

STAFF REPORT

Community Development | Board of Zoning Appeals

APPLICATION DETAILS

Applicant	Scott Webb Architect
Location	5111/5115 Morning Sun Rd
Owner	H&P Properties Inc.
Action Request	Variances to <i>Section 1141.03(b)</i> principal entrance upon a street
Lot Size	40,435 square feet
Lot Width	If the lot is split as proposed - - 5111 : Approx. 158 ft; 5115 : Approx. 219 ft
Current Use	Vacant (intended conversion to 2 mixed-use buildings)
Current Zoning	NB Neighborhood Business District
Surrounding Land Uses	Single-Family, Multi-Family, Office (Vet Clinic), Hotel

BACKGROUND

Architect Scott Webb has submitted requests for Variances pertaining to a mixed-use project currently proposed on vacant land located at the northwest corner of Morning Sun Road and West Sycamore Street. The applicant is asking for the same Variance twice, to correspond individually to each of the proposed mixed-use buildings as outlined below:

1. **5111 Morning Sun Road** (Building 1; SW Lot) – corresponds to BZA-2020-13
2. **5115 Morning Sun Road** (Building 2; NE Lot) – corresponds to BZA-2020-12

The application history for this project dates back to February 2020, when a request to split the subject property into two triangle-shaped lots was approved by the Planning Commission. However, the lot split was not recorded within the Code's 6-month timeframe, so a new City approval will be necessary in order to record the lot split. The BZA also conducted its own review in May 2020 for a separate Variance to the maximum lot coverage of 50%. At the time, the BZA approved the request by a vote of 5-0-0 to increase the resulting coverage from 50% to 56.51% for the entire site.

The applicant later followed up by submitting applications for Building Permits on December 11, 2020 for 5115 Morning Sun and on December 16, 2020 for 5111 Morning Sun. The Zoning Division issued nearly identical response letters for these applications on December 15 and December 18, respectively. The zoning comments were provided on the basis that the anticipated lot split would eventually be approved and recorded, which would have to be done prior to officially approving the Building Permit.

Among other comments provided in the Zoning Division reviews, one notable observation was the lack of compliance with the principal entrance provision in **Section 1141.03(b)**, which requires every building to have its principal entrance upon a street bordering the lot. There is past precedent in the community that this provision applies to all principal uses within a structure, including residential units. The Code clarifies that an alley is not considered a street, except when involving an alley lot which the subject lot is not. Staff has also further interpreted that access must be available from the front *at all times* throughout the day, so a visitor may knock and be granted access through the front.

The proposed buildings are shown to have their residential entrances situated to the rear of the structure (off the rear parking area), the provision is not met and therefore needs a Variance to proceed as proposed.

DESCRIPTION

The applicant's requested variances can be summarized as follows:

Requirement	Code Section	Standard	Proposal
Principal Entrance	1141.03(b)	Upon the street	Not upon the street
The proposal contains 2 mixed-use buildings, each with 2 units located on the second and third floors; this results in a total of 4 units proposed for the site. Taking advantage of the site's downward grade moving away from the public streets, the applicant has planned a series of basement-level garages to support the residential units as well as to meet the Code's minimum parking requirement of 2 spaces per unit. A single common exterior entrance and stairwell is proposed to serve the residential units in each building. The entrances and stairs will also serve as a rear entrance for commercial "shell" spaces proposed in each building. The main commercial entrances comply with the principal entrance provision, since each faces a public street (Morning Sun & W Sycamore). However, the residential entrances do not since they face the private parking area to the rear of the buildings.			

PUBLIC COMMENTS

Notification was mailed to property owners within 200 feet and a sign was placed on the property. The notice specifically addressed possible changes to the date, location and format of the meeting due to the COVID-19 pandemic, including the possibility of a video conference and/or teleconference format. No official public comments have been received as of this writing.

DEPARTMENT COMMENTS

Below are comments from City departments:

Department	Respondent	Response
Economic Development	Jessica Greene, Assistant City Manager	Not returned
Engineering	Scott Otto, City Engineer	Returned without Comments
Fire	John Detherage, Fire Chief	Returned with Comments
<i>From what I have seen on this project I am agreeable to the entrances of the apartment's being on the opposite side of the structure from the street. This is based on full access and maneuverability of all Oxford fire apparatus in the back lot.</i>		
Police	John Jones, Police Chief	Not returned

BZA SITE HISTORY

There was one recent BZA case for the subject property, as outlined in the table below:

Request	Case No.	Standard	Granted
Variance to Maximum Lot Coverage	BZA-2020-01	50%	50.56%
Explanation: To accommodate a development proposal sensitive to the surrounding residential environment with buildings brought up to street level with parking provided in rear, the applicant's ability to meet the maximum lot coverage was slightly compromised. The BZA approved the Variance 5-0-0, finding the request was not substantial, would maintain the essential character of the neighborhood, would not affect governmental services, and uphold the spirit and intent of the Code.			

