

**City of Oxford**  
*Community Development Department*  
**STAFF REPORT**

**Board of Zoning Appeals**

**Case # BZA-05-2009**

**Date: July 15, 2009**

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**APPLICATION**

|                        |                                                     |
|------------------------|-----------------------------------------------------|
| Petitioner:            | David Kellems                                       |
| Location:              | 210 S. Poplar St.                                   |
| Owner:                 | J.P. Green Living LLC                               |
| Action Request:        | Appeal of Administrator's Decision                  |
| Current Use:           | Single-Family House (Two-Family Under Construction) |
| Zoning:                | R2MS Single and Two-Family Mile Square Residential  |
| Surrounding Land Uses: | Residential                                         |

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**DESCRIPTION**

The appellant is a neighboring property owner of 210 S. Poplar Street and is appealing the Administrator's Decision to issue a building permit (Permit No. 09-056) for the construction of a two-story, dwelling unit addition to an existing single family, thus making it a two-family dwelling unit at this location. The building permit application was filed March 25, 2009 and issued May 13, 2009.

The appellant's letter also states that previous variances should be overturned. To be very clear, the Board is not considering any information regarding this property previously presented to it in prior hearings, nor is the Board reconsidering any of their decisions. This Board does not hear appeals of its own decisions.

The Board should verify the appellant's intentions (appealing the permit or the Boards prior rulings) prior to hearing the appeal.

**§1129.11 APPEALS OF ADMINISTRATOR'S DECISION.**

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

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

- (1) Cite specific provisions of this Zoning Ordinance that are alleged to have been interpreted in error of the specific decisions or action being appealed and the grounds on which the appeal is being made;
- (2) Include any required application fee in an amount set by the City;
- (3) Include such other information as the City or the Board may reasonably require; and
- (4) Include a statement as to why the appellant has standing to pursue the appeal from the administrative action by a statement of the way in which the administrative action adversely affects the appellant.

(Ord. 2901. Passed 2-21-06.)

## AGENCY REVIEW

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

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

## ANALYSIS

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". In this regard, the application contains the following two statements:

1. *"My wife and I have stance (sic) in this matter because we own 21 and 23 East Collins; two structures that abut said property."*
2. *"We absolutely believe that not only will this adversely affect our property values, the second structure is unfair to the rest of the citizens in Oxford; allowing an out-of-town landlord to fail to meet the zoning code provided by the City."*

In Staff's opinion, the fact that the Appellant owns an adjoining property does not demonstrate that the Appellant has been adversely affected by the decision to issue the building permit in question. The Appellant fails to support his claim that his property value has been adversely affected. The subject property, as well as the Appellant's properties, are zoned "R2MS" which permits two-family dwellings. One of the Appellant's neighboring properties is currently a two-family dwelling. Both the subject property and the Appellant's property will have duplexes located on them and staff does not see any unfairness in the code or how it has been applied. Both property owners have been permitted to maximize their property to the highest and best use that the zoning code permits. In short, Staff does not believe the Appellant has demonstrated standing to appeal the decision to issue the building permit in question.

On April 27, 2009 the appellant filed a public records request for copies of the drawings submitted with the building permit application, which included architectural drawings and site plan dated April 22, 2009 and May 1, 2009. On May 12, 2009 he paid for and picked up his public records request. On May 13, 2009 the appellant filed a second public records request for copies of the files and minutes of prior BZA hearings conducted for this property and copies of the complete file for the approved building permit. To date, the appellant has never picked up this request. None of the supporting documentation submitted with the Appellant's Administrative Appeal are approved drawings related to the issued building permit. The BZA should affirm the Zoning Administrator's Decision since the appellant has failed to provide relevant drawings with his appeal.

The appellant's primary argument(s) to the issuance of the permit is that there are two buildings on one lot and that the Mile Square Design Standards have not been satisfied.

