

BZA Case# 03-2009

210 S. Poplar

Previously Provided Information

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 1/30/ 2009

To: **Fire Department** Engineering Division Police Department Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-03-2009

ADDRESS: 210 S. Poplar

Description:

BZA-03-2009 – 210 S. Poplar, Variance to Section 1141.03(e)(4)Principal Entrance and Section 1141.03(j) Residential Building Additions, Scott Webb, Applicant, Agent

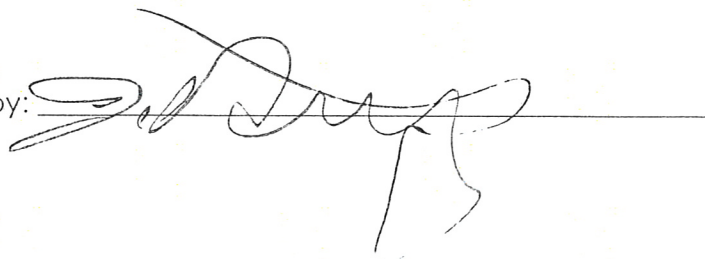
_____X_____ Review _____ Revisions _____ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **2/12/2009** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

Drawings reviewed by: _____



City of Oxford
Inter-Office Review Transmittal Sheet

Date: 1/30/ 2009

To: Fire Department **Engineering Division** Police Department Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-03-2009 ADDRESS: 210 S. Poplar

Description:

BZA-03-2009 – 210 S. Poplar, Variance to Section 1141.03(e)(4)Principal Entrance and Section 1141.03(j) Residential Building Additions, Scott Webb, Applicant, Agent

_____X_____ Review _____ Revisions _____ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **2/12/2009** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

SEE MEMO DATED 2-10-09.

Drawings reviewed by: *A. Pasen* 2-10-09



Memo

Service Department
Engineering Division

513/524-5208 fax 513/524-5267

TO: Community Development Department

FROM: Victor Popescu, P.E.
City Engineer

RE: Case #03-2009
210 S. Poplar St.

DATE: February 10, 2009

Interesting definition of a principal building. Connecting buildings with breezeways and, ultimately, consolidating lots, the entire city could become a principal building.

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 1/30/ 2009

To: Fire Department Engineering Division Police Department Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-03-2009

ADDRESS: 210 S. Poplar

Description:

BZA-03-2009 – 210 S. Poplar, Variance to Section 1141.03(e)(4) Principal Entrance and Section 1141.03(j) Residential Building Additions, Scott Webb, Applicant, Agent

____X____ Review

_____ Revisions

_____ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **2/12/2009** Note: If no comments are received, we will assume the project meets your department's standards.

.....

Drawings are returned: w/comments without/comments

Drawings reviewed by: SS Schwein

To build a new building and connect it to the existing building, then call the two combined buildings the "principal building" is beyond the grasp of logic for this simple police officer.

To build a new building and connect it to the existing building, then call the two combined buildings the "principal building" is beyond the grasp of logic for this simple police officer.

Lynn Taylor
City of Oxford

Per you letter regarding the BZA MEETING ON 2/18/09 AT 7:30PM regarding BZA-03-2009 210 S Poplar. By copy of this letter I appoint Dave Kellums as my duly appointed agent to represent me for this meeting.

I am against the proposed addition to the property.

Dave Kellums can be reached at 513-505-4918 should you have any questions or I can be contacted at 847 274 6600.

Best regards,

Signed Tom Conrad 1/26

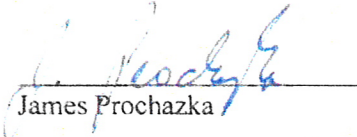
October 9, 2008

To: Scott Webb Architect
Attention: Scott Webb
& Oxford Board of Zoning
103 West Walnut Street
Oxford, OH 45056
P: (513) 523-3838
e-mail: scott@scottwebbarchitect.com

From: J.P. Green Living, LLC.
James Prochazka
408 W. St. Clair Ave.
Suite # 226
Cleveland, OH 44113
P: (216) 701-6203
e-mail: johnprochazka1@hotmail.com

Re: Letter of Agency

Please let it be known that Mr. Scott Webb of Scott Webb Architect is the acting Agent of the real property known as 210 South Poplar, Oxford, OH in front of the Board of Zoning Appeals of Oxford.


James Prochazka

Petition for Zoning Variance
City of Oxford, Ohio

Feb-18, 2009

REQUIRED INFORMATION

Name of Petitioner: Scott Webb, Architect
(Attach a Letter of Agency if the Applicant is not the property owner.)
Mailing Address: 103 W. Walnut St. Oxford Ohio 45050
Telephone Number(s): 923-3838
Name of Property Owner: J.P. Carver Living LLC
Mailing Address: 408 W. St. Clair Ave, Suite 2200 Cleveland OH 44113
Telephone Number(s): (216) 701-6203
Requested Variance: 1141.03(c)(4)
(Indicate nature of variance and applicable section(s) of the Zoning Code.) principal entrance facing a public street
Location of Requested Variance: 210 S. Poplar
Legal Description: _____
Zoning District: B2MS
Total Acreage: .278 Acres
Existing Use of Site: Single-family Residence
Proposed Use: (if applicable) 2-family Residence
A description of operations, including type of goods sold, services performed, and expected number of customers, clientele, delivery, and service vehicles, and the hours of operation.

REQUIRED INFORMATION

Eight complete sets of all information shall be submitted with an application. The Zoning Administrator may modify this requirement based upon the type of materials included. The applicant is encouraged to contact the Zoning Administrator prior to submitting an application to discuss the submission requirement. If any information is submitted in color or on non-standard paper, more copies may be required.

(1) **SITE PLAN** – A scaled site plan shall include the following information in detail and must be prepared by an Ohio licensed surveyor. The required information may be submitted on multiple site plans if inclusion of all information on a single plan makes it illegible or difficult to understand.

- North arrow
- Scale
- Vicinity map
- All existing and proposed lot lines within the site
- Dimensions of all lots and of the entire site and any adjacent rights-of-way
- Location, height, and use of all proposed and existing structures
- Location and design of all proposed vehicle management areas
- Location, size, and type of all proposed signs
- Location, height, and type of all proposed screening and landscaping
- Distances to residential zoning districts if within 1,000 feet
- The use of land and location of structures on adjacent property and across adjacent rights-of-way
- An indication of the regulation from which the variance is requested
- Other information as required by the Board of Zoning Appeals.

(2) ELEVATIONS – Elevations of proposed structure, or typical elevations if structures are not yet designed, may be required by the Zoning Administrator if the proposed location, height, or bulk of the structure is such that it may negatively affect an adjacent use.

(3) OTHER – Photographs of the existing use and its surroundings and other information regarding the proposed use, site, or surrounding area as may be pertinent to the application or required by the Board of Zoning Appeals.

(4) On a separate sheet, provide the names and mailing addresses of all property owners within 200 feet of all boundaries of the property in question, provide parcel numbers as well. NOTE: The Butler County website (www.butlercountyohio.org/auditor) is very helpful when searching for the mailing address of adjoining property owners. Once the site is up, click on online searches, then click on real estate. It will allow you to search by owner, address or parcel number.

(5) A separate narrative statement that explains how the proposed variance satisfies each of the following Decision Standards required to grant a variance. A separate response is required for each subsection. 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.

Submit this application with required attachments and a **\$150.00 filing fee**, made payable to the City of Oxford, to the office of the Community Development Director, Municipal Building, 101 East High Street, Oxford, Ohio 45056. Any questions should be directed to the Community Development Department at (513) 524-5204. The application will be placed on the next possible agenda.

NOTE: Notification and publication requirements must be adhered to. Submit materials 35 days prior to the proposed Board of Zoning Appeals meeting at which the action is requested.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

SIGNATURE OF APPLICANT: _____

Date: Jan 13, 2009

PRINTED NAME OF APPLICANT: _____

FEE / RECEIPT

\$150 Fee Paid / Receipt Number: 3629

Board of Zoning Appeals
City of Oxford
101 East High Street
Oxford, Ohio 45056



SCOTT
WEBB

ARCHITECT

103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838

www.scottwebbarchitect.com

Re: Proposed Dwelling Unit Addition
210 South Poplar Street

January 12, 2009

1st letter

Board Members

Please accept this letter as a formal petition for a Board of Zoning Appeals review hearing for a variance to the following Sections:

1141.03(e)(4) Every building hereafter erected, converted, enlarged, reconstructed or structurally altered shall be located on a lot of record, and shall have its principal entrance upon a street bordering such lot.

1141.03(j) Residential Building additions: Any addition to a residential building that results in or enables a new dwelling unit is not permitted.

The proposal contained herein describes the construction of an addition to convert the existing single family residence into a two-family residence in the Mile square.

On November 19, 2008 variances to 1143.05(c)(1)(B) Minimum Lot Width, and 1149.04(b)(6) were granted, allowing a two-family residence at this location, and the reduction of the driveway width as presented, allowing the project to proceed.

I will address the two variances separately as follows:

1141.03(e)(4), regarding the requirement that the principal entrance must face the street:

After the November 19, 2008 approvals, the Community Development department was asked for an interpretation of section 1141.03(e)(4) regarding the principal entrance to the additional dwelling unit and correspondence was exchanged via email and face to face discussions. It was the decision of the Community Development Director, that application must be made for a variance to this section for the entrance to the second dwelling unit (the addition as approved at the November 19, 2008 BZA meeting).

I do not believe a variance to this section is required, based upon the following:

- Section 1141.03(a) prohibits two buildings on the same lot in a residential district.
- However, a second Dwelling Unit is allowed in the R2MS District. The definition of "Dwelling, Two Family, Section 1159.05(8)(D) defines a two family dwelling as a building consisting of two single dwelling units, detached, or separated from other dwelling units by open spaces.

- In discussions with the Community Development Department, it was determined that there is nothing in the Zoning Code that prohibits constructing a breezeway to connect the proposed addition to the existing building, so the entire building could be considered as one principal building
- Finally, there is no requirement that all dwelling units must face the Street; only that principal buildings do.

It is therefore my opinion that the building as presented, meets the code as follows:

Section 1141.03(a) says no more than one "principal building" per lot in a residential district.

- The existing building is the principal building

Section 1141.03(e)(4) says every building shall have its "principal entrance" face the street.

- The existing building is the principal building on the lot and has its principal entrance facing the street.

Section 1159.05(8)(F) states that "Publicly accessible space separates a dwelling unit from any other dwelling unit"

- The two dwellings are separated by a passageway.

Section 1141.03 (f) states that multi-family dwellings shall be considered as one building with regard to yard requirements

The design meets all the yard/setback requirements as shown or as granted relief by the Board of Zoning Appeals.

There is no basis in the code to require two separate "principal entrances", as two principal buildings would be prohibited.

There is no code requirement for multi-family buildings that addresses multiple entrances.

There is no code section that requires all dwelling units to face the street, only principal buildings.

1141.03(j) Residential Building additions, regarding the requirement that the prohibition of an addition that results in a new dwelling unit:

This code section, was added to the Zoning Code by City Council, Ordinance No. 3005, and made effective July 17, 2008, and is in clear conflict with other sections of the Zoning Code.

An attempt by the Community Development Department to delete this contradictory section is scheduled to begin at Planning Commission, January 13, 2009. In the Staff report for that meeting, the Community Development Director stated

"this section could also be construed to prohibit any additional dwelling to be added to a single family dwelling in a two family district. It actually forces the demolition of an existing single family structure in order to build a two family dwelling, since the language outright prohibits an additional unit."

While this attempt at removing contradictory language in the code makes its way through the legislative process, my client should not be forced to raze the existing building in order to build the new unit.

Secondly, the approvals granted by this body on November 19, 2008 were based on drawings renderings, site plans, required to be submitted. The drawings, renderings, etc. were reviewed for compliance with the applicable codes by staff and presented to the Board of Zoning Appeals for their consideration. The drawings clearly show the addition as the means to create the new dwelling unit.

To deny this application after the review and approval of the submitted plan is an unfair and arbitrary application of the rules.

Decision Standards

In response to the decision standards outlined in the application, we offer the following:

- a) Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;

The location of the proposed entrance has no bearing on the return or beneficial use of the property.

The prohibition of an additional dwelling unit limits the property owner's the right to improve his property in a manner consistent with the Zoning district in which it resides.

- b) Whether the variance is substantial;

The Variance is not substantial. If a variance is even required, it will not affect the size or location of the previously approved building/site plan.

The variance required to build the addition will not affect the previously approved site plan. Compliance with the strict interpretation of the code would require razing of the existing historic home to realize the allowable potential of the site.

- 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;

The variances, if required, would not substantially alter the essential character of the neighborhood, nor would any adjoining property suffer a substantial detriment.

- d) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage);

The variances, if required, has no affect on the delivery of services.

- e) Whether the property owner purchased the property with knowledge of the zoning restriction

The property owner was well aware of the restrictions for which relief has already been granted. In the application at hand, the property owner does not believe such a variance is required.

The property was purchased prior to the modification of the supplemental regulations of the Zoning Code.

- f) Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

The internal design of the building could be slightly modified, changing the front entrance to the side and vice versa, but that would be less desirable for the owner, his potential tenants, and the neighborhood itself.

The existing historic home would have to be razed in order to meet the code as written.

- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;

The requirement that entrances to principal structures face the street has been met, and the scale, and design of the neighborhood is maintained. To require that all entrances of a two family dwelling unit must face the street is not supported by our code, and would place an arbitrary and unfair burden on my client.

To grant approval of the previous application and then deny construction that matches the submitted plan would deny my client the ability to construct the project

- h) Any other relevant factor.

Staff has recognized the conflict in the code, and is working to rectify it through the legislative process.

Thank you for your consideration of this application. If you have any questions or need any additional information, please call.

Respectfully,

Scott Webb, Architect

OLD



Board of Zoning Appeals
City of Oxford
101 East High Street
Oxford, Ohio 45056

SCOTT
WEBB

Re: Proposed Dwelling Unit Addition
210 South Poplar Street

ARCHITECT

103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838

www.scottwebbarchitect.com

14
January 12, 2009

Board Members

Please accept this letter as a formal petition for a Board of Zoning Appeals review hearing for a variance to the following Sections:

1141.03(e)(4) Every building hereafter erected, converted, enlarged, reconstructed or structurally altered shall be located on a lot of record, and shall have it's principal entrance upon a street bordering such lot..

The proposal contained herein describes the construction of an addition to convert the existing single family residence into a two-family residence in the Mile square.

On November 19, 2008 variances to 1143.05(c)(1)(B) Minimum Lot Width, and 1149.04(b)(6) were granted, allowing the project to proceed.

Since that time, the Community Development department was asked for an interpretation of section 1141.03(e)(4) regarding the principal entrance to the additional dwelling unit and correspondence was exchanged via email and face to face discussions. It was the decision of the Community Development Director, that application must be made for a variance to this section for the entrance to the second dwelling unit (the addition as approved at the November 19, 2008 BZA meeting).