DECISION CRITERIA

In accordance with **Section 1139.02(c)(1)**, the burden of proof is upon the Applicant to present reliable and substantial evidence that supports the request for variance. Furthermore, per **Section 1139.02(c)(2)** the BZA must find that **practical difficulties** exist that would render strict application of the Code unreasonable. In determining whether such difficulties exist which are sufficient to warrant the variance, the Board shall use the attached eight decision criteria (A-H) in its deliberation. See the enclosed letter addressing the review criteria from Mr. Webb.

If the BZA determines that difficulties exist which are sufficient to warrant the variance, staff recommends that the BZA cite any new or different specific evidence not yet identified and approve the variance request. If the BZA does approve the variance it can make separate findings and attach any appropriate conditions it deems necessary as permitted by **Section 1139.02(d)(2)**.

Staff's review of the criteria is outlined in the table below. At the time of this report, staff believes **there is substantial evidence** to support the Variance requests.

Criterion A	Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance
Does not support granting the variance	The property is currently vacant, and has been for some time. Staff believes there can in fact be beneficial use of the property that would yield a reasonable return without the Variance. The property as currently exists is developable by-right under the standards of the NB district, which allows for a number of permitted uses and also a host of conditional uses. The applicant could choose to provide entrances for the upper-level residential units that would directly face the streets, though this could in effect reduce the amount of available square footage and lead to reduced return. However, the resulting return would likely still be found “reasonable” as it would simply take adjusting or increasing the amount of area devoted to common hallways/stairwells without completely compromising the ability to provide commercial space.
Criterion B	Whether the variance is substantial
✓ Supports granting the variance	The relocation of the residential principal entrance from the front of the buildings to the rear, in this particular case, will not have a substantial effect on the overall building design, the ability to service the property, or creating adverse impacts to adjoining properties.
Criterion 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
✓ Supports granting the variance	The building design, as a whole, is still oriented toward the public realm by having the main commercial entrances facing Morning Sun Road and Sycamore Street. Locating residential entrances in the rear in this particular case will not compromise the overall design in terms of its street presence, which is in keeping with the spirit of the NB district.
Criterion D	Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage)
✓ Supports granting the variance	The Fire Chief has commented that the location of the residential principal entrances is acceptable to him, since this site has been comprehensively planned and designed. The natural inclination for first responders will be to drive into the parking lot in the event of an emergency. He has requested turning radius information to ensure that emergency vehicles can adequately access the back portion of the property; this can be handled as part of the Building Permit review process. No other comments were received from other City departments.
Criterion E	Whether the property owner purchased the property with knowledge of the zoning restriction
Does not support granting the variance	The applicant indicates the owner was made aware of the past interpretation and application of this standard, but chose to proceed with the current plan since it was seen as the most desirable option.

Criterion F	Whether the property owners' predicament feasibly can be obviated through some method other than a variance
Does not support granting the variance	The applicant could choose to provide entrances directly facing the public streets, which at the very least would be "ceremonial" in nature. The applicant notes the following negative consequences of this option: (1) the likely reduction of available commercial space; and (2) the entrance might rarely be utilized by residential tenants who are accessing the private garage spaces at basement level. However, staff notes having a front-facing entrance could provide a more engaging way for residents to access the immediate urban environment on foot by entering/exiting adjacent to the street frontage, rather than taking the "back way" around the parking lot.
Criterion G	Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance
✓ Supports granting the variance	Staff believes the spirit and intent of this zoning provision is three-fold: (1) neighborhood character (no "sideways" buildings); (2) public health and safety (readily apparent access for emergency personnel arriving on the scene); and (3) general navigability (reducing confusion for visitors/deliveries). Staff believes all three of these purposes are upheld, seeing as how: (1) the building will still present itself as being oriented toward the street (due to the main commercial entrances fronting on Morning Sun and W Sycamore); and (2) the private curb cuts and parking lot aisles should be the natural points of access for reaching the upper-level dwelling units, for both emergency responders as well as visitors/deliveries. The inclusion of unit address numbers on the doors would help make unit access more visible to those arriving on-site.
Criterion H	Any other relevant factor
N/A	The BZA may rely upon additional factors or evidence contributed by the applicant.