The permit was reviewed approved by the Zoning Administrator on the following basis:

1. §1143.05(b)(1)B. states that in the "R2MS" Single and Two-Family Mile Square Residential District two-family dwellings are permitted.
  - *The permit was issued for a two-story, 4 bedroom dwelling unit addition creating a two-family, which is permitted.*
2. Variances were granted regarding the minimum lot width not being satisfied and driveway width being larger than the maximum permitted, but all other requirements for lot coverage, setbacks, height and Mile Square Design Standards for the "R2MS" zoning district were satisfied.
  - *The appellant claims that §1143.05(d)(1)A. of the Mile Square Design Standards is not met. This subsection specifically states: "The restoration or alteration of existing buildings must follow the historical characteristics of the existing building." What the appellant doesn't provide is that the Mile Square Design Standards do not dictate any architectural style or design. The specific statement he references addresses the*

*restoration or alteration of existing buildings, not new construction. The intent of this section is in reference to improvements made on an existing building such as, but not limited to, fixing or repairing features or correcting missing features on the existing building (i.e., windows, crown molding, façade repair). The architectural style of the proposed addition is an exact replica of the existing unit, with the exception of the materials being used. The existing unit has siding and the additional unit will consist of brick. The Mile Square Design Standards do not require that the materials for an addition must be the same as the original structure.*

3. The proposed construction satisfies the definition of “Addition” and “Two-Family Dwelling”.

- *§1159.02(5) Addition is defined as: “Any extension or enlargement of a structure that results in additional square foot area.”*
- *§1159.05(8)D. Two-Family Dwelling Unit is defined as: “A building consisting of two single dwelling units, detached or separated from other dwelling units by open spaces.*
  - *Further definitions:*
    - *§1159.20(14) Structure - “Anything permanently constructed, erected or located on the ground, including, but not limited to, advertising signs and backstops for tennis courts.”*
    - *§1159.05(8)F. Dwelling Unit - “One or more rooms which are arranged, designed, or occupied as living quarters for a 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 a dwelling unit from any other dwelling unit. No doorway or perforated walls exist between dwelling units.”*
    - *§1159.03(5) Building - “Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials of any kind.”*

Based on the definitions above, the project must be considered a single building because it is a walled structure, under roof, and intended for the housing or enclosure of persons. The breezeway, rather than connecting two separate buildings, is walled and roofed such that the additional construction cannot be considered a separate building under the definitions in the Planning and Zoning Code. The existing home, plus the new construction, must be considered a single building. It obviously meets the definition of structure as something permanently constructed, and as both a building and a structure, the new construction meets the definition of addition because there is clearly an extension or enlargement that results in additional square footage. Furthermore, the addition contains a second dwelling unit with publicly accessible space between units creating one principal, primary use as a two-family.

The appellant claims that §1141.03(a) was interpreted in error. This section states:

- *“One Principal Building per Lot. In a residential district there shall be no more than one principal building on one lot.”*

The structure, with the proposed addition on the subject property will be one principal building, which is a two-family duplex. The intent of this section is to prevent two separate, unconnected, detached buildings with the same use in each building on one lot. For example, two, detached duplexes, totaling 4 dwelling units would not be permitted on a single lot. Other relevant definitions:

- *§1159.17(12) Principal Building - “A building on a lot containing the primary use of the lot.”*
- *§1159.22(1) Use - “The activity occurring on a lot or parcel for which land or a building is arranged, designed, or intended, or for which land or a building is or may be occupied, including all accessory uses.”*

- §1159.22(1)C. *Principal Use* - "A use which fulfills a primary function of a household, establishment, institution, or other entity."

In summary, based on all the definitions presented herein and the construction plans as submitted with the permit, there was and is no justifiable reason to refuse the permit. There are no requirements in the code that state an addition has to be connected by a specific percentage of exterior walls or that the connection between units has to be a livable/habitable space. The Zoning Administrator's Decision should be upheld and that the Board cannot render a decision in support of the appellant because the appellant has not demonstrated that he is adversely affected by the decision to issue the building permit and there is no supporting information related to the permit submitted with the appeal. Furthermore, the zoning district permits a two-family use on the property and the Board is prohibited per §1139.01(a) from considering use variances.

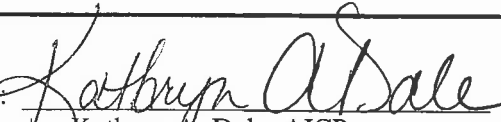
The Board must decide if the Applicant has standing and whether the administrative decision to issue a construction permit for an addition was correct.