I do not believe a variance to this section is required, based upon the following:

- Section 1141.03(a) prohibits two buildings on the lot in a residential district.
- However, a second Dwelling Unit is allowed in the R2MS District. The definition of "Dwelling, Two Family, Section 1159.05(8)(D) defines a two family dwelling as a building consisting of two single dwelling units, detached, or separated from other dwelling units by open spaces.
- The definition of a Dwelling Unit, Section 1159.05(8)(F) requires again that "publically accessible space separates a dwelling unit from any other dwelling unit". And further states that "no doorway or perforated walls exist between dwelling units".
- Based on these code sections, there is no way one could present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street, as was suggested by a Board of Zoning Appeals member at the November meeting. This would in fact violate each of the sections listed above.

- While the “addition” of another dwelling unit is required to be separate, it can not be considered another “principal building” on this lot per Section 1141.03(a).
- Finally, there is no requirement that all dwelling units must face the Street; only that principal buildings do.

It is my opinion that the building as presented, meets the code as follows:

Section 1141.03(a) says no more than one “principal building” per lot in a residential district.

- The existing building is the principal building

Section 1141.03(e)(4) says every building shall have its “principal entrance” face the street.

- The existing building is the principal building on the lot and has its principal entrance facing the street.

Section 1159.05(8)(D) the dwelling units are required to be “detached or separated from other dwelling units by open spaces”

- The two dwellings are separated by a passageway.

Section 1159.05(8)(F) states that “Publicly accessible space separates dwelling unit from any other dwelling unit”

- The two dwellings are separated by a passageway.

Section 1141.03 (f) states that multi-family dwellings shall be considered as one building with regard to yard requirements

The design meets all the yard/setback requirements as shown or as granted relief by the Board of Zoning Appeals.

There is no basis in the code to require two separate “principal entrances”, as two principal buildings would be prohibited.

There is no code requirement for multi-family buildings that addresses multiple entrances.

There is no code section that requires all dwelling units to face the street, only principal buildings.

In response to the decision standards outlined in the application, we offer the following:

- a) Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;

The location of the proposed entrance has no bearing on the return or beneficial use of the property.

- b) Whether the variance is substantial;

The Variance is not substantial. If a variance is even required, it will not affect the size or location of the previously approved building/site plan.

- 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;

The variance, is required, would not substantially alter the essential character of the neighborhood, nor would any adjoining property suffer a substantial detriment.

- d) Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage);

The variance, if required, has no affect on the delivery of services.

- e) Whether the property owner purchased the property with knowledge of the zoning restriction

The property owner was well aware of the restrictions for which relief has already been granted. In the application at hand, the property owner does not believe such a variance is required.

- f) Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

The internal design of the building could be slightly modified, changing the front entrance to the side and vice versa, but that would be less desirable for the owner, his potential tenants, and the neighborhood itself.

- g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;

The requirement that entrances to principal structures face the street has been met, and the scale, and design of the neighborhood is maintained. To require that all entrances of a two family dwelling unit must face the street is not supported by our code, and would place an arbitrary and unfair burden on my client.

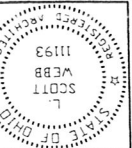
- h) Any other relevant factor.

Thank you for your consideration of this application. If you have any questions or need any additional information, please call.

Respectfully,

A handwritten signature in black ink, appearing to read 'Scott Webb', is written over the printed name.

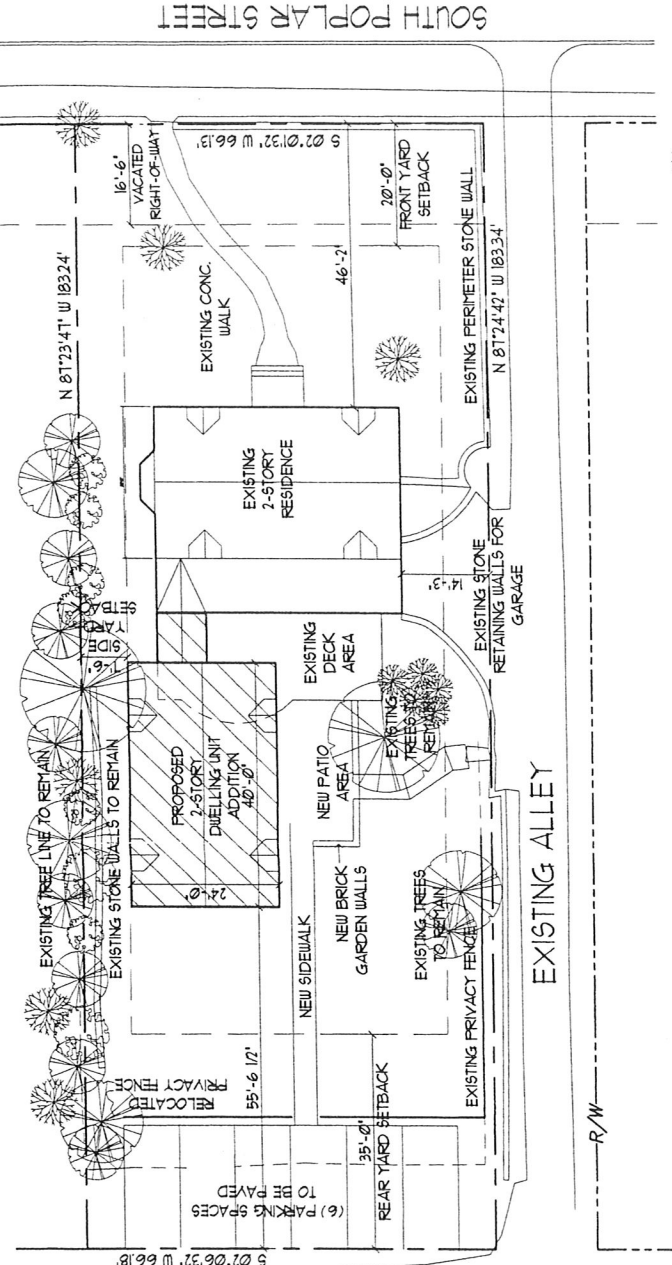
Scott Webb, Architect



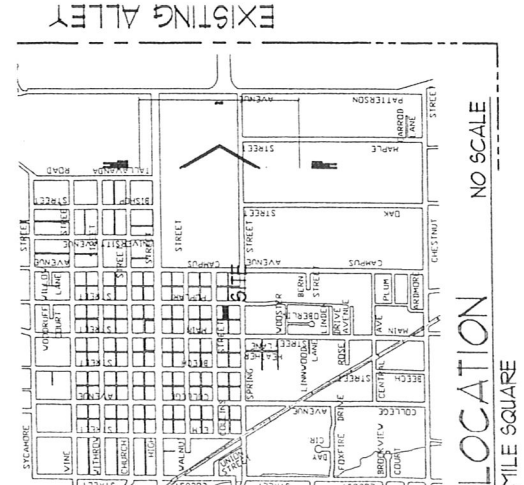
PROPOSED ADDITION & REMODELING
210 South Poplar Street
OXFORD, OHIO 45056
J.P. GREEN LIVING LLC - JOHN PROCO
ARCHITECT
SCOTT WEBB
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

DATE	October 10, 2008
REVISIONS	

A-1



SITE PLAN
1" = 20'-0"
SHOWING ADDITION OF 2-STORY DWELLING UNIT TO AN
EXISTING SINGLE FAMILY RESIDENCE, CREATING A
2-FAMILY RESIDENCE IN THE R2MS ZONING DISTRICT
SURVEY INFORMATION FROM: BAYER BECKER
EXISTING SITE PLAN OF 210 SOUTH POPLAR, LOT #139
9/05/08

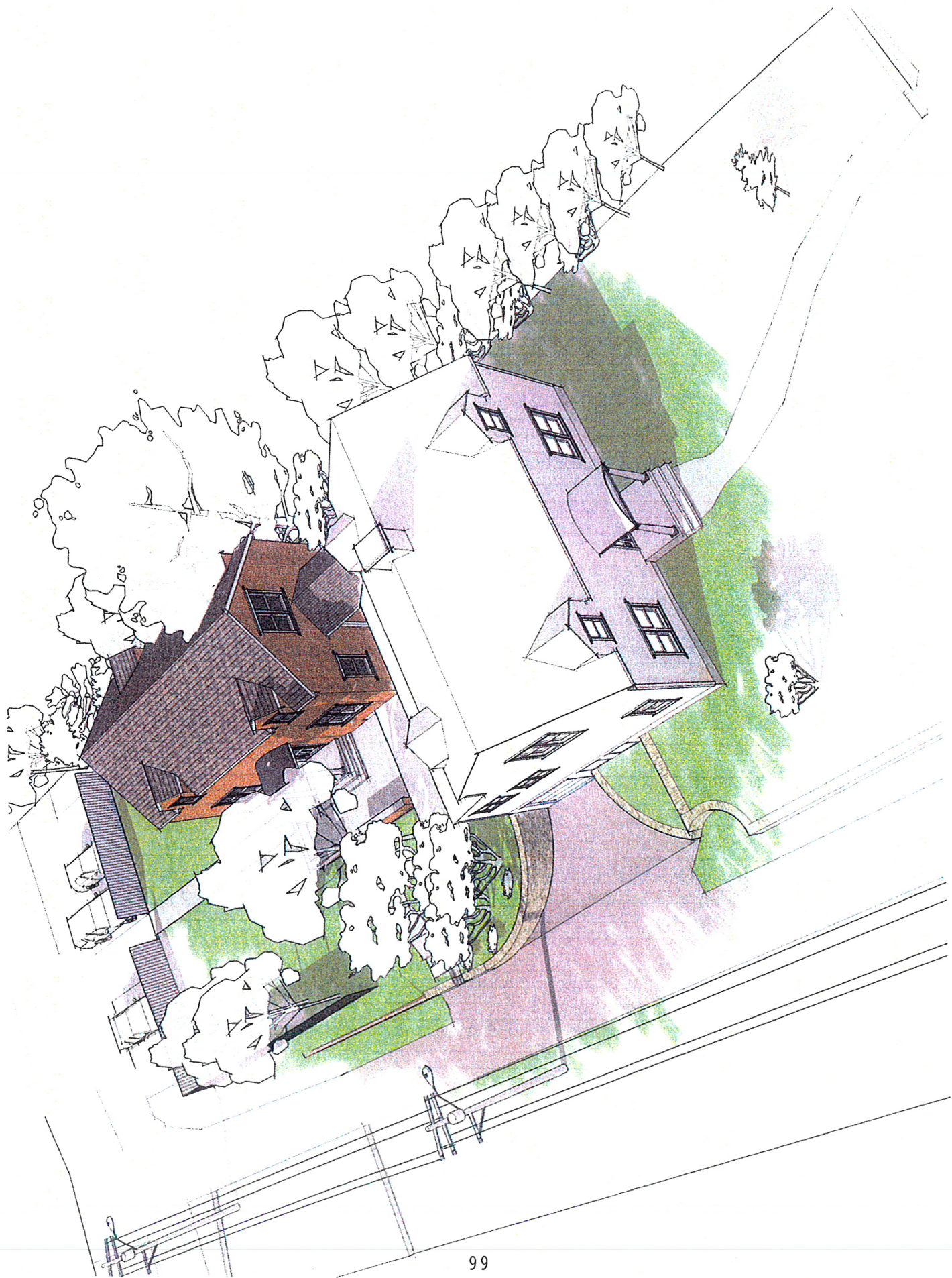


LOT COVERAGE	EXIST. SITE	PROPOSED	TOTAL
OVERALL LOT AREA:	12,125 SF.		
BUILDINGS: MAX. 25% (3031 SF.)	1359 SF.	1,000 SF.	2,359 SF. (19.5%)
DECKS, DRIVES & WALKS	1,051 SF.	360 SF. (NET)	1,411 SF. (11.6%)
(6) PARKING SPACES		1,081 SF.	1,081 SF. (8.9%)
TOTAL LOT COVERAGE: (40%)			4,880 SF. (40.0%)

114305(c)/4(B): LOTS WITH
VEHICULAR ACCESS FROM A
REAR OR SIDE ALLEY

YARD REQUIREMENTS
MIN. FRONT YARD DEPTH: 20'-0" (42'-2" PROVIDED)
MIN. REAR YARD DEPTH: 35'-0" (55'-0" PROVIDED)
MIN. SIDE YARD WIDTH: 7'-6" (7'-6" TO NORTH, EXIST 14'-2" TO SOUTH)

PARKING REQUIREMENTS
MIN. FRONT YARD DEPTH: 20'-0" (42'-2" PROVIDED)

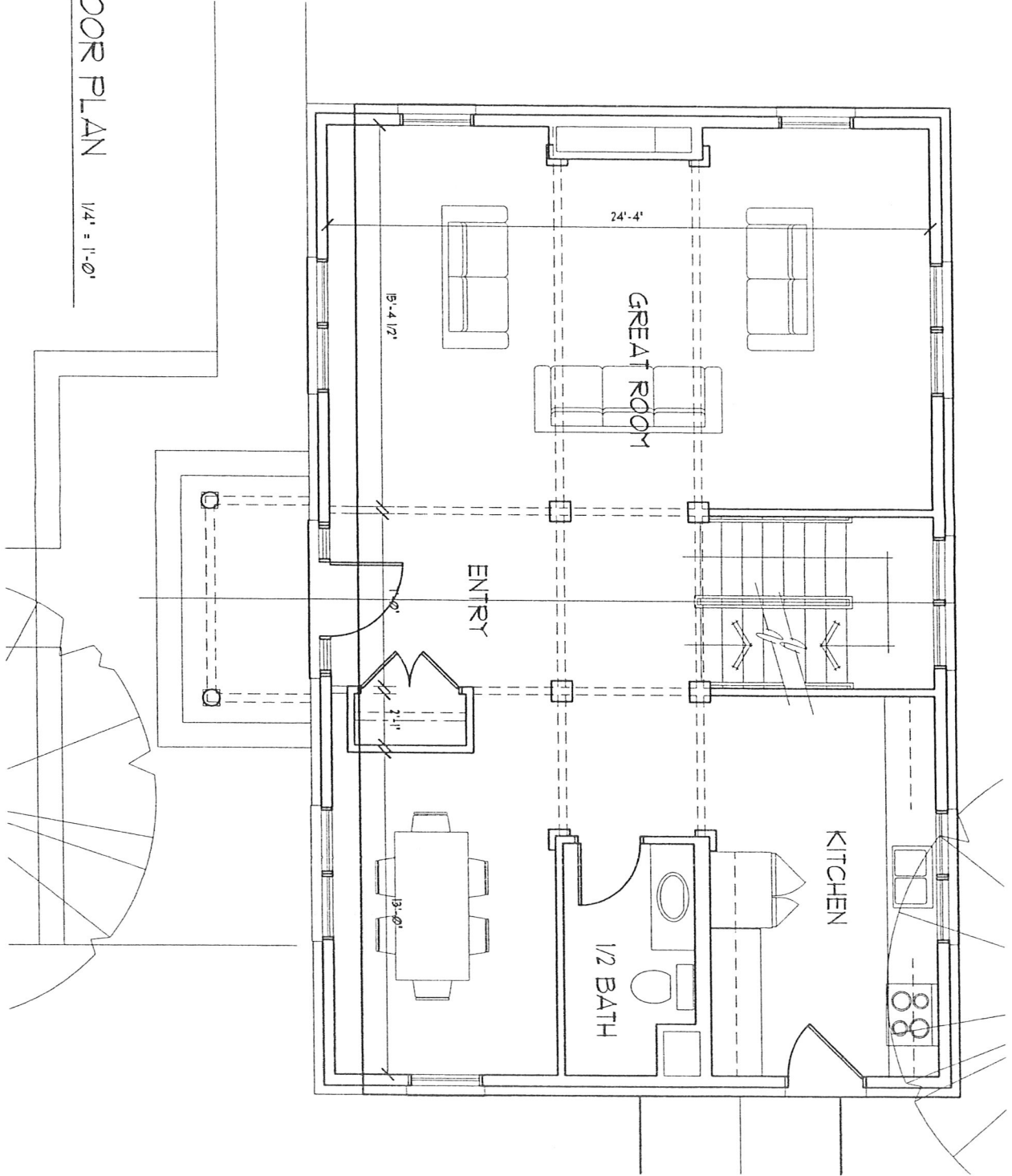




Proposed Floor Plan of New Construction

FIRST FLOOR PLAN

1/4" = 1'-0"