SUBMITTED BY:



Zachary Moore, AICP
Planner

DATE: January 11, 2021

BZA MOTION FOR VARIANCES

With regard to the Request for Variance # **BZA 2020-12 & BZA-2020-13**, being Variances to Section 1141.03(b) for a principal entrance to be upon the street:

Mr./Ms. _____ hereby moves that the Board adopt and make the following findings of fact:

- A. The property in question (**will / will not**) yield a reasonable return or (**can / cannot**) be used beneficially without the variances because:_____
- B. The variance (**is / is not**) substantial because:_____
- C. The essential character of the neighborhood (**would / would not**) be substantially altered by the variance and adjoining properties (**would / would not**) suffer a substantial detriment as a result of the variance because:_____
- D. The variance (**would / would not**) adversely affect the delivery of governmental services (i.e. water, sewer, garbage, etc.) because:_____
- E. The property owner (**did / did not**) purchase the property with knowledge of the zoning restriction because:_____
- F. The property owner's predicament (**can / cannot**) feasibly be obviated through some method other than a variance because:_____
- G. The spirit and intent behind the zoning requirement (**would / would not**) be observed and substantial justice done by granting the variance because:_____
- H. Other relevant factors, if any, considered include:_____

It is further moved that after considering and weighing these factors, the Board should find that practical difficulty (**is/is not**) shown sufficient to warrant granting the Variance requested, and that the Variance should be accordingly (**APPROVED / DENIED / APPROVED WITH THE FOLLOWING CONDITIONS**). The conditions for approval, if any, include:

Motion Seconded by: Mr. / Ms. _____.

Vote: Aye_____ Nay:_____

BZA-2020-12 Surrounding Property Owners Map

Legend

-  Subject Parcel
-  200 Ft. Buffer
-  Oxford Corporation Limit
-  Parcel
-  Vacated Right-of-Way
-  Building Footprint
-  Paved Roadway



1 inch = 100 feet

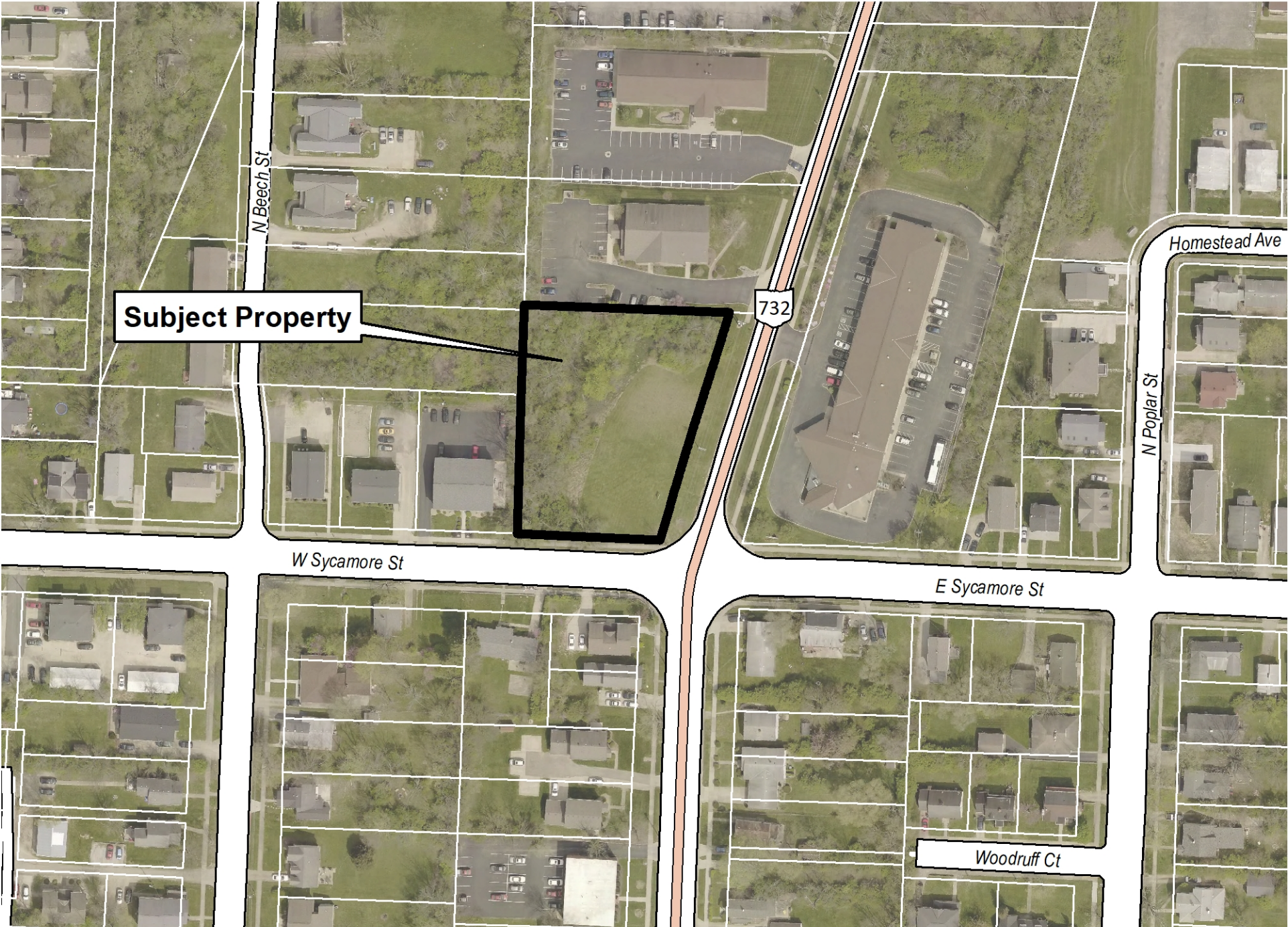
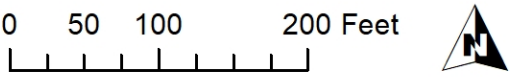
Prepared on Thursday, January 7, 2021