### RECOMMENDATION

Not Applicable

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SUBMITTED BY:

  
Kathryn A. Dale, AICP  
City Planner

DATE: June 16, 2009



Scale: 1 inch = 42.8 feet

City of Oxford  
Inter-Office Review Transmittal Sheet

Date: 6/2/ 2009

To: Fire Department Engineering Division Police Department Economic Development

From: Community Development

Drawings are being submitted to you for the following:

Case #: BZA-05-2009

ADDRESS: 210 S. Poplar

Description:

**BZA-05-2009 – 210 S. Poplar Street** Appeal of Administrator's Decision to allow the issuance of a building permit, Number 09-056, for an addition, **David A. Kellems, Applicant**

\_\_\_\_X\_\_\_\_ Review

\_\_\_\_ Revisions

\_\_\_\_ Other

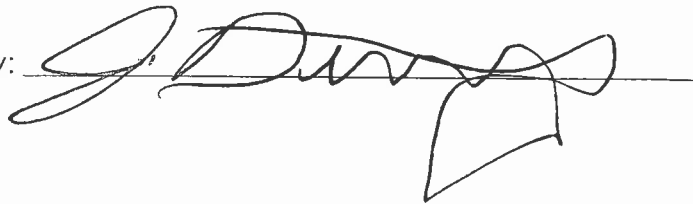
Comments or status update requested by: Lynn Taylor

Please return no later than: <sup>6</sup>~~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: 6/2/ 2009

To: Fire Department Engineering Division Police Department Economic Development

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☒ X Review

☐ Revisions

☐ Other

Comments or status update requested by: Lynn Taylor

Please return no later than: <sup>6</sup>~~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: \_\_\_\_\_

**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

June 18, 2009

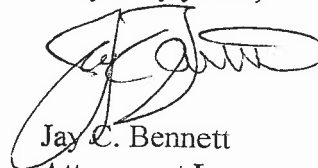
Board of Zoning Appeals  
City of Oxford  
c/o Kathy Dale  
101 E. High Street  
Oxford, OH 45056

*Re: Appeal of administrative decision 210 S. Poplar St.,  
BZA -05-2009*

To the Board of Zoning Appeals:

As legal counsel for James Prochazka I am writing to request a continuance of the hearing of the above listed matter that is scheduled for Wednesday July 15, 2009 at 7:30 p.m. Both my client and I will be out of the state on that day. Hence, I am respectfully requesting a continuance of said hearing until the next meeting of the Board of Zoning Appeals. Please contact me with regard to the new date at your earliest convenience. Thank you for your consideration.

Very truly yours,



Jay C. Bennett  
Attorney at Law

JCB/da

Case No.: BZA-05-2009

Date Filed: 5/21/09

## Petition for Appeals of Administrator's Decision

City of Oxford, Ohio

### REQUIRED INFORMATION

Name of Petitioner:

DAVID A. KELLEMS

(Attach a letter of agency if the applicant is not the property owner.)

Mailing Address:

8747 MT. HOPE RD., HARRISON, OH 45030

Telephone Number(s):

513-505-4918 cell 513-367-6039

Name of Property Owner:

JOHN PROCHAZKA

Mailing Address:

4120 LANDER RD., ORANGE VILLAGE, OH 44622

Telephone Number(s):

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

requesting decision to appeal  
administrators decision of issuing  
a permit for 210 S Poplar  
09-056

Location of Requested

Variance:

Legal Description:

Zoning District:

Total Acreage:

Existing Use of Site:

Proposed Use: (if applicable)

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.

210 S Poplar

R2MS

12.125 acres lot

single family

two family

### 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) Cite specific provisions of this Zoning Ordinance that are alleged to have been interpreted in error of the specific decisions or action being appealed and the grounds on which the appeal is being made;
- (2) Include any required application fee in an amount set by the City;
- (3) Include such other information as the City or the Board may reasonably require; and
- (4) Include a statement as to why the appellant has standing to pursue the appeal from the administrative action by a statement of the way in which the administrative action adversely affects the appellant
- (5) 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, including but not limited to site plans and elevation drawings.
- (6) 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, giving lot numbers and house numbers. (This information is available at the Butler County Auditor's Office.)