A-2

DATE	December 17, 2025
REVISIONS	

NEW FOUR BEDROOM DWELLING UNIT ADDITION
210 S. Poplar
NEED, OHIO 45056
J 101 EEN LIVING LLC

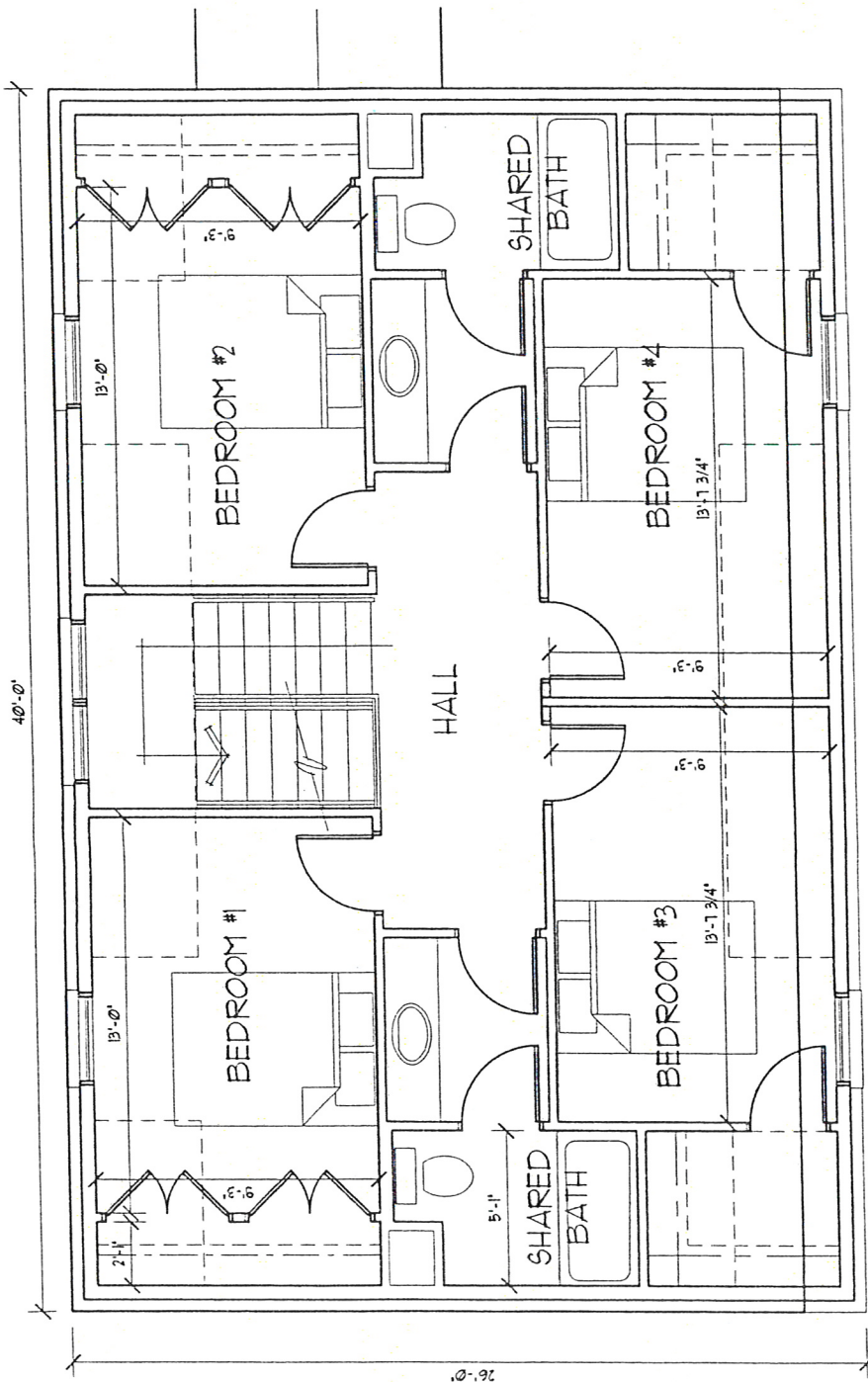
ARCHITECT
SCOTT
WEBB
100 West Third Street
Cincinnati, OH 45202
(513) 522-3038
www.scottwebbarchitect.com





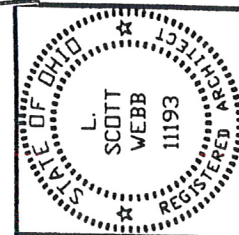
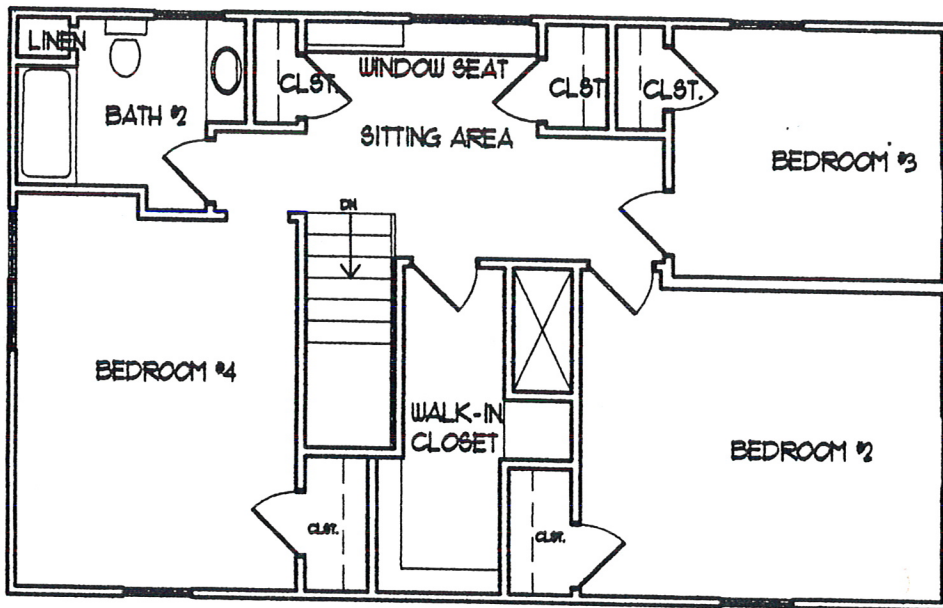
DATE	December 17, 2008
REVISIONS	

A-3



Proposed
Floor Plan
New Construction

SECOND FLOOR PLAN 1/8" = 1'-0"

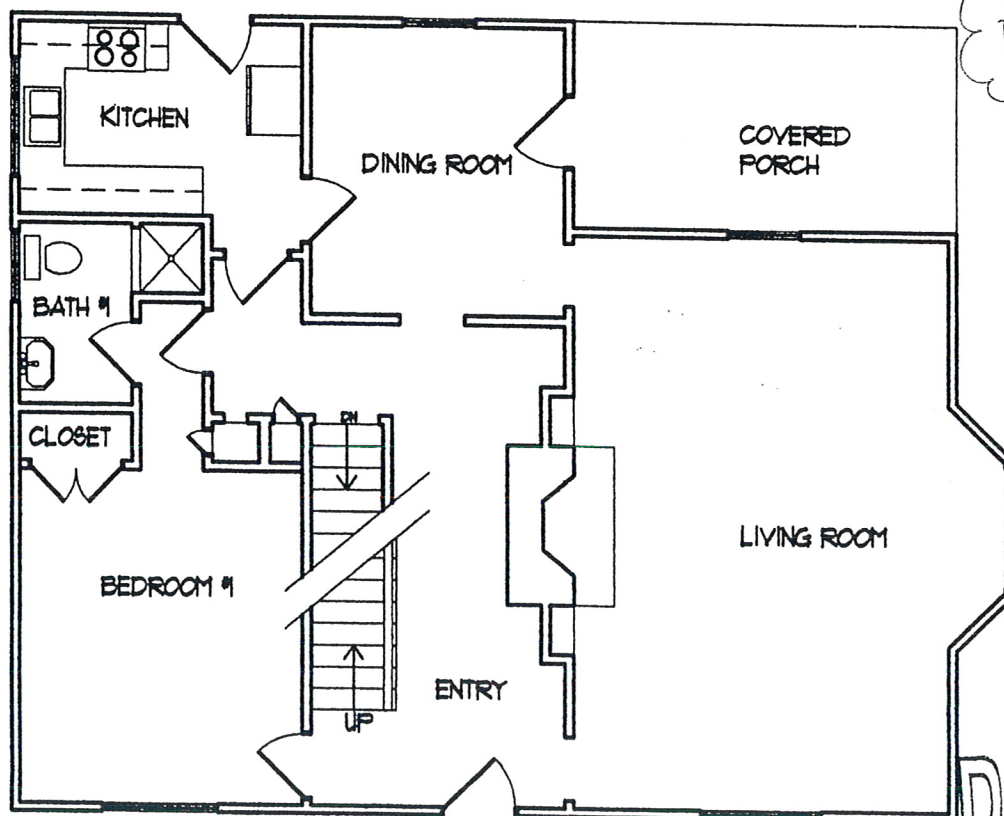


SCOTT WEBB
ARCHITECT
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

Existing
Bldg.

SECOND FLOOR PLAN

1/8" = 1'-0"



Front Bldg
Facing
Poplar St

RENTAL PLAN

210 S. Poplar

210 S. POPLAR
OXFORD, OHIO 45056

DATE	
JUNE 12, 2008	
REVISIONS	

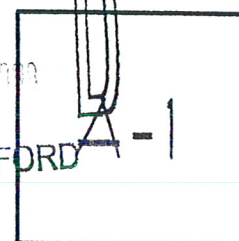
1ST FLOOR PLAN

103

1/8" = 1'-0"

CITY OF OXFORD

effective June 2008



Site Pictures – 210 South Poplar



Existing Residence from Poplar Street



Existing Residence (Rear from Alley)



Existing Parking in Alley



Existing Privacy Fence



Intersection of Alleys to Rear (looking East)



Intersection of Alleys to Rear (looking West)

Board of Zoning Appeals
City of Oxford
101 East High Street
Oxford, Ohio 45056

Current
letter



SCOTT
WEBB

Re: Proposed Dwelling Unit Addition
210 South Poplar Street

ARCHITECT

103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838

www.scottwebbarchitect.com

February 24, 2009

Board Members

Please accept this letter as a clarification to the previous application for an appeal to:

1141.03(e)(4) Every building hereafter erected, converted, enlarged, reconstructed or structurally altered shall be located on a lot of record, and shall have its principal entrance upon a street bordering such lot.

This is in fact an **Appeal of an Administrator's Decision** per **1129.11**

In accordance with 1129.11(a) it is my opinion there has been an error in interpretation of the Zoning code resulting in an error in the determination of the requirements with regard to **1141.03(e)(4)**. regarding the requirement that the principal entrance must face the street:

I do not believe a variance to this section is required, based upon the following:

- Our Zoning Code does not regulate nor prescribe the arrangement of Dwelling Units in Two-Family Dwellings
- There is no requirement that a Two-Family Dwelling have a single shared entrance.
- There is no requirement that all dwelling units must face the Street; only that principal buildings do
- Two-Family Dwellings are not considered two "Principal Buildings" on the same lot and are not required to provide **two** "Principal Entrances".
- Section 1141.03(a) prohibits two buildings on the same lot in a residential district

Additional attachments as requested by the Community Development Department are included with this submission.

Thank you for your consideration of this application. If you have any questions or need any additional information, please call.

Respectfully,

Scott Webb, Architect

Kathy Dale
City of Oxford,
Municipal Building
101 E. High Street
Oxford, Ohio 45056



SCOTT
WEBB

ARCHITECT

103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838

www.scottwebbarchitect.com

Re: 210 South Poplar

February 23, 2009

Kathy,

As requested, here is the outline of what has transpired over the past few months in our attempt to construct an addition to 210 South Poplar for James Prochazka and the list of associated emails and submitted documents we feel are relevant to the case at hand.

I have printed out each email and have included a CD with other associated documents.

October 9, 2008 application was made to the Community Development Department for an appeal to:

1143.05(c)(1)(B) Minimum Lot Width restriction of 75' in the R2MS Zoning District. The lot in question is 66.13' wide, 8.87' less than the minimum lot width for a two family dwelling.

1149.04(a)(3) Location requires all parking spaces to be a minimum of 3'-0" from any lot line. The proposal described herein shows parking access directly from the alley to the rear.

The Following attachments were submitted with the application:

210 South Poplar BZA.pdf is the narrative describing the project that accompanies the Application, describing the variances and includes the responses to the *Decision Standards* listed in the Zoning Code

Site Plan.pdf is the Site Plan clearly showing the **Proposed Two-Story Dwelling Unit Addition**. This drawing also includes all relevant lot coverage calculations, and clearly describes the proposal with regard to all applicable zoning regulations.

Addition.jpg & From **Above.jpg** were renderings submitted with this application, further illustrating the proposal and clearly showing the two proposed entrances. **Site Pictures.pdf** shows the existing building and its entrance.

Staff reviewed all the above documents, and found only that section **1149.04(b)(6)** which limits driveway width to 18'-0" needed to be added to the application.

No mention was made of the two, clearly shown entrances in the October 2008 review by the Community Development Department.

November 19, 2009 presentation was made to the Board of Zoning Appeals.

[Powerpoint BZA.pdf](#) is a printed version of the PowerPoint presentation made to the BZA, showing in plan & rendering, a **Proposed Two-Story Dwelling Unit Addition**

At the **November 19, 2009 BZA meeting**, approval was granted to the lot width reduction, 1143.05(c)(1)(B) and the max. 18' driveway width Section 1149.04(b)(6).