The City of Oxford does not guarantee the dimensional accuracy of this map. Precise dimensional accuracy should be based upon recorded deeds, plats or a professional survey.



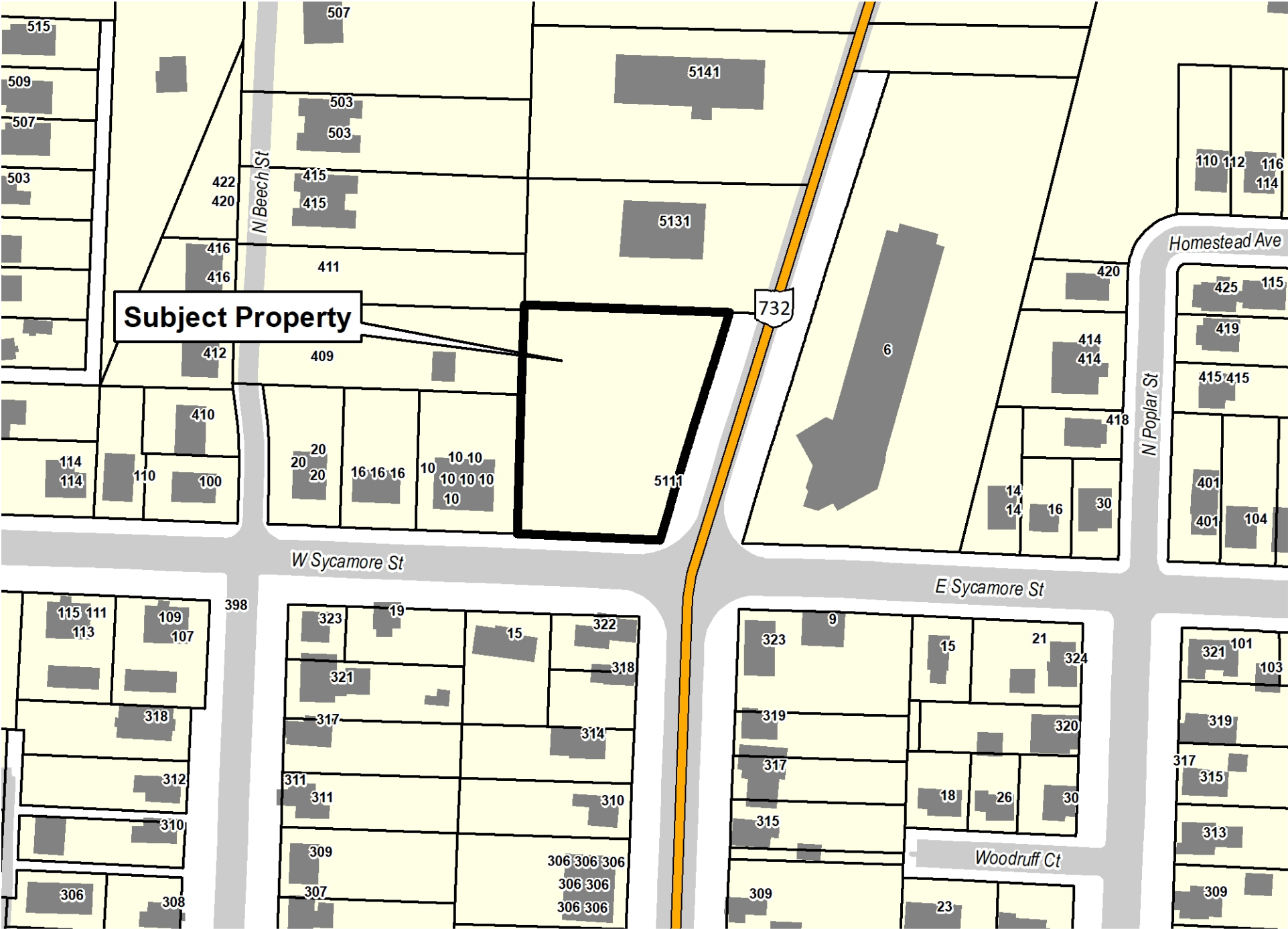
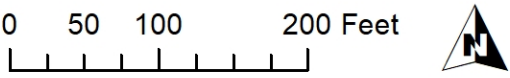
Location Map