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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**

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SIGNATURE OF APPLICANT: \_\_\_\_\_

David A. Kellem

Date: \_\_\_\_\_

5/14/09

PRINTED NAME OF APPLICANT: \_\_\_\_\_

DAVID A. KELLEMS

**FEE / RECEIPT**

\$150 Fee Paid / Receipt Number: \_\_\_\_\_

14697

Board Members:

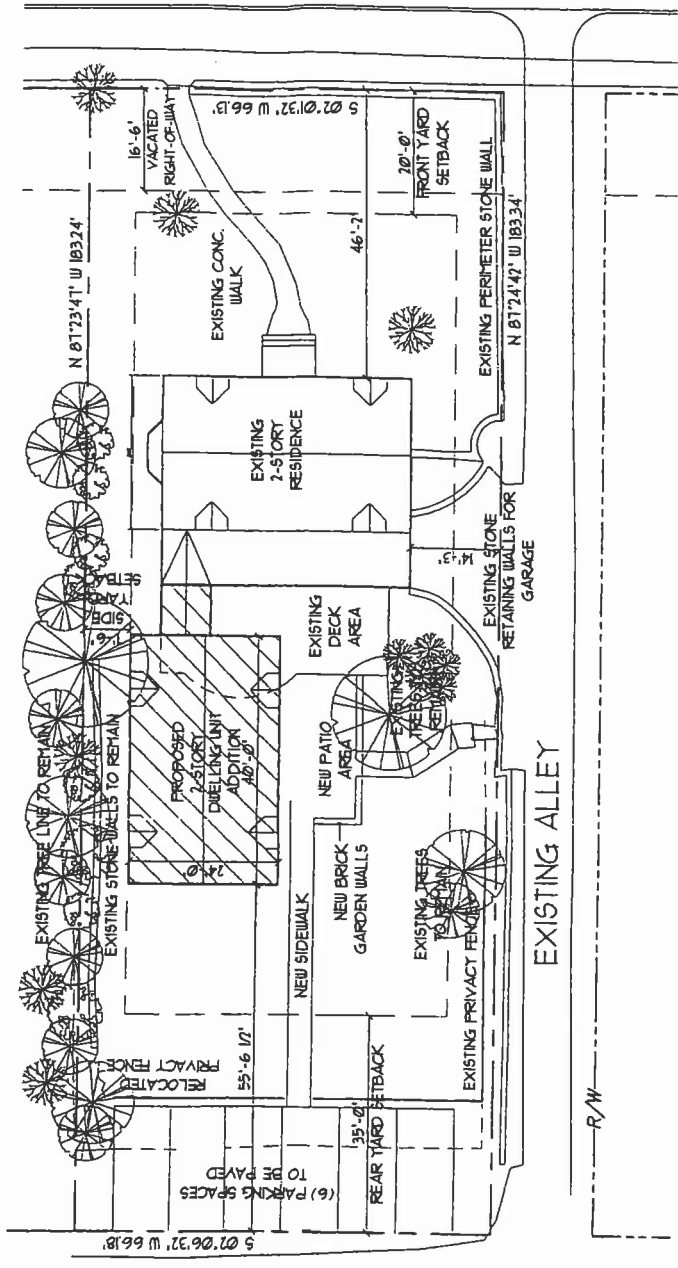
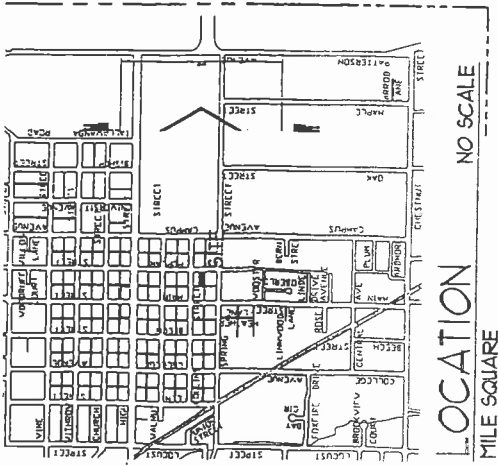
Please accept this letter as a formal petition for the Board of Zoning Appeals to review and overturn the Zoning Administration decision on permit no. 09-056 (210 South Poplar).