1149.04(a)(3), the requirement that all parking spaces be 3'-0" from the lot line died for lack of a motion.

Discussions regarding 1141.03(e)(4) at the Nov. 19, BZA meeting

At this meeting, Bill Houck, a Board of Zoning Appeals Member brought up his thoughts on the requirement that every principle building must have its principal entrance facing the street.

While some discussion was had around this topic, it was clear that I had not applied for that variance, so no action could be taken. If, after plans were complete, it was determined that I would in fact need this variance, I would have to come back to BZA.

[Staff report for Feb. 18, 2009 BZA meeting](#) wherein staff states that "The record shows that the applicant testified that the building had not yet been designed, and that this unit could have its access through the front structure" relates to this discussion.

After further review however, it became apparent that this was neither possible, nor required by our code and I began a correspondence with Jung-Han Chen as follows:

Discussions regarding 1141.03(e)(4) after Nov. 19, BZA meeting

[Nov. 20, 2008 email to Jung-Han Chen](#) asking for clarification to principal entrance question. (1)

[Nov. 24 2008 reply from Jung-Han](#) includes no interpretation or explanation, merely the code section & definition of Dwelling inserted into an email. (2)

[Nov. 24, 2008 email to Jung-Han Chen](#) asking for clarification of his answer, stating that he didn't answer my questions, and again stating how I believe the proposal as drawn met the Code, and that there is no requirement that all entrances must face the street. *"If you can find something that states or implies that ALL entrances face the street, I will stand corrected and happily comply"*. (3)

[Dec. 8, 2008 Email from Jung-Han \(subject line Stewart square\)](#) describing that no code prohibits a breezeway connection between allowing the building to be considered "one principal building" (4)

Secondarily, he acknowledges that the entrance to the existing dwelling faces the street, but goes on to suggest that I must *"present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street."*

[Dec. 8, 2008 reply to Jung-Han](#) stating that the addition of a "separated dwelling unit" does not require a common entrance, and stating once again that there is no requirement that all dwelling units face the street. (5)

[Dec. 29, 2008 email to Jung-Han](#) stating that the apparently he still feels I need to appeal, and reiterated my arguments again, and further stating: *"It seems to me the "appeal" I need is an appeal of your interpretation."* (6)

[Jan. 9, 2009 email to Jung-Han](#) resending the Dec. 29, 2008 email stating that the apparently he still feels I need to appeal, and reiterated my arguments again, and further stating: *"It seems to me the "appeal" I need is an appeal of your interpretation."* And asking again for clarification on "what I should be applying for". (7)

[Jan. 9, 2009 reply from Jung-Han](#) stating that I needed to apply for a variance to **1141.03(e)(4)**. (8)

Jan. 12, 2009 Application to BZA, includes [210 South Poplar BZA-2.pdf](#) is the narrative describing the project that accompanies the Application, describing the variances and includes the responses to the *Decisions Standards* listed in the Zoning Code

This narrative also describes an appeal to **1141.03(j) Residential Building additions**: Any addition to a residential building that results in or enables a new dwelling unit is not permitted, which was eliminated by legal council.

Discussions regarding 1141.03(e)(4) after Feb. 18, BZA meeting

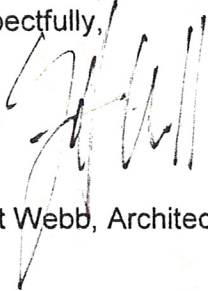
Feb. 19, 2009 email to Jung-Han & Kathy requesting a reconsideration of the facts and code sections relevant to my client's case. (9)

Feb. 20, 2009 email to Jung-Han & Kathy after no response to my request to meet, and including the [Two-family Entrance requirements.PDF](#) I prepared in lieu of the opportunity to present it face to face. (10)

Feb. 20, 2009 reply from Kathy Dale describing how the City "will permit the request to Appeal the Administrator's Decision to be on the March 18, 2009 BZA agenda". (11)

If you have any questions, or need any additional information, please call.

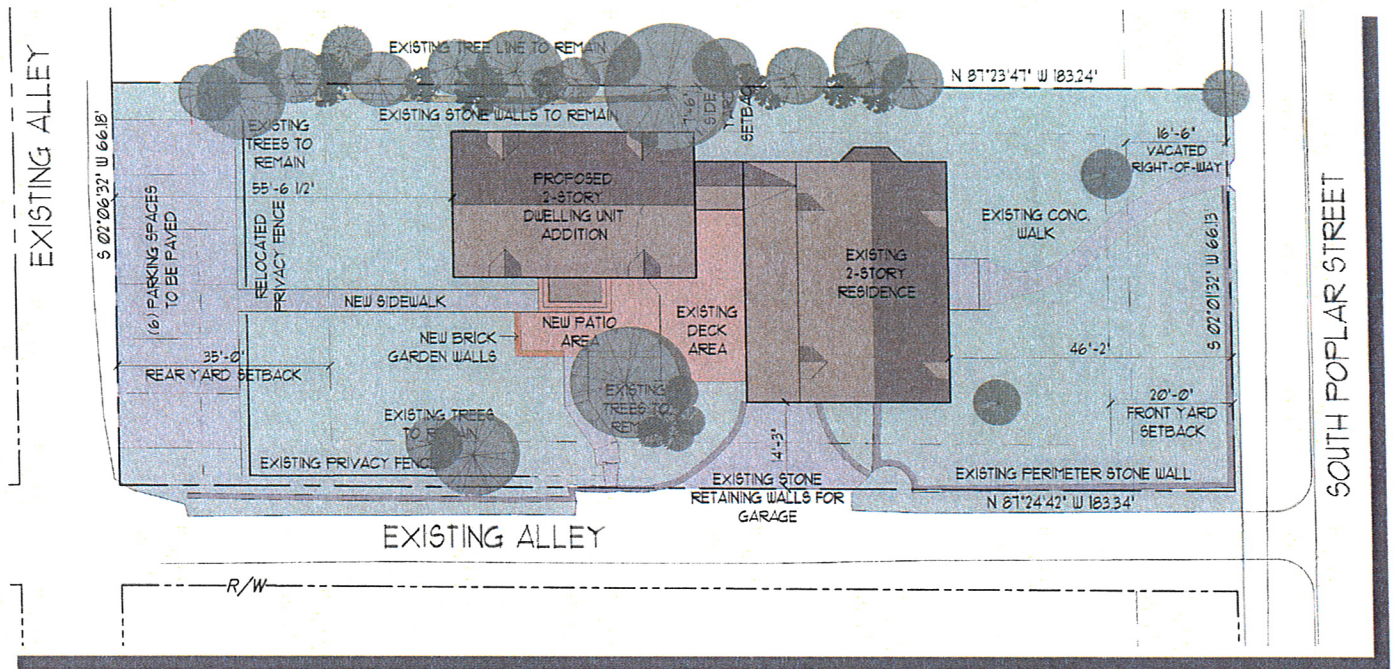
Respectfully,

A handwritten signature in black ink, appearing to read 'Scott Webb', written over a light blue horizontal line.

Scott Webb, Architect

The Issue at hand is related to the following code section:

1141.03(e)(4) Every building hereafter erected, converted, enlarged, reconstructed or structurally altered shall be located on a lot of record, and shall have it's principal entrance upon a street bordering such lot.



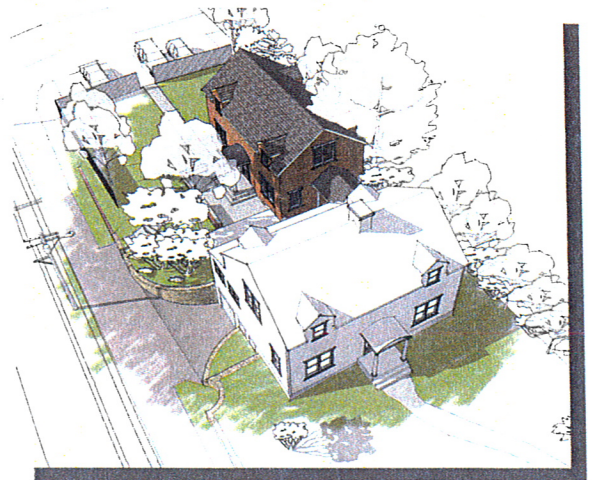
Here is the site Plan as presented, and approved at BZA

1141.03(a) In a residential District there shall be no more than one principal building per lot

The Addition as shown is Not a second "Principal Building" as that would be prohibited by **1141.03(a)**

This is an addition making a Single Family Dwelling into a Two -Family Dwelling which is a principal permitted use in this R2MS district.

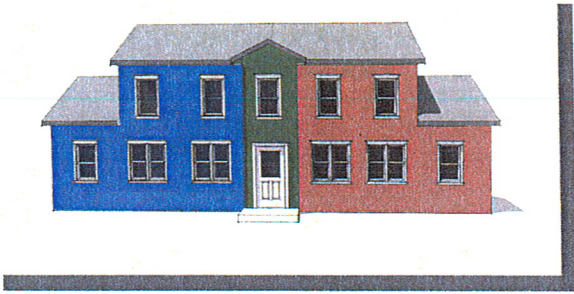
This Two-Family Dwelling as shown was approved by BZA.



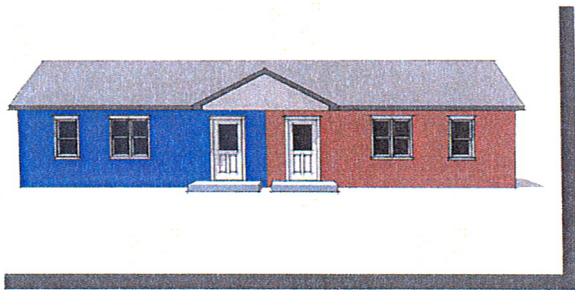
Since this is not two principal buildings, here are the questions at hand:

1. Are Two-Family Dwellings required to have a single Principal Entrance?
2. Is a Two-Family Dwelling required to have two Principal Entrances?
3. If two entrances are provided, must they both face the street?

1. Are Two-Family Dwellings required to have a single Principal Entrance?



Two-Family Dwelling units may have a single Principal Entrance, and clearly, per 1141.03(e)(4), this entrance must face the street.



But Two-Family Dwellings are not required to have a single Principal Entrance. Each may have its own front door, with no shared public space.



2. Is a Two-Family Dwelling required to have two Principal Entrances?

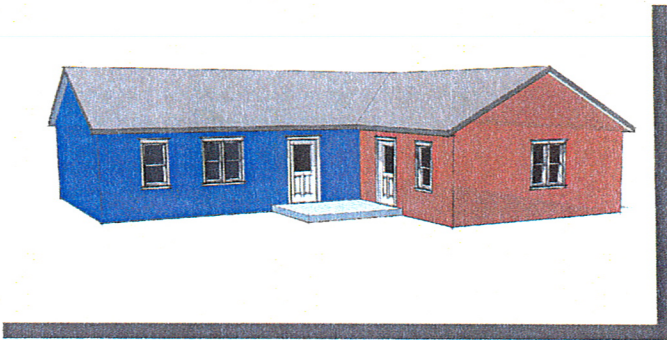
Either arrangement for a Two-Family unit is allowed by our Zoning Code.

Our Zoning Code does not regulate nor prescribe the arrangement of Dwelling Units in Two-Family Dwellings

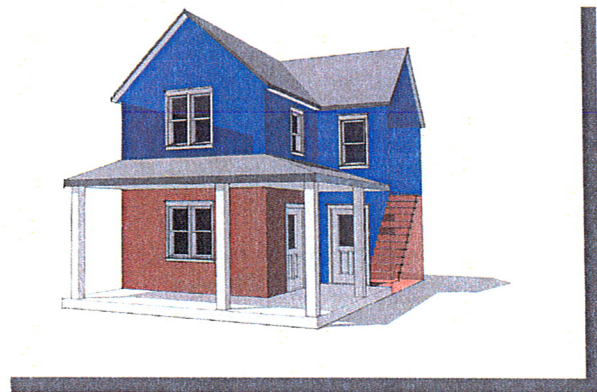
1159.05(8)(D) Dwelling, Two-Family A building consisting of two single dwelling units, detached, or separated from other dwelling units by open space.

1159.05(8)(f) Dwelling Unit -One or more rooms which are arranged, designed or occupied as living quarters for family as a single housekeeping unit. A dwelling unit includes bathroom and kitchen facilities in addition to sleeping and living areas. Publicly accessible space separates dwelling unit from any other dwelling unit. ***No doorway or perforated walls exist between dwelling units***

3. If two entrances are provided, must they both face the street?



There is no requirement in our Zoning Code, nor evidence of precedent that *Every Entrance* to every Individual Dwelling Unit must face street

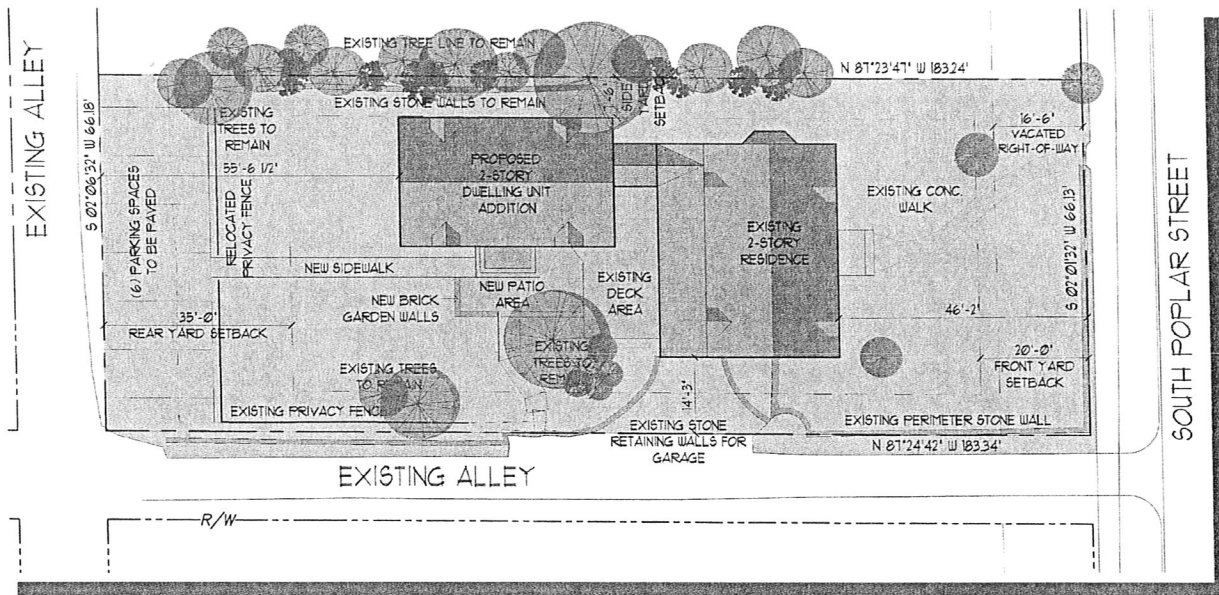


There are numerous arrangements for Two-Family Dwellings throughout the City.