 Site Parcel(s)



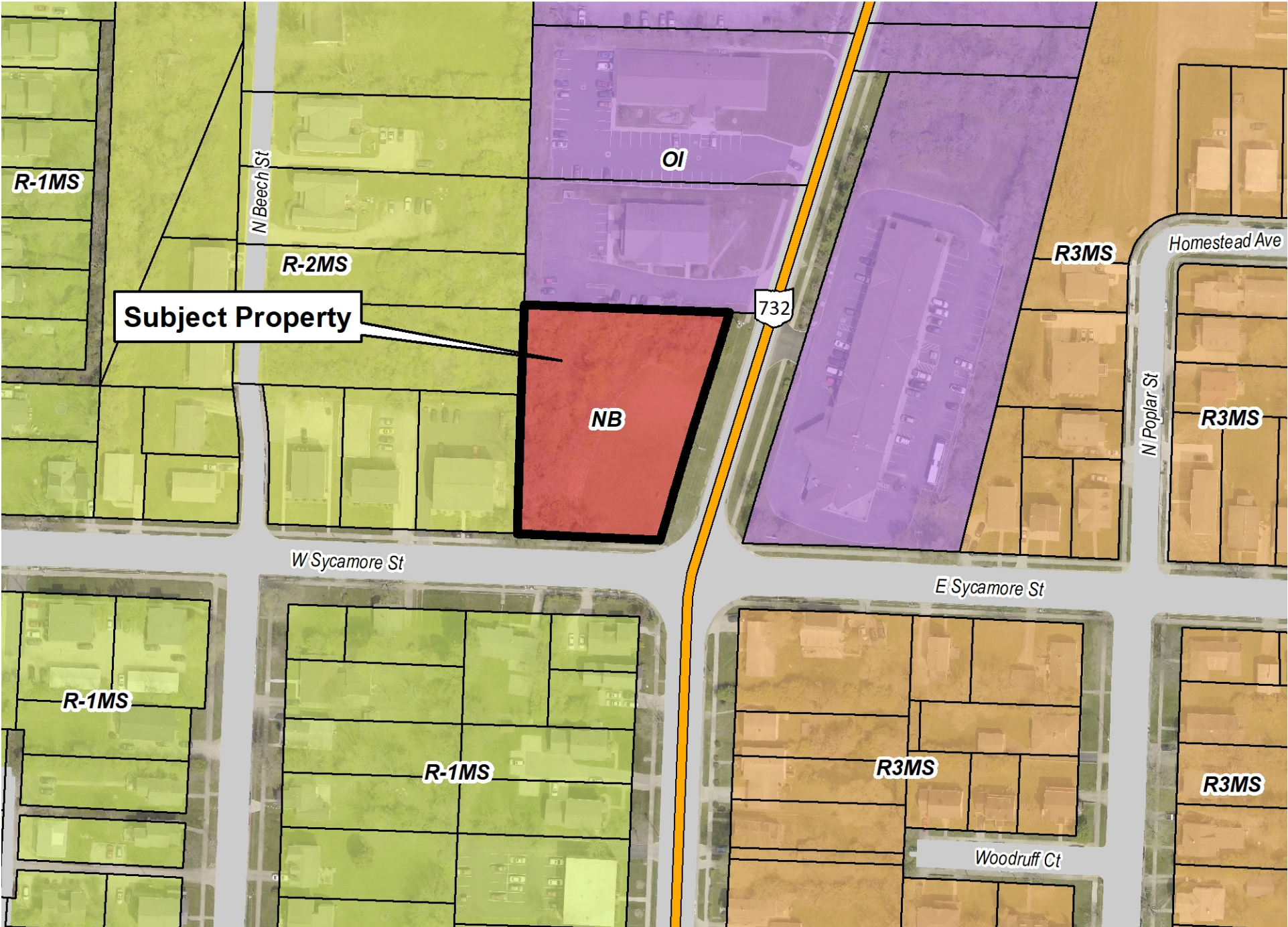
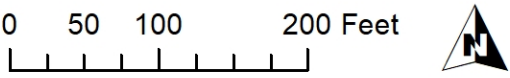
Location Map