My wife and I have stance in this matter because we own 21 and 23 East Collins; two structures that abut said property.

On May 13, a permit was issued for 210 South Poplar, which fails to meet section definitions of the zoning code.

A permit should not have been issued for the following reasons:

- Section 1141.03 (a) prohibits two buildings on one lot in a residential district
- Definition of Addition: Section 1159.02 (5)– Any extension or enlargement of a structure that results in additional square foot area.
  - o The plan provided by the architect clearly displays no enlargement of the *existing* structure.
- Definition of Building: Section 1159.03 (5) – Any structure having a roof supported by columns or walls intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods or materials of any kind.
  - o The drawings provided by the architect clearly show two distinct roofs.
- Definition of Two Family Dwelling: Section 1159.05 (8) – A building consisting of two single family dwelling units, detached or separated from other dwelling unit by open spaces
  - o Keywords here are “a building’ this is clearly *singular* and not *plural*
- Definition of Principal Building: Section 1159.17 (12) – A building on a lot containing the primary use of the lot.
  - o Under this definition, the existing building is the principal building. By adding another new four-bedroom dwelling unit, you would now have 2 principal buildings.
  - o But if you were building a true addition, by definition of the code, you would meet the guidelines of “Principal Building.”
- Definition of Structure: Section 1159.20 (14) – Anything permanently constructed, erected or located on the ground.
  - o The plan provided by the architect clearly shows they are adding another structure, or in their words, adding a new four-bedroom dwelling unit addition. Simple arithmetic summarizes the plan,  $1+1 = 2$ .

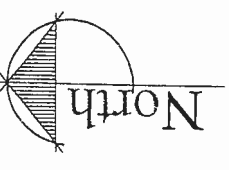


# SITE PLAN

1" = 20'-0"

SHOWING ADDITION OF 2-STORY DUELLING 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%) |

1143.05(CX4)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)



SCOTT WEBB  
ARCHITECT  
103 West W. New Street  
Columbus, Ohio 43206  
(614) 523-2038  
www.scottwebbarchitect.com

PROPOSED ADDITION & REMODELING  
210 South Poplar Street  
OXFORD, OHIO 45056  
J.P. GREEN LIVING LLC - JOHN PROX

|           |                  |
|-----------|------------------|
| DATE      | October 16, 2008 |
| REVISIONS |                  |

A-1

- Section 1143.05 (d) – Mile Square Design Standards
  - o (1) Streetscape Part A – The restoration or alteration of existing building must follow the historical characteristics of the existing building.
    - The plan provided by the architect does not show this
    - I was told by the Zoning Administration this doesn't pertain because it is *a new building*

If this were a true addition, by definition of the code, there would be restoration or alteration to the existing building.

If this were a true addition, by definition of the code, the structure would have to be altered; therefore it would fall under Mile Square Design guidelines.

If this were a true addition, by definition of the code, the structure would meet both sections of the zoning code that we are appealing.

- Section 1141.03 – One building per lot
- Section 1143.05 – Mile Square Design Standards

If this were a true addition, the structure would meet all definitions supplied by the Oxford Zoning Code.

- Section 1159.02 – Addition
- Section 1159.05 – Dwelling, Two Family
- Section 1159.17 – Principal Building
- Section 1159.20 – Structure

The plans provided present a new building, not an addition.

On November 19<sup>th</sup>, 2008, a BZA member brought up his thoughts on the requirement that every principal building must have its principal entrance facing a street.

- Plan confirms someone agreed.

On January 14<sup>th</sup>, 2009, the architect provided us with 11 drawings of two family dwelling units.

- 210 South Poplar does not look like any of these drawings.
- I have provided a picture of a two family dwelling for clarification.

On February 18<sup>th</sup>, 2009, a BZA member brought up his thoughts on the requirement that you're only allowed one building per lot. He stated the plan shows two buildings.