- Our Zoning Code does not regulate nor prescribe the arrangement of Dwelling Units in Two-Family Dwellings
- There is no requirement anywhere in our Zoning Code that Every Dwelling Unit to have Every Entrance facing the street
- Two-Family Dwellings are not considered two "Principal Buildings" on the same lot and are not required to provide **two** "Principal Entrances".



210 South Poplar as presented to the BZA meets the Code as follows:



1141.03(a) In a residential District there shall be no more than one principal building per lot

- Building as shown meets the definition if a Two-Family Dwelling:

1159.05(8)(D) 1159.05(8)(D) Dwelling, Two-Family

A building consisting of two single dwelling units, detached, or separated from other dwelling units by open space

1141.03(e)(4) Every Building hereafter erected, converted, enlarged, reconstructed or structurally altered shall be located on a lot of record, and have its principal entrance upon a street bordering such lot

- Building as shown has a "Principal Entrance" facing the street
- There is no requirement that a Two-Family Dwelling must have a common entrance
- There is no requirement that Every Dwelling Unit in a Two-Family Dwelling must have a "Principal Entrance" facing the street

The requirement of **1141.03(e)(4)** that every structure have a principal entrance that faces the street has been met.

To require that every Dwelling Unit must have its own principal entrance and that entrance must face the street is not supported by our Zoning Code, nor by precedent, and places an arbitrary and unfair burden on my client.

Two-Family Dwelling used with regard to question #1

Two-Family with shared entrance: 302 South Main Street (picture)

Two Family with separate entrances 614 Erin Drive (picture)

Both facing street

Additional Examples: 600-716 Erin Drive (12) examples

309 – 317 Sandra (5) examples

The examples give are from simple observation, driving around town, and is not intended to be a complete list.

1362 Dana Dr. (picture)

1371 Dana Dr.

1376 Dana Dr.

A more effective way to evaluate examples would be to begin with a list of buildings classified as two-family or multi-family and examine their entrances, and any associated BZA cases.

1383 Dana Dr.

725 Daniel Dr.

Two-Family Dwelling used with regard to question #3

Two Family with separate entrances 1375 Dana Dr. (picture)

Not facing street

Additional Examples: 1379 Dana Dr.

719 Daniel Dr.

724 Daniel Dr.

Mile Square Examples

303 N. College (picture)

312 S. College (picture)

126 E. Church St. (picture)

Additional Examples: 17 W. Vine St.

119 N. Beech St.

308 N. College

313 N. College

The examples given for the Mile Square are buildings which appear to have additional units attached or incorporated, having separate address plaques, mailboxes, or house numbers.

306 N. Beech (two family house facing alley)

115 N. College

A more effective way to evaluate examples in the Mile Square would be to begin with a list of buildings classified as two-family or multi-family and examine their entrances, and any associated BZA cases.

218 N. Campus/116 E. Vine

116 E. Church.

111 N. Campus

211 N. University

BZA Case# 03-2009

210 S. Poplar

Emails provided by Applicant

Scott Webb, Architect

From: Scott Webb, Architect [scott@scottwebbarchitect.com]

Sent: Thursday, November 20, 2008 11:14 AM

To: 'Jung-Han Chen'

Cc: James Prochazka (johnprochazka1@hotmail.com)

Subject: 210 South Poplar

Jung-Han,

I wanted to be sure I was clear on the "principal entrance" requirement Bill Houk brought up last night at BZA.

Per 1141.03 (e) (4), every building needs to have its principal entrance facing a street. As far as I can see however, there is no requirement that each entrance for a two-family dwelling face a street.

1141.03 (f) appears to address this, stating that multi-family dwellings shall be considered as one building with regard to yard requirements. The requirement cited above is from a section titled "Front Yards", and this section appears to modify the yard requirements for multi-family dwellings. Per this section, I am providing one front, one rear, and two side yards as required, but no mention is made of a requirement that all entrances face the front yard.

As discussed last evening, this will affect the design of the building, so I would appreciate a ruling on this as soon as you can.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

2/24/2009

Scott Webb, Architect

From: Jung-Han Chen [JHChen@cityofoxford.org]
Sent: Monday, November 24, 2008 12:18 PM
To: Scott Webb, Architect
Subject: RE: 210 South Poplar

Scott,

Section 1141.03(e)(4) Every building hereafter erected, converted, enlarged, reconstructed or structural altered shall be located on a lot of record, and shall have its principal entrance upon a street bordering such lot. Therefore, any addition to an existing structure must have a principal entrance from the street bordering the lot.

Additionally, I include two definitions for your information as they relate to the proposed project.

Section 1159.05(8)(D) DWELLING, TWO FAMILY- A building consisting of two single dwelling units, detached or separated from other dwelling units by open spaces.

Section 1159.05(8)(F) SWELLING UNIT - One or more rooms which are arranged, designed or occupied as living quarters for family as a single housekeeping unit. A dwelling unit includes bathroom and kitchen facilities in addition to sleeping and living areas. Publicly accessible space separates dwelling unit from any other dwelling unit. No doorway or perforated walls exist between dwelling units.

Please also incorporate those decisions rendered by the BZA in your site layout as well.

Thanks

Jung-Han Chen, AICP
 Community Development Director
 City of Oxford
 (513) 524-5204

From: Scott Webb, Architect [mailto:scott@scottwebbarchitect.com]
Sent: Thursday, November 20, 2008 11:14 AM
To: Jung-Han Chen
Cc: James Prochazka
Subject: 210 South Poplar

Jung-Han,

I wanted to be sure I was clear on the "principal entrance" requirement Bill Houk brought up last night at BZA.

Per 1141.03 (e) (4), every building needs to have its principal entrance facing a street. As far as I can see however, there is no requirement that each entrance for a two-family dwelling face a street.

1141.03 (f) appears to address this, stating that multi-family dwellings shall be considered as one building with regard to yard requirements. The requirement cited above is from a section titled "Front

2/24/2009

Yards”, and this section appears to modify the yard requirements for multi-family dwellings. Per this section, I am providing one front, one rear, and two side yards as required, but no mention is made of a requirement that all entrances face the front yard.

As discussed last evening, this will affect the design of the building, so I would appreciate a ruling on this as soon as you can.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

2/24/2009

Scott Webb, Architect

From: Scott Webb, Architect [scott@scottwebbarchitect.com]
Sent: Monday, November 24, 2008 2:29 PM
To: 'Jung-Han Chen'
Cc: James Prochazka (johnprochazka1@hotmail.com)
Subject: RE: 210 South Poplar

Jung-Han,

Thank you for your response, but I don't think you answered the question.

Here is how I believe I meet the code with the drawings as submitted:

Section 1141.03(a) says no more than one "principal building" per lot in a residential district.

The existing building is the principal building

Section 1141.03(e)(4) says every building shall have its "principal entrance" face the street.

The existing building has its principal entrance facing the street.

Section 1159.05(8)(D) the dwelling units are required to be "detached or separated from other dwelling units by open spaces"

The two dwellings are separated by a passageway.

Section 1159.05(8)(F) states that "Publicly accessible space separates dwelling unit from any other dwelling unit"

The two dwellings are separated by a passageway.

Section 1141.03 (f) states that multi-family dwellings shall be considered as one building with regard to yard requirements

The design meets all the yard/setback requirements as shown.

There is no basis in the code to require two separate buildings (it is actually prohibited)

There is no code requirement for multi-family buildings that addresses multiple entrances.

There is nothing that requires all entrances to face the street.

If you can find something that states or implies that ALL entrances face the street, I will stand corrected and happily comply.

Respectfully,

Scott Webb, Architect
 103 West Walnut Street
 Oxford, Ohio 45056
 (513) 523-3838
www.scottwebbarchitect.com

From: Jung-Han Chen [mailto:JHChen@cityofoxford.org]
Sent: Monday, November 24, 2008 12:18 PM
To: Scott Webb, Architect
Subject: RE: 210 South Poplar

2/24/2009

Scott,

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Additionally, I include two definitions for your information as they relate to the proposed project.

Section 1159.05(8)(D) DWELLING, TWO FAMILY- A building consisting of two single dwelling units..

SWELLING UNIT - One or more rooms which are arranged, designed or occupied as living quarters for family as a single housekeeping unit. A dwelling unit includes bathroom and kitchen facilities in addition to sleeping and living areas.. No doorway or perforated walls exist between dwelling units.

Please also incorporate those decisions rendered by the BZA in your site layout as well.

Thanks

Jung-Han Chen, AICP
Community Development Director
City of Oxford
(513) 524-5204

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Cc: James Prochazka
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Jung-Han,

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Per 1141.03 (e) (4), every building needs to have its principal entrance facing a street. As far as I can see however, there is no requirement that each entrance for a two-family dwelling face a street.

1141.03 (f) appears to address this, stating that multi-family dwellings shall be considered as one building with regard to yard requirements. The requirement cited above is from a section titled "Front Yards", and this section appears to modify the yard requirements for multi-family dwellings. Per this section, I am providing one front, one rear, and two side yards as required, but no mention is made of a requirement that all entrances face the front yard.

As discussed last evening, this will affect the design of the building, so I would appreciate a ruling on this as soon as you can.

Respectfully,

2/24/2009

Scott Webb, Architect

From: Jung-Han Chen [JHChen@cityofoxford.org]

Sent: Monday, December 08, 2008 5:31 PM

To: Scott Webb, Architect

Subject: Stewart Square

Scott,

My staff asked me about the Stewart Square Phase III building application last week. In reviewing our files, I did not see anything showing a "Phase III". Can you enlighten me on this?

I also want to discuss the issues around 210 S. Poplar. Your proposal is to build an addition to an existing building. At this point of time, I have not found anywhere in the Zoning Code that prohibits constructing a breezeway to connect the proposed addition to the existing building, so the entire building could be considered as one principal building. However, it certainly is not the intent of the zoning code.

However, this building (the addition and the existing building) will still require having its principal entrance face the street. It is my understanding from your previous emails that you consider the entrance to the existing building to be the principal entrance of the new building. However, the existing entrance, which faces Poplar St., would seem to only serve the existing portion of the building, while the addition would have its own separate entrance facing the alley. As you pointed out Section 1141.03(e) (4) that **"every building shall have its principal entrance face the street."**

So, you will need to present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street,

Or,

You may ask BZA for a variance to have a separate entrance for the addition, as part of the principal building, to face the alley.

Thanks

Jung-Han Chen, AICP
Community Development Director
City of Oxford
(513) 524-5204

2/24/2009

Scott Webb, Architect

From: Scott Webb, Architect [scott@scottwebbarchitect.com]
Sent: Monday, December 08, 2008 6:25 PM
To: 'Jung-Han Chen'
Subject: RE: Stewart Square

Jung-Han,

With regard to Stewart Square:

There is no Phase 3. The original approval documents describe 2 phases. When we built the building for the bank, it was the first of (2) buildings in phase 2. The application you have is for the remaining building of phase 2. We have been calling it phase 3 for clarity, but it is truly phase 2 building 2, and is designed and located based on the Planned Development approval documents.

With regard to 210 South Poplar:

The bottom line is, our code does not address duplexes, or is conflicting at best.

We are prohibited from two buildings on the lot, 1141.03(a)

yet we are required to separate the dwelling units 1159.05(8)(D) & 1159.05(8)(F) with open space.

So there is no way I can "present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street" as you suggested, as it violates 1159.05(8)(D) & 1159.05(8)(F)

While the "addition" of another dwelling unit is required to be separate, it can not be considered another "principal building" on this lot.

The only way I see this working is if we call the "addition" a separated dwelling unit per 1159.05(8)(D) & 1159.05(8)(F).

There is no requirement that all dwelling units must face the Street. Only that principal buildings do. (And I can't have more than one principal building per lot in a residential district)

Respectfully,

Scott Webb, Architect
 103 West Walnut Street
 Oxford, Ohio 45056
 (513) 523-3838
www.scottwebbarchitect.com

From: Jung-Han Chen [mailto:JHChen@cityofoxford.org]
Sent: Monday, December 08, 2008 5:31 PM
To: Scott Webb, Architect
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files, I did not see anything showing a "Phase III". Can you enlighten me on this?

I also want to discuss the issues around 210 S. Poplar. Your proposal is to build an addition to an existing building. At this point of time, I have not found anywhere in the Zoning Code that prohibits constructing a breezeway to connect the proposed addition to the existing building, so the entire building could be considered as one principal building. However, it certainly is not the intent of the zoning code.

However, this building (the addition and the existing building) will still require having its principal entrance face the street. It is my understanding from your previous emails that you consider the entrance to the existing building to be the principal entrance of the new building. However, the existing entrance, which faces Poplar St., would seem to only serve the existing portion of the building, while the addition would have its own separate entrance facing the alley. As you pointed out Section 1141.03(e)(4) that **"every building shall have its principal entrance face the street."**

So, you will need to present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street,

Or,

You may ask BZA for a variance to have a separate entrance for the addition, as part of the principal building, to face the alley.

Thanks

Jung-Han Chen, AICP
Community Development Director
City of Oxford
(513) 524-5204

2/24/2009

Scott Webb, Architect

From: Scott Webb, Architect [scott@scottwebbarchitect.com]

Sent: Monday, December 29, 2008 11:09 AM

To: 'Jung-Han Chen'

Cc: Alan Kyger (akyger@cityofoxford.org)

Subject: 210 South Poplar

Jung-Han,

It seems from our last couple of conversations, including the most recent one in Alan's office, that you feel I must apply for some type of variance regarding the entrance to the dwelling unit addition at 210 South Poplar. I do not know what code section I need relief from given the following:

We are prohibited from two buildings on the lot, 1141.03(a)

We are required to separate the dwelling units 1159.05(8)(D) & 1159.05(8)(F) with open space.

There is no way I can "present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street" as you suggested, as it violates 1159.05(8)(D) & 1159.05(8)(F)

While the "addition" of another dwelling unit is required to be separate, it can not be considered another "principal building" on this lot.

The addition can be a separated dwelling unit per 1159.05(8)(D) & 1159.05(8)(F).

There is no requirement that all dwelling units must face the Street. Only that principal buildings do. (And I can't have more than one principal building per lot in a residential district)

It seems to me the "appeal" I need is an appeal of your interpretation. You know as well as I do, that if I go to the Board of Zoning Appeals, we need to be quite clear on the variances I need, or it will be tabled, or not heard, and another month will have disappeared.

So.... Let me know what variance I need, and the submission deadline so we can proceed.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

2/24/2009

Scott Webb, Architect

From: Scott Webb, Architect [scott@scottwebbarchitect.com]

Sent: Friday, January 09, 2009 8:39 AM

To: 'Jung-Han Chen'

Cc: 'Alan Kyger'

Subject: FW: 210 South Poplar

Jung-Han,

Lynn sent me the new application deadlines for 2009. The next BZA deadline is January 12 for the February 18 meeting.