 Site Parcel(s)



Location Map

 Site Parcel(s)





Internal Use Only:

Case No.

BZA-2020-12

Date Filed

12/21/20

Petition for Zoning Variance

Petitioner Information

Attach a Letter of Agency if the Petitioner is not the property owner.

Name * Scott Webb, Architect

Mailing Address * 103 West Walnut Street

City, State & Zip Code * Oxford, Ohio 45056

Telephone Number(s) * 523-3838

Email Address scott@scottwebbarchitect.com

Owner Information

Name * H & P Properties Inc.

Mailing Address * 5282 Booth Road

City, State & Zip Code * Liberty, Indiana 47353

Telephone Number(s) * (765) 458-7896

Email Address shanebcoffman@aol.com

Variance and Lot Information

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

1141.03(b) requires every building to have its principal entrance upon a street bordering the lot

Location of Requested Variance * 5115 Morning Sun Road

Name of Building

Legal Description * Parcel #H4100011000032

Zoning District * NB Neighborhood Business Total Acreage * .473

Existing Use of Site * Vacant

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.

New Mixed-Use Neighborhood Business Development

- 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.

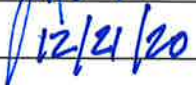
Fees & Receipt

The variance fee is \$200.00, plus \$100.00 for each additional variance request up to a maximum of \$1,000.00, plus \$10.00 postage charge. **Fees may increase if staff determines that you need more variances.**

Sign and Date

Petitioner Signature *

Date *

Submit Application, Plans and Documentation, and Fees

We will not accept incomplete applications and/or plans and documentation.

Send or drop off this application with required plans and documentation as attachments and a check for fees and postage charge, made payable to **City of Oxford**, to Community Development Director, 15 South College Avenue, Oxford, OH 45056.

Direct questions to the Community Development Department at (513) 524-5204. The application will be placed on the next possible agenda.

Note: You must adhere to notification and publication requirements. Submit materials 30 days prior to the Board of Zoning Appeals meeting at which the action is requested. City Staff will place a public hearing sign on the subject property. **The Petitioner is responsible for removing the signage at the completion of the hearing(s).**

¹ Butler County Auditor Real Estate Search: <http://www.butlercountyauditor.org/>

² City of Oxford Codified Ordinances: <http://www.cityofoxford.org/fees-ordinances-and-charter>



Internal Use Only:	
Case No.	BZA-2020-13
Date Filed	12/21/20

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Name * Scott Webb, Architect

Mailing Address * 103 West Walnut Street

City, State & Zip Code * Oxford, Ohio 45056

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Email Address scott@scottwebbarchitect.com

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1141.03(b) requires every building to have its principal entrance upon a street bordering the lot

Location of Requested Variance * 5111 Morning Sun Road

Name of Building

Legal Description * Parcel #H4100011000032

Zoning District * NB Neighborhood Business Total Acreage * .458

Existing Use of Site * Vacant

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.

New Mixed-Use Neighborhood Business Development

- 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;
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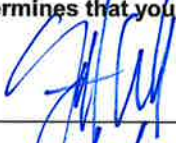
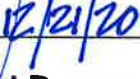
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Petitioner Signature *

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LETTER OF AGENCY

To Whom It May Concern:

Please be advised that Scott Webb, Architect has permission to represent our interest with the City of Oxford's Board of Zoning Appeals regarding the proposed