- Plan illustrates someone disagreed.

We absolutely believe that not only will this adversely affect our property values, the second structure is unfair to the rest of the citizens in Oxford; allowing an out-of-town landlord to fail to meet the zoning code provided by the city.

The plan provided by the architect clearly shows they are adding another structure. In the architect and owners own words, they describe the structure as a "New Four-Bedroom Dwelling Unit Addition."

It is our opinion that the variances should be overturned. The owner stated that he knows of all the zoning restrictions.

It is also my opinion that the architect did not complete a full application and was still in the process of completing plans but wanted variances on something that didn't exist.

We are not asking, in the words of the architect, that the owner be forced to completely destroy the existing building in order to build the new unit, but that the owner follow the code and appropriately construct a new unit as an addition to the existing structure.

In closing, we ask the Board of Zoning Appeals to overturn this decision. This plan disregards the zoning code and exhibits numerous code violations.

Thank you,

David Kellems

Pamela Kellems

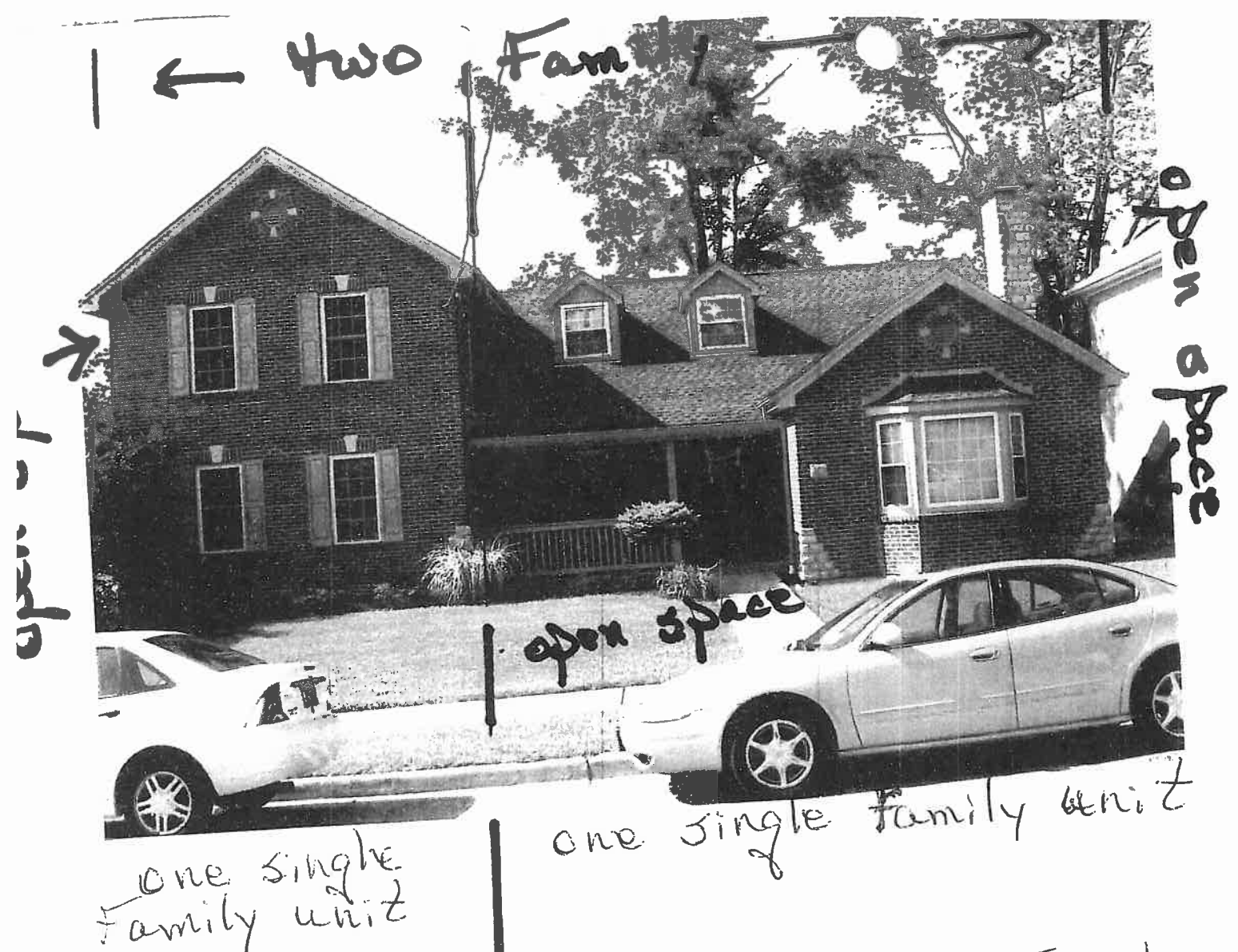
Zoning Board of Appeals,

The architect for 210 South Poplar has construed the legislation of the Oxford Zoning Code for his own benefit. He applied the code out of context, placing ambiguity and vagueness into the words of the statute. Subjective interpretations can lead to inaccurate and distorted views of the code. No rational basis for this exists. The Oxford Zoning Code is very clear on **Section #1159.05 (8d)** – Dwelling, Two Family: *A building* consisting of two single dwelling units, detached or separated from other dwelling units by open spaces.

I fear the possibility of doubts in the minds of our city officials. Permitted uses are single-family dwellings and two-family dwellings, accessory buildings that do not include activities conducted as business or dwelling, and day care homes. This is straightforward. Objective descriptions help us look at the big picture, in order to form a definite representation of the regulations supposed to be executed by the city. The Oxford Zoning Code is very clear, and leaves no doubt that 210 South Poplar will have two buildings on one lot, which is not permitted in the City of Oxford.

Thank you,

Dave Kellems



1159.06 D. Dwelling, Two Family - a "Building" consisting of two single family unit's, detached or separated from ~~other~~ other dwelling unit's by open spaces.

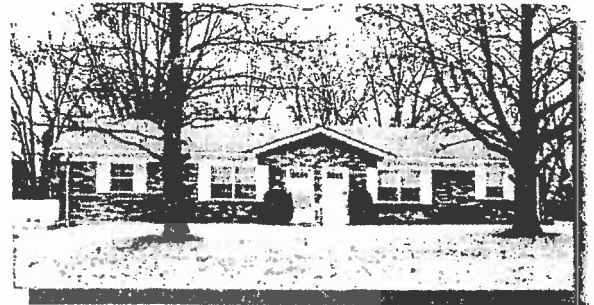
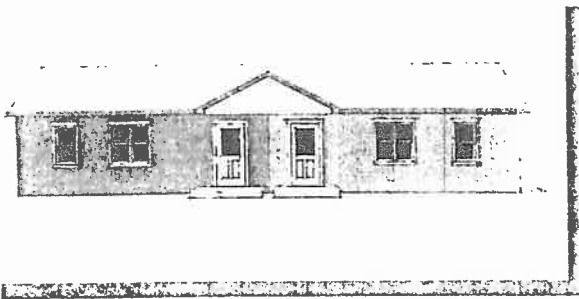
"Building" is singular in this definition!!

What are breeze ways?

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?

yes

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

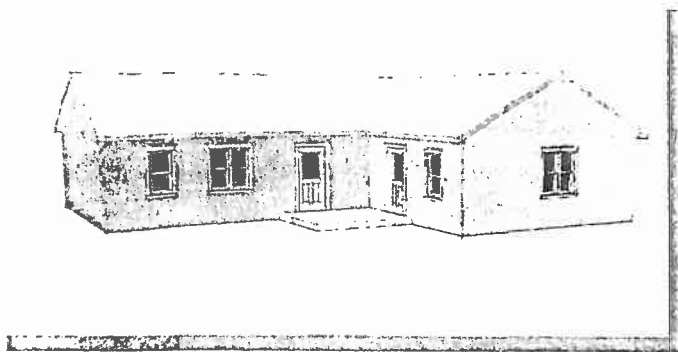
Our Zoning Code does not regulate nor prescribe the arrangement of Dwelling Units in Two-Family Dwellings

**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?

no



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

border



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".

ccng