Below is the email I sent Dec. 29, asking for clarification on what I should be applying for. Since I have not received a response from you, I am concerned that I will not have enough time to prepare an application, and the supporting documentation for Monday's deadline.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838

www.scottwebbarchitect.com

From: Scott Webb, Architect [mailto:scott@scottwebbarchitect.com]

Sent: Monday, December 29, 2008 11:09 AM

To: 'Jung-Han Chen'

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We are prohibited from two buildings on the lot, 1141.03(a)

We are required to separate the dwelling units 1159.05(8)(D) & 1159.05(8)(F) with open space.

There is no way I can "present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street" as you suggested, as it violates 1159.05(8)(D) & 1159.05(8)(F)

While the "addition" of another dwelling unit is required to be separate, it can not be considered another "principal building" on this lot.

The addition can be a separated dwelling unit per 1159.05(8)(D) & 1159.05(8)(F).

There is no requirement that all dwelling units must face the Street. Only that principal buildings do. (And I can't have more than one principal building per lot in a residential district)

It seems to me the "appeal" I need is an appeal of your interpretation. You know as well as I do, that if

2/24/2009

I go to the Board of Zoning Appeals, we need to be quite clear on the variances I need, or it will be tabled, or not heard, and another month will have disappeared.

So.... Let me know what variance I need, and the submission deadline so we can proceed.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

2/24/2009

Scott Webb, Architect

From: Jung-Han Chen [JHChen@cityofoxford.org]

Sent: Friday, January 09, 2009 8:50 AM

To: Scott Webb, Architect

Cc: Alan Kyger; Kathy Dale

Subject: RE: 210 South Poplar

Scott,

In our various email exchange, I pointed out the section to be 1141.03(e)(4) is the one that needs to be waived by the BZA.

Jung-Han Chen, AICP
Community Development Director
City of Oxford
(513) 524-5204

From: Scott Webb, Architect [mailto:scott@scottwebbarchitect.com]

Sent: Friday, January 09, 2009 8:39 AM

To: Jung-Han Chen

Cc: Alan Kyger

Subject: FW: 210 South Poplar

Jung-Han,

Lynn sent me the new application deadlines for 2009. The next BZA deadline is January 12 for the February 18 meeting.

Below is the email I sent Dec. 29, asking for clarification on what I should be applying for. Since I have not received a response from you, I am concerned that I will not have enough time to prepare an application, and the supporting documentation for Monday's deadline.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838

www.scottwebbarchitect.com

From: Scott Webb, Architect [mailto:scott@scottwebbarchitect.com]

Sent: Monday, December 29, 2008 11:09 AM

To: 'Jung-Han Chen'

Cc: Alan Kyger (akyger@cityofoxford.org)

Subject: 210 South Poplar

Jung-Han,

It seems from our last couple of conversations, including the most recent one in Alan's office, that you feel I must apply for some type of variance regarding the entrance to the dwelling unit addition at 210 South Poplar. I do not know what code section I need relief from given the following:

2/24/2009

We are prohibited from two buildings on the lot, 1141.03(a)

We are required to separate the dwelling units 1159.05(8)(D) & 1159.05(8)(F) with open space.

There is no way I can "present a building layout showing the existing portion and the proposed addition as one building with its principal entrance facing the street" as you suggested, as it violates 1159.05(8)(D) & 1159.05(8)(F)

While the "addition" of another dwelling unit is required to be separate, it can not be considered another "principal building" on this lot.

The addition can be a separated dwelling unit per 1159.05(8)(D) & 1159.05(8)(F).

There is no requirement that all dwelling units must face the Street. Only that principal buildings do. (And I can't have more than one principal building per lot in a residential district)

It seems to me the "appeal" I need is an appeal of your interpretation. You know as well as I do, that if I go to the Board of Zoning Appeals, we need to be quite clear on the variances I need, or it will be tabled, or not heard, and another month will have disappeared.

So.... Let me know what variance I need, and the submission deadline so we can proceed.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

Scott Webb, Architect

From: Scott Webb, Architect [scott@scottwebbarchitect.com]
Sent: Thursday, February 19, 2009 10:38 AM
To: 'Jung-Han Chen'; 'Kathy Dale'
Cc: 'Alan Kyger'; Douglas R. Elliot Jr. (delliott@cityofoxford.org)
Subject: 210 South Poplar

Jung-Han & Kathy,

As you know, I first presented the site plan & renderings for 210 South Poplar October 9, 2008 for consideration of the lot width question, and the setback distance for the parking spaces. The documents presented included plans & renderings, clearly showing the entrance to the new dwelling unit facing the alley. When I made this application, it was reviewed by your department and was determined that the only additional variance that was required, was for the driveway width. I amended my application accordingly and proceeded to BZA.

At the November BZA meeting, Bill Houck brought up the question of a second entrance facing the street. This is not, in my opinion, and applicable section of the code, nor did your department in your review of the plans & renderings prior to the November meeting.

November 20, I began an email correspondence with Jung-Han asking for clarification on this question.

November 24, I first put forth my argument that there is no code requirement that ALL entrances to dwelling units must face the street.

In numerous subsequent emails and face to face conversations, I asked for you to find a code section that requires all entrances face the street, or reconsider your interpretation. Despite the fact that I wrote & said specifically, I did not think I need to appeal a code section, but rather your interpretation, I was instructed that I must apply for a variance. After conferring with my client, we decided to do so.

Now it seems you, and/or the City's legal counsel feel I am in fact "appealing your decision", I have not made the correct application, and subsequently could not be heard last evening.

I truly believe I have put forth the right and complete information, and have asked staff for guidance, but find myself unable to be heard on this issue until March, nearly 6 months after first presenting this building to your department.

I still do not believe a variance is required. I have thoroughly researched the code, looked at examples throughout the City, gathered pictures, and created explanatory sketches to illustrate my point. I was unable to present them to BZA last evening, but would appreciate an opportunity to sit down with you and your staff to show them to you, in hopes you might reconsider this question and allow my client to proceed.

The only remaining question on this project is the location of the door. It is clearly within your power to interpret the code, and I believe it to be in the best interest of the City and my client to resolve this issue administratively.

Respectfully,

2/24/2009

Scott Webb, Architect

From: Scott Webb, Architect [scott@scottwebbarchitect.com]
Sent: Friday, February 20, 2009 10:01 AM
To: 'Jung-Han Chen'; 'Kathy Dale'
Cc: 'Alan Kyger'; Douglas R. Elliott Jr. (delliott@cityofoxford.org)
Subject: 210 South Poplar
Attachments: Two-Family Entrance requirements.pdf

Jung-Han & Kathy,

I know you guys are busy and apparently don't have time to meet to discuss this question as I suggested yesterday. For your consideration, I have attached an illustrated explanation of my argument that no Appeal is required to 1141.03(e)(4).

Please review this at your earliest convenience.

As discussed, timing is critical for this project to proceed.

Respectfully,

Scott Webb, Architect
103 West Walnut Street
Oxford, Ohio 45056
(513) 523-3838
www.scottwebbarchitect.com

2/24/2009

Scott Webb, Architect

From: Kathy Dale [kdale@cityofoxford.org]
Sent: Friday, February 20, 2009 3:53 PM
To: Scott Webb, Architect
Cc: Alan Kyger; Douglas Elliott; Rob Jacques (jacquesr@altickcorwin.com); Steve McHugh; Jung-Han Chen; Lynn Taylor
Subject: 210 S. Poplar

Scott,

In response to your previous emails regarding 210 S. Poplar; upon discussion with our legal council, we will permit the request to Appeal the Administrator's Decision to be on the March 18, 2009 BZA agenda provided additional, required information is submitted to our office by Tuesday, February 24, 2009 by 12:00 noon in order to meet the advertisement deadline for the newspaper. Items needed include:

1. A letter from you, the agent, clarifying your intent and request to appeal.
2. If Mr. Bennett is a co-agent and will be testifying on the owners' behalf at the hearing, a letter of agency indicating as such needs to be submitted.
3. Additional information as outlined and required in Section 1129.11, which includes any emails or other items you may have with content constituting the Administrative Ruling that you are appealing.
4. The addresses of the properties used as examples in your email attachment from this morning for verification purposes.

Respectfully,

Kathryn A. Dale, AICP

City of Oxford
City Planner
Community Development Department
101 E. High Street
Oxford, Ohio 45056
p. (513) 524-5204
f. (513) 524-5266

2/24/2009

City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-04-2009

Date – March 18, 2009

APPLICATION

Petitioner:	Clive Getty
Location:	946 Silvoor Lane
Owner:	Same
Action Request:	Variance to Section 1141.01(a)(3)A(1) to allow for installation of 9' high fence in front yard.
Current Use:	Single Family Residential
Zoning:	"R1A" Single-Family Low Density Residential
Surrounding Land Uses:	Single Family Residences

DESCRIPTION

The Applicant is requesting relief from Section 1141.01(a)(3)A(1) to allow for installation of an 9-foot high mesh deer fence and a 6'- 9' ornamental fence in the front yard. According to the site plan, a portion of the deer fence along the northern property line will project into the front yard and the proposed ornamental fence will be setback from the eastern property line in the front yard.

VARIANCES REQUESTED

Section 1141.01 (a)(3)A(1): Residential fences, walls, and hedges: May not exceed four feet in height front yards.

- The Applicant is proposing to install fencing, a maximum 9-feet in height, in the front yard to deter the deer.

SITE HISTORY

BZA 02-1997: Sec. 1129.02(d)(1) "R-1" side yard setback from 10-feet to 8-feet.

AGENCY COMMENTS

Requests for review were sent to Engineering, Economic Development, Police and Fire.

Econ. Dev.:	Returned with no comments.
Police:	Returned with no comments.
Fire:	Returned with no comments.
Engineering:	Returned with no comments.

ANALYSIS

The Applicant is proposing a decorative, open design fence along the front property line. The deer fence will not create a visual barrier nor will vehicular traffic be impaired, but instead will be transparent and likely unnoticeable to the neighboring properties. The variance request seems to be the minimum variance necessary to permit reasonable use of the land, the proposal permitted by the variance will be in harmony with the general vicinity, and will not be detrimental to the public health, safety, or general welfare.

According to the application, it appears that a sufficient practical difficulty exists to warrant granting the requested variance from Section 1141.01(a)(3)A(1) on the basis that the adjoining properties would not suffer a substantial detriment as a result of the variance, the request is the minimal method necessary to alleviate the property owners practical difficulty.

RECOMMENDATION

Should the BZA recommend approval, Staff recommends the following conditions:

1. That, the proposed work be constructed as approved with this appeal and that no changes or modifications be made without the consent of this Board.
2. That, the proposed work complies in all other respects with all applicable codes, Ordinances and the City of Oxford Zoning Code.
3. That, the proposed work be complete within 1 year of this decision.

SUBMITTED BY: Kathryn Dale
Kathryn A. Dale, AICP
City Planner

DATE: March 10, 2009

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/20/09

To: **Fire Department** Engineering Division Police Department Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-04-2009

ADDRESS: 946 Silvoor

Description:

**BZA-04-2009 – 946 Silvoor Lane, Variance to Section 1141.01(a)(3)A.1. fence height in front yard,
Clive Getty, Applicant**

____X____ Review

_____ Revisions

_____ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **3/11/2009** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

Drawings reviewed by:

A handwritten signature in black ink, appearing to be "J. Taylor", written over a horizontal line.

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/20/09

To: Fire Department **Engineering Division** Police Department Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-04-2009

ADDRESS: 946 Silvoor

Description:

**BZA-04-2009 – 946 Silvoor Lane, Variance to Section 1141.01(a)(3)A.1. fence height in front yard,
Clive Getty, Applicant**

____X____ Review

____ Revisions

____ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **3/11/2009** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments

without/comments

Drawings reviewed by: *Heidi Ogden* 2-27-09

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/20/09

To: Fire Department Engineering Division **Police Department** Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-04-2009

ADDRESS: 946 Silvoor

Description:

**BZA-04-2009 – 946 Silvoor Lane, Variance to Section 1141.01(a)(3)A.1. fence height in front yard,
Clive Getty, Applicant**

____X____ Review _____ Revisions _____ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **3/11/2009** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

Drawings reviewed by: SScawen

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/20/09

To: Fire Department Engineering Division Police Department **Economic Development**

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-04-2009

ADDRESS: 946 Silvoor

Description:

**BZA-04-2009 – 946 Silvoor Lane, Variance to Section 1141.01(a)(3)A.1. fence height in front yard,
Clive Getty, Applicant**

____X____ Review

_____ Revisions

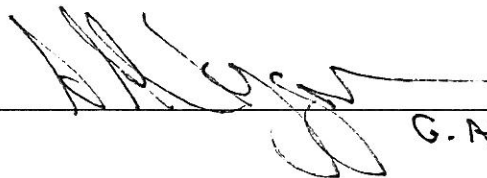
_____ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **3/11/2009** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

Drawings reviewed by: _____


G. ALAN KYSER



Samples of Deer Fencing
- provided by Staff

Petition for Zoning Variance
City of Oxford, Ohio

Date Filed: 2/9/09

Rec'd 2/9/09

3/18/09

mtg.

REQUIRED INFORMATION

Name of Petitioner:

Clive F. Getty

(Attach a Letter of Agency if the Applicant is not the property owner.)

Mailing Address:

946 Silver Lane, Oxford, OH 45056

Telephone Number(s):

523-3384

Name of Property Owner:

Clive F. Getty

Mailing Address:

946 Silver Lane, Oxford, OH 45056

Telephone Number(s):

523-3384

Requested Variance:

(Indicate nature of variance
and applicable section(s)
of the Zoning Code.)

Ornamental trellis for east (front) side of
property: 6' to 9' in height

Also 8' plastic mesh deer fence on north + south sides of
Section

1141.01(a)(3)A.1

property including front line of
house to ornamental trellis
on north side

Location of Requested Variance:

Front of house

Legal Description:

785 N 98.92

Zoning District:

Oxford Corp T-1 DL

Total Acreage:

1.5450 Acres

Existing Use of Site:

Single family home

Proposed Use: (if applicable)

Same

*A description of operations, including
type of goods sold, services performed,
and expected number of customers,
clientele, delivery, and service vehicles,
and the hours of operation.*

REQUIRED INFORMATION

Eight complete sets of all information shall be submitted with an application. The Zoning Administrator may modify this requirement based upon the type of materials included. The applicant is encouraged to contact the Zoning Administrator prior to submitting an application to discuss the submission requirement. If any information is submitted in color or on non-standard paper, more copies may be required.

(1) SITE PLAN – A scaled site plan shall include the following information in detail and must be prepared by an Ohio licensed surveyor. The required information may be submitted on multiple site plans if inclusion of all information on a single plan makes it illegible or difficult to understand.

- North arrow
- Scale
- Vicinity map
- All existing and proposed lot lines within the site
- Dimensions of all lots and of the entire site and any adjacent rights-of-way
- Location, height, and use of all proposed and existing structures
- Location and design of all proposed vehicle management areas
- Location, size, and type of all proposed signs
- Location, height, and type of all proposed screening and landscaping
- Distances to residential zoning districts if within 1,000 feet
- The use of land and location of structures on adjacent property and across adjacent rights-of-way
- An indication of the regulation from which the variance is requested
- Other information as required by the Board of Zoning Appeals.

- (2) ELEVATIONS – Elevations of proposed structure, or typical elevations if structures are not yet designed, may be required by the Zoning Administrator if the proposed location, height, or bulk of the structure is such that it may negatively affect an adjacent use.
- (3) OTHER – Photographs of the existing use and its surroundings and other information regarding the proposed use, site, or surrounding area as may be pertinent to the application or required by the Board of Zoning Appeals.
- (4) On a separate sheet, provide the names and mailing addresses of all property owners within 200 feet of all boundaries of the property in question, provide parcel numbers as well. NOTE: The Butler County website (www.butlercountyohio.org/auditor) is very helpful when searching for the mailing address of adjoining property owners. Once the site is up, click on online searches, then click on real estate. It will allow you to search by owner, address or parcel number.
- (5) A separate narrative statement that explains how the proposed variance satisfies each of the following Decision Standards required to grant a variance. A separate response is required for each subsection. In determining whether practical difficulties exist sufficient to warrant a variance, the Board shall consider and weigh the following factors:
- Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;
 - Whether the variance is substantial;
 - 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;
 - Whether the variance would adversely affect the delivery of governmental services (i.e., water, sewer, garbage);
 - Whether the property owner purchased the property with knowledge of the zoning restriction
 - Whether the property owners' predicament feasibly can be obviated through some method other than a variance;
 - Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance;
 - Any other relevant factor.

Submit this application with required attachments and a **\$150.00 filing fee**, made payable to the City of Oxford, to the office of the Community Development Director, Municipal Building, 101 East High Street, Oxford, Ohio 45056. Any questions should be directed to the Community Development Department at (513) 524-5204. The application will be placed on the next possible agenda.

NOTE: Notification and publication requirements must be adhered to. Submit materials 35 days prior to the proposed Board of Zoning Appeals meeting at which the action is requested.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

SIGNATURE OF APPLICANT: _____

Date: Feb. 2, 2009

PRINTED NAME OF APPLICANT: _____

Clive F. Getty

FEE / RECEIPT

\$150 Fee Paid / Receipt Number: Pd Check # 4294

(5) Narrative

a) Purchased property in August 1998. Since then have spent a considerable amount of money on landscaping. Initially deer were not much of a problem. But their numbers have multiplied at an alarming rate over the past ten years. At the moment I have my own "private" herd of six deer that regularly cross my property, devouring just about everything in sight. Beneficial use and enjoyment of the property and its landscaping is not possible without the installation of a deer fence and ornamental trellis which will deny deer access to the property.

b) Variance is not substantial.

c) The essential character of the neighborhood would not be substantially altered. On the contrary, the ornamental trellis would add to its picturesque appearance. Because of the openwork quality of the plastic mesh deer fence and the ornamental trellis, neither would block anyone's view. The plastic mesh deer fence is virtually invisible from a distance.

d) The variance in no way would affect the delivery of government services.

e) Zoning restrictions were not a factor in the purchase of the property.

f) Without the variance, it would not be possible to construct the trellis and deer fence high enough to deny the deer entrance to the property. The continued presence of the deer on the property will result in a steady degradation of the landscaping which was meant to enhance the picturesque nature of both the property and the surrounding neighborhood. Indeed, neighbors have repeatedly applauded my efforts to enhance the appearance of what had been a run-down property.

g) The openwork quality of the plastic mesh deer fence and the ornamental trellis will not result in the type of visual barrier which the zoning requirement presumably was meant to prohibit.

January 31, 2009

CLIVE GETTY

946 SILVOOR LANE

PROPOSED ORNAMENTAL TRELLIS FOR EAST BORDER

INCLUDES PEDESTRIAN GATE AND VEHICULAR GATE

This document is description of the dimensions and intent of the proposed trellis

Goal

This trellis is meant to aesthetically enhance the front garden of the Getty residence while preventing deer from entering the garden and destroying its value.

Dimensions

From South to North, the overall length of the trellis is near 50'. It begins with a 3' deep arched trellis with a gate on the West end. This allows for safe entry and exit of the garden. The rest of the trellis is a minimum of 6' from ground level to the top rail, and the middle section at approximately 9'. The open spaces between the patterned lumber range between 2' to 10". The uprights are pressure treated 6x6, with the rest of the lumber being pressure treated 2x4 and 4x4. Galvanized exterior hardware is used throughout. All uprights are set in concrete for stability.

Description

The design of this structure is patterned after the Chinese Chippendale tradition often used in the colonial architecture found in Williamsburg, VA and elsewhere. Staying true to the architectural style has been Mr. Getty's goal in his remodeling, garden design and so on.

The intent is to plant vines and climbers along the base of the trellis. This will provide an adequate barrier against deer while keeping a very open, aesthetic appearance. There are two 6-7' gates at the North end of the trellis to allow for vehicular traffic when the need arises.

DEVORE'S LANDSCAPE SERVICES INC.

1410 HOGUE RD

HAMILTON, OH 45013

(513) 896-9077

"Our Work is Our Art"

946 SILVOOR LANE

0 5 8

$\frac{1}{8}'' = 1'$

② →

Raised
Chippendale
Pattern

Anchored
Trellis

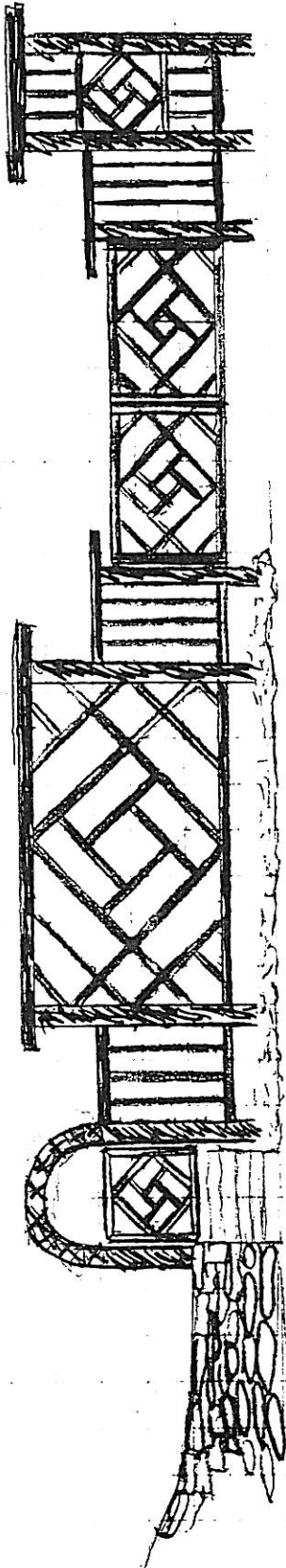
Vehicular gate

Vines and Hydrangea

Ornamental
Trellis

not for fence

Copyright ©2007 Pictometry International Corp.



Vehicular

gate

Pedestrian

Gate

South.....North

Scale

1/8 inch = 1'



City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-03-2009

Date – February 18, 2008
REVISED – MARCH 18, 2009

APPLICATION

Petitioner: Scott Webb
Location: 210 S. Poplar St.
Owner: J.P. Green Living LLC

Action Request: Appeal of Administrator's Decision and Variances to Section
1141.03(e)(4) Principal Entrance and Section 1141.03(j) Residential
Building Additions
Current Use: Single-Family House
Zoning: R2MS Single and Two-Family Mile Square Residential
Surrounding Land Uses: Residential

DESCRIPTION

This property is located on the west side of Poplar Street between Collins and Spring Streets. In November the BZA granted two variances to this property (Case# 15-2008) in regards to the parking width and minimum lot size for a two-family lot.

The Applicant wishes to construct a two-story dwelling unit addition to an existing single family thus making it a two-family unit at this location. However, the principal entrance to the second unit would not be along a public street, but rather facing an alleyway.

Prior to the February BZA meeting, the Applicant's legal counsel contacted the City's legal counsel and indicated that the Applicant intended his application to be an appeal of the administrator's decision. The application itself was ambiguous, and the Applicant's legal counsel indicated that a request would be made to table the application. However, the request was not made and the Applicant appeared at the February BZA meeting. The full Board was not present at that meeting, and the matter was postponed at the Applicant's request.

Due to the ambiguity of the original application, Staff determined that the application could proceed as a dual-purpose application, conditioned on the submission of supplemental materials required for an administrative appeal under §1129.11 of the Code.

The application before the Board involves two separate, but related, determinations: an administrative appeal and a variance request. First, the Applicant wishes to appeal the decision of the Zoning Administrator regarding the interpretation of §1141.03(e)(4). The appeal arises from a series of emails between the Applicant and Staff regarding the Applicant's need for a variance to §1141.03(e)(4), which provides:

"Every building hereafter erected, converted, enlarged, reconstructed, or structurally altered shall be located on a lot of record, and shall have its principal entrance upon a street bordering such lot."

The Board must determine if the referenced email exchange constitutes a "decision of the Zoning Administrator" subject to appeal under §1129.11, and if so, whether the decision given to the Applicant was made in error. If the Board determines that a decision of the Zoning Administrator was made in error, the Applicant's variance request will be rendered moot and need not be considered. If the Board determines that no Administrator's Decision was made, or that if made, it was not in error, then the Applicant wishes to proceed on a request for a variance to §1141.03(e)(4) Principal Entrances.

VARIANCES REQUESTED

Section 1141.03(e)(4): Every building hereafter erected, converted, enlarged, reconstructed or structurally altered shall be located on a lot of record, and shall have its principal entrance upon a street bordering such lot.

Section 1141.03(j): Residential Building Additions. Any addition to a residential building that results in or enables a new dwelling unit is not permitted.

- Please see Legal Counsel's memorandum dated February 17, 2009. This request should be removed from consideration.

AGENCY REVIEW

02.18.09 Responses:

Requests for review were sent to Engineering, Economic Development, Police and Fire.

Econ. Dev.:	No comments returned to date.
Police:	Comments noted. See attached.
Fire:	Returned with no comments.
Engineering:	Comments noted. See attached.

03.18.09 Responses:

Econ. Dev.:	No comments returned to date.
Police:	Returned with no comments.
Fire:	Returned with no comments.
Engineering:	Refers to previous comments.

ANALYSIS

Relevant definitions and code provisions:

§1159.17 (13) PRINCIPAL ENTRANCE - The place of ingress and egress used most frequently by the public.

§1159.20 (12) STREET - Any vehicular way that: (1) is an existing state, county, or municipal roadway; (2) is shown upon a plat approved pursuant to law; (3) is approved by other official action.

§1159.02 (10) ALLEY - A service, space, or roadway providing a secondary means of public access to abutting property and not intended for general traffic circulation.

Appeal of Administrator's Decision:

Per §1129.11 the aggrieved party may appeal the decision of the zoning administrator. Subsection (a)(4) says that in order to demonstrate standing for an appeal, the appellant must state "the way in which the administrative action adversely affects the appellant." Clearly this statement is not in any of the Applicant's letters submitted, only their opinion that they disagree. Furthermore, the Applicant has never officially filed a permit application for this proposed addition, thus no administrative action has officially transpired to adversely affect the appellant by refusing or denying an application.

If the Board decides that the Applicant has standing and an administrative decision or action has occurred, the question to be determined is whether the Zoning Administrator's decision was correct, *i.e.*, whether the Applicant's design would need a variance relating to the requirement that principal entrances face the street. Staff believes that the addition, as planned, would result in a building that has a principal entrance not facing a street, and would require a variance from the requirements of §1141.03(e)(4).

A building's "principal entrance" is defined as the place of ingress and egress used most frequently by the public. The proposed building includes two dwelling units that have completely separate places of ingress/egress. The additional unit is not accessed from within the existing unit, so the existing place of ingress/egress cannot be the principal entrance with respect to that dwelling unit. Therefore, the completed building would have two places of ingress/egress that would be equally used by the public. Since only one of the principal entrances faces a street, it is the opinion of Staff that a variance would be required to allow a principal entrance that would not be facing the street.

Variance Request:

At the November BZA hearing regarding this property, the question was raised regarding the entrance and these very provisions from which the Applicant is requesting relief. The record shows that the Applicant testified that the building had not yet been designed and that this unit could have its access through the front structure. But based on the Applicant's floor plan for the proposed addition, submitted with the present application, and the floor plan to the original unit, the breezeway connecting the units fails to connect any ingress/ egress between them and the proposed second unit clearly is not accessible through the principal entrance facing Poplar Street.

According to the Applicant's letter dated February 23, 2009, the Applicant indicates that Staff failed to inform them of additional variances, yet this letter also concedes that the Applicant had not yet completed the design for the proposed structure. As aforementioned, the Applicant has never filed a building permit application for Staff's review and determination, nor has the Applicant submitted a final design to request a formal ruling as to variances that might be required.

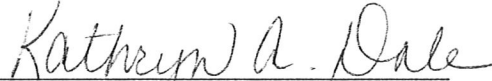
Staff believes that a number of the Decision Standards are relevant in this matter, but that A and F are particularly applicable. The property is already used as a rental property, deriving an economic benefit to the owner. The proposed addition could certainly increase the income potential of the property, but it would not be accurate to say the property cannot be put to beneficial use without the requested variance. Likewise, it is not clear that a variance is the only way to achieve the conversion of the existing single-family residence to a two-family residence. While they may be more or less convenient to the property owner, there are other ways to convert the property that would not require a principal entrance to be oriented away from the street. Staff does not believe that strict application of the Zoning Code imposes practical difficulties on the Applicant sufficient to warrant a variance.

RECOMMENDATION

Should the BZA recommend approval, Staff recommends the following conditions:

1. That, the proposed work is completed within one year from this approval.
2. That, the proposed work complies in all other respects with all applicable codes and the City of Oxford Zoning Code.
3. That, the proposed work be constructed as approved with this appeal and that no changes or modifications be made without the consent of this Board.

SUBMITTED BY:


Kathryn A. Dale, AICP
City Planner

DATE: January 30, 2009

REVISED: March 6, 2009

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.

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/24/2009

To: **Fire Department** Engineering Division Police Department Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-03-2009

ADDRESS: 210 S. Poplar

Description:

BZA-03-2009 – 210 S. Poplar, Appeal of Administrator's Decision and Variance to Section 1141.03(e)(4) Principal Entrance and Section 1141.03(j) Residential Building Additions, Scott Webb, Applicant, Agent

____X____ Review _____ Revisions _____ Other

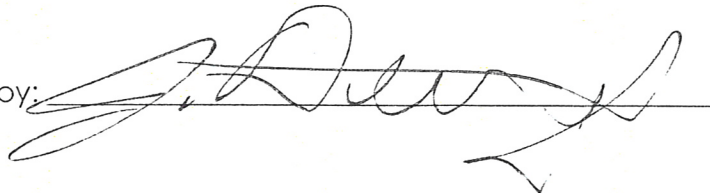
Comments or status update requested by: Lynn Taylor

Please return no later than: **3/11/2008** Note: If no comments are received, we will assume the project meets your department's standards.

.....

Drawings are returned: w/comments without/comments

Drawings reviewed by:



SECOND REVIEW

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/24/2009

To: Fire Department Engineering Division Police Department Economic Development

From: Community Development

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 X Review Revisions Other

Comments or status update requested by: Lynn Taylor

Please return no later than: **3/11/2008** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

My PREVIOUS COMMENT STANDS.

Drawings reviewed by: A. Poplar 2-27-09

SECOND REVIEW

City of Oxford
Inter-Office Review Transmittal Sheet

Date: 2/24/2009

To: Fire Department Engineering Division **Police Department** Economic Development

From: Community Development

Drawings are being submitted to you for the following:

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BZA-03-2009 – 210 S. Poplar, Appeal of Administrator's Decision and Variance to Section 1141.03(e)(4) Principal Entrance and Section 1141.03(j) Residential Building Additions, Scott Webb, Applicant, Agent

☒ Review

☐ Revisions

☐ Other

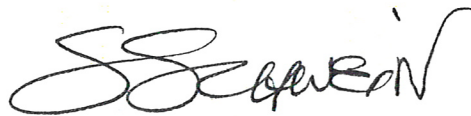
Comments or status update requested by: Lynn Taylor

Please return no later than: **3/11/2008** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments

without/comments

Drawings reviewed by: _____



SECOND REVIEW

Jung-Han Chen

From: David Kellems [hoganknowsbest@msn.com]
Sent: Wednesday, February 18, 2009 8:10 AM
To: barnhajf@muohio.edu; houktw@muohio.edu; gmeyer@woh.rr.com; Jung-Han Chen; Schmates Rentals; prbrady2@verizon.net; Scott Otto
Subject: FW:
Attachments: email.jpg

From: hoganknowsbest@msn.com
To: HOGANKNOWSBEST@MSN.COM
Subject:
Date: Tue, 17 Feb 2009 14:08:12 -0500

See how Windows Mobile brings your life together—at home, work, or on the go. [See Now](#)

Breezeway

From Wikipedia, the free encyclopedia

A **breezeway** is an architectural feature similar to a hallway that allows the passage of a breeze between structures to accommodate high winds, allow aeration, or provide aesthetic design variation. Often a breezeway is a simple roof connecting two structures; sometimes it can be much more like a tunnel.

26

<http://artwinknits.typepad.com/photos/house/breezeway.jpg>

Retrieved from "http://en.wikipedia.org/wiki/Breezeway"

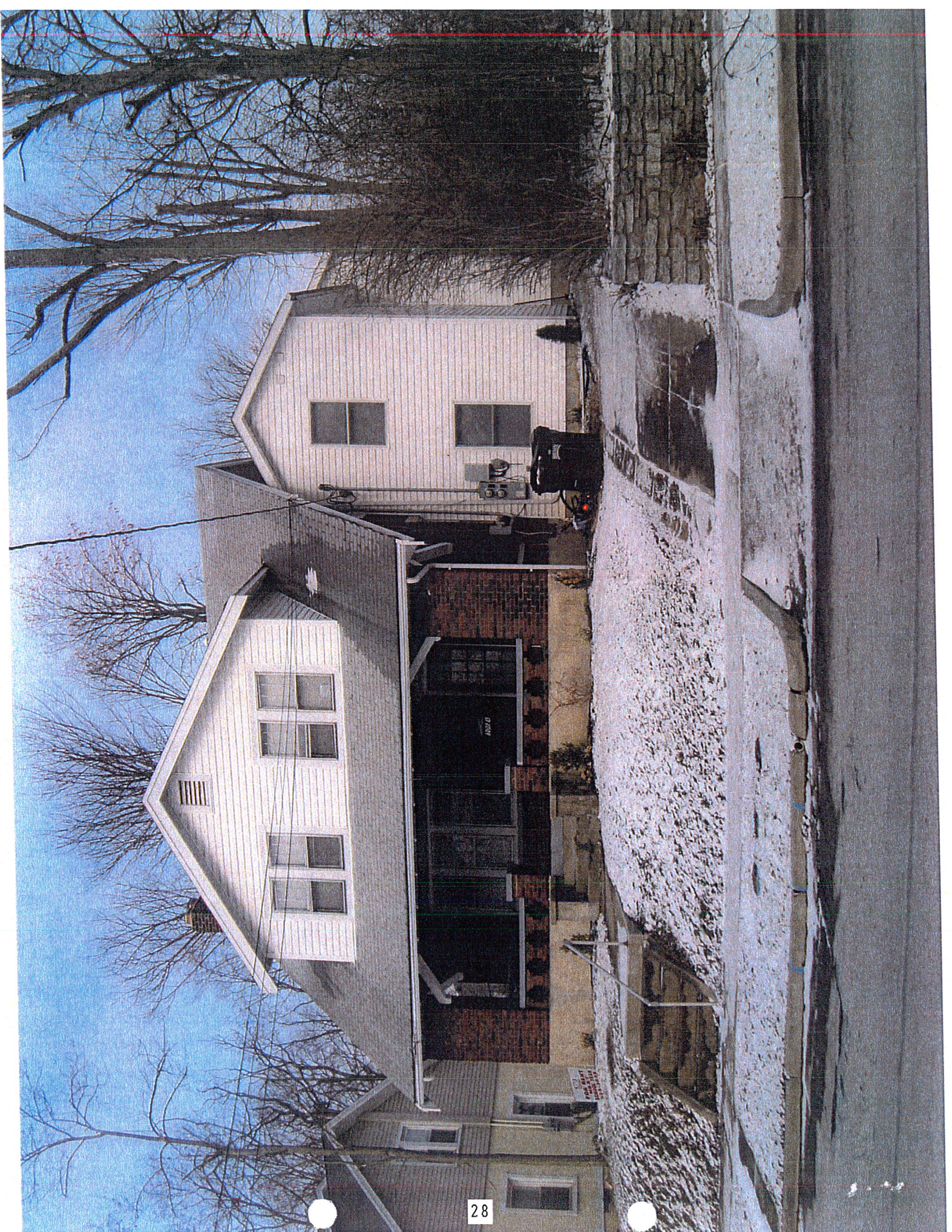
Categories: Rooms | Room stubs

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Jung-Han Chen

From: David Kellems [hoganknowsbest@msn.com]
Sent: Friday, February 13, 2009 2:09 PM
To: barnhajf@muohio.edu; houktw@muohio.edu; gmeyer@woh.rr.com; Jung-Han Chen; prbrady2@verizon.net; Schmates Rentals
Subject: UGLY ADDITIONS
Attachments: Albatrosses 010.jpg

Windows Live™: E-mail. Chat. Share. Get more ways to connect. [Check it out.](#)



Jung-Han Chen

From: David Kellems [hoganknowsbest@msn.com]
Sent: Wednesday, February 11, 2009 3:23 PM
To: barnhajf@muohio.edu; houktw@muohio.edu; gmeyer@woh.rr.com; Jung-Han Chen; prbrady2@verizon.net; pamela kellems; Schmates Rentals
Subject: THANKS TO THE BOARD MEMBERS FOR THE NEW MILE SQUARE DESIGN STANDARDS !! (butt)
Attachments: Albatrosses 003.jpg

where does it say that people with permits are the only ones that have to follow these guidelines ??
I have purged the zoning code and can not find where it says this ???

Windows Live™: E-mail. Chat. Share. Get more ways to connect. [See how it works.](#)



Jung-Han Chen

From: David Kellems [hoganknowsbest@msn.com]
Sent: Sunday, February 15, 2009 10:38 AM
To: barnhajf@muohio.edu; houktw@muohio.edu; gmeyer@woh.rr.com; Jung-Han Chen; prbrady2@verizon.net; Schmates Rentals
Subject: ADDITIONS
Attachments: Rental pics 006.jpg

The look of a well built addition ,that doesn't look like a addition , a MILE SQUARE BUILDING STANDARD greatly needed in Oxford .What is the definition of ' BREEZEWAY ' ????

Windows Live™: E-mail. Chat. Share. Get more ways to connect. [See how it works.](#)



Jung-Han Chen

From: David Kellems [hoganknowsbest@msn.com]
Sent: Friday, February 13, 2009 2:13 PM
To: barnhajf@muohio.edu; houktw@muohio.edu; gmeyer@woh.rr.com; Jung-Han Chen; prbrady2@verizon.net; Schmates Rentals
Subject: MILE SQUARE DESIGN STANDARDS NOT FOLLOWED !!!!
Attachments: Albatrosses 011.jpg

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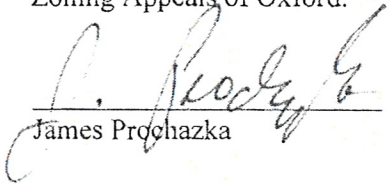
February 24, 2009

To: Scott Webb Architect
Attention: Scott Webb
& Oxford Board of Zoning
103 West Walnut Street
Oxford, OH 45056
P: (513) 523-3838
e-mail: scott@scottwebbarchitect.com

From: J.P. Green Living, LLC.
James Prochazka
408 W. St. Clair Ave.
Suite # 226
Cleveland, OH 44113
P: (216) 701-6203
e-mail: johnprochazka1@hotmail.com

Re: Letter of Agency

Please let it be known that Mr. Jay C. Bennett Attorney at Law is an acting Agent of the real property known as 210 South Poplar, Oxford, OH in front of the Board of Zoning Appeals of Oxford.


James Prochazka

JAY C. BENNETT
ATTORNEY AT LAW
Oxford Professional Building
5995 Fairfield Road, Suite #5
Oxford, Ohio 45056-1587
Telephone 513.523.4104
Fax 513.523.1525

February 11, 2009

Robert Jacques
Altick & Corwin Co., LPA
1700 One Dayton Centre
One South Main
Dayton, Ohio 45402

Re: *Oxford City Ordinance Section 1141.03(j)*

Dear Rob:

As legal counsel for JP Green Living, LLC I am writing with regard to my client's project located at 210 S. Beech Street. As you know my client has obtained variances to allow an addition to the existing structure at said address to form and complete a two family dwelling in the R2MS district. The following ordinance and its interpretation has a direct bearing on my client's project. The ordinance reads:

1141.03(j) Residential Building Additions: Any addition to a residential building that results in or enables a new dwelling unit is not permitted.

The ordinance is problematic since by its terms, it creates a contradiction in the zoning code.

As you are aware, the rules of statutory construction and interpretation call for statutes to be read in the context of the entire code and must, when possible, be read in harmony with other sections of the code. The purpose of statutory construction and interpretation is ultimately to decipher the legislative intent. My client seeks to construct an addition that, when completed, would fulfill the principal permitted use of two family dwelling. The ordinance, when read in context of the rest of the code, would force the property owner to demolish his single family structure and then rebuild a two family structure to fulfill the principal permitted two family use allowed in the R2MS district.

The staff report dated December 11, 2008 indicates that this section is most likely a "remnant from the previous code" that city staff believes should be removed. Staff correctly characterizes the intent of this section as ensuring no additional dwelling units would be permissible when the allowable number of units have been established. Staff cites the appropriate decision criteria contained in 1135.02(c)(1) as the criteria to be used for amendments to the code. As you know, fulfillment of any one of the criteria would justify the amendment. It is my belief that the

amendment of 1141.03(j) would fulfill more than one of the decision criteria.

The fulfillment of subsections C and D are somewhat obvious since one of the two principal permitted uses under Oxford City Ordinance 1143.05 is a two family dwelling and the facilitation of such use is clearly the intent of the code. The offending section appears to negate one of only two principal permitted uses that are allowed in the R2MS district, depending upon the chosen mode of construction used to establish such a use. The repeal of the contradictory section would remove any confusion regarding the efficacy and legislative certainty of the permitted use classifications for that zone.

The repeal of the offending section would, pursuant to subsection B, improve the public health, safety and welfare of the City if only because the offending section, as written, fails to substantially advance public health, safety and welfare. As well supported by Ohio case law the lack of a nexus between the provisions of this ordinance and the enumerated public interests may render the ordinance violative of substantive due process. The code, as presently written, would theoretically create the need for an application for use variance to achieve a two family dwelling. Oxford's code and Ohio case law proscribe use variances. The benefits of amending the code to repeal this contradiction would obviously outweigh any pitfall from the standpoint of code clarity.

A more benign interpretation of the offending section, read in harmony with the principal permitted use provisions of the R2MS designation would indicate that 1141.03(j) prohibits (as stated by staff) an addition that purports to create a new dwelling unit exceeding the maximum number units allowable, i.e. a third unit. Adopting such interpretation would, at the very least, move the interpretation from contradictory to redundant, thereby rendering the offending section a harmless nullity. This interpretation would alleviate an unnecessary delay in the owner's project and the resulting potential financial loss. Such an interpretation also completely removes or negates the City's exposure to potential liability and litigation over this section.

In light of the foregoing I would request your consideration of rendering a legal opinion as to the efficacy and legality of section 1141.03(j) as it is contained in the present zoning code. If your legal opinion is in agreement with the staff report and the content of this letter, the necessity of delaying my client's project until the section is officially repealed or replaced would become unnecessary.

I would be most appreciative if you could express to me an opinion prior to the Board of Zoning Appeals hearing scheduled for the evening of February 18, 2009. This may alleviate the necessity of my appearing at that meeting should your opinion be consistent with the foregoing. Thank you for your consideration.

Very truly yours,



Jay C. Bennett
Attorney at Law

JCB/da



Altick & Corwin Co., L.P.A.

1700 One Dayton Centre • One South Main Street • Dayton Ohio 45402

Tel: (937) 223-1201 • Fax: (937) 223-5100

TO: Jung-Han Chen and Kathryn A. Dale
City of Oxford Community Development Department

FROM: Robert F. Jacques

CC: Stephen M. McHugh

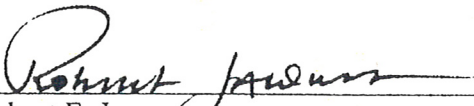
DATE: February 17, 2009

RE: Variance requested for 210 S. Poplar Street
Subsection 1141.03(j)

In response to your request, I have reviewed Subsection 1141.03(j) of the Planning and Zoning Code, which prohibits "(a)ny addition to a residential building that results in or enables a new dwelling unit." This subsection has become the subject of a variance application submitted by Scott Webb on behalf of J.P. Green Living, LLC, for property located at 210 S. Poplar Street. The property currently contains a single-family residence which the applicant wants to convert to two-family use. The application is scheduled to be heard by the Board of Zoning Appeals on Wednesday, February 18, 2009.

Upon review, Subsection 1141.03(j) is not a proper subject for a variance application on the present facts. Because it bears directly on the applicant's desire to convert an existing single-family use to a two-family use, I would classify this request as an application for a use variance, which is prohibited by Subsection 1139.01(a) and not subject to review by the Board of Zoning Appeals.

ALTICK & CORWIN CO., LPA


Robert F. Jacques