being of a different zoning district they could have other signage.

Mr. Troy referred to Mr. Brady's comment of could sign placement be outside of the right-of-way. Mr. Troy referred to the existing tree placement and that the sign would still be hard to see. Mr. Troy stated they wanted the sign visible to cars and walking pedestrians. Mr. Troy stated there were practical difficulties and that they went to some length to design a sign that was appropriate for the location.

Mr. Perry referred to the Zoning Code which stated that wherever the sign is allowed the sign setback would have to be equal to the height of the sign.

Mr. Barnhart made motion to reconvene to regular meeting BZA-14-2013. Ms. Dana seconded the motion. All were in favor.

Mr. Brady stated he understood the need.

Prue Dana moved to approve BZA-14-2013 based upon Decision Standards b, c, and g. John Barnhart seconded. The motion passed with the following roll call:

AYE: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, Michael Schnipper (5)
NAY: None (0)
ABS: None (0)

BZA-15-2013 311 & 311-1/2 W. Church Street, variance to Sections 1143.05(c)(2)B, rear yard setback; 1143.05(c)(4)A.1, total lot coverage; 1143.05(c)(4)A.2, building coverage Terry Dudley, Petitioner, Property Owner

Mr. Meyer made motion to adjourn to BZA-15-2013. Mr. Barnhart seconded the motion. All were in favor.

Mr. Perry provided an overview stating that the Petitioner was requesting three variances due to improvements he wished to make to the existing two-family structure. Mr. Perry provided a description of the current structure stating that the house was 100+ years old and included different additions through the years, including a log cabin addition. Mr. Perry stated that the two family use was permitted in the R2MS District. Mr. Perry stated that the log cabin portion had a failing foundation. Mr. Perry stated that the Petitioner wished to remove the additions due to necessary repairs. Mr. Perry stated that the building was a nonconforming structure because of its setbacks, building and lot coverage; however, was not a nonconforming use, meaning the occupancy would not have to be reduced. Mr. Perry described the affected zoning code sections; the current rear yard setback is nine feet, the code requires 35 feet. The Petitioner's proposal would increase the rear yard setback to 18 feet, which would still be 50% of the required setback. Regarding total lot coverage, the current coverage is 62.7%; the current code limits the lot coverage to 35%. Mr. Perry stated that the Petitioner's proposal is to not only remove the additions but also some of the existing paved/patio stone area. The Petitioner's proposal would decrease the lot coverage to 52%, which would still be 17% short of the required 35% limit. Mr. Perry then discussed the building coverage: the current coverage including the garage, was 30.7%. The Petitioner's proposal would maintain the building coverage nearly the same at 30%; however, the zoning code limits the building coverage to 25%; therefore, the proposal would still fall short 5%. Mr. Perry stated that the BZA was dealing with a structure issue not a use issue.

Mr. Perry displayed existing and proposed site layouts.

Mr. Perry discussed the Decision Standards. In regards to receiving a reasonable return, Mr. Perry felt that Staff did not receive any detailed information to base any decision upon. Regarding criterion B, substantial criteria, the nonconformities would decrease; would be less substantial than what it is now.

Mr. Barnhart inquired about any historic value of the log cabin structure. Mr. Perry stated the log cabin materials were historic but not to the site. Mr. Perry stated he did conduct a historic search and that possibly the log cabin came from out of state. Mr. Perry added that there would be some effort made to try and conserve.

Mr. Terry Dudley was sworn in by Mr. Brady. Mr. Dudley is also owner of the property. Mr. Dudley stated that because of the way the house was situated on the lot that he needed three variances. Mr. Dudley described his plans for the property. Mr. Dudley stated that some of the additions were not fully useable due to varying ceiling heights and other issues. Mr. Dudley stated he was proposing to remove the side and rear additions and rebuild new additions and that the rebuilt additions would be farther away from the side and rear property lines. Mr. Dudley shared that he felt the neighborhood would benefit by placing the cabin elsewhere.

<u>Mr. Schnipper made motion to reconvene BZA-15-2013. Mr. Barnhart seconded the motion. All were in favor.</u>

<u>Michael Schnipper moved to approve BZA-15-2013 based upon Decision Standards b and c. Gary Meyer seconded. The motion passed with the following roll call:</u>

AYE: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, Michael Schnipper (5)
NAY: None (0)
ABS: None (0)

<u>Approval of Minutes of the September 18, 2013 Regular Meeting</u>
<u>Mr. Barnhart made motion to approve the minutes as written. Ms. Dana seconded the motion. All were in favor.</u>

Old Business

There was none.

New Business

Mr. Brady noted that the BZA would elect officers in January.   Also, it was determined to continue BZA training before the regular meeting in January.

Adjournment

Mr. Meyer made motion to adjourn the meeting at 8:58 p.m. Mr. Barnhart seconded the motion. All were in favor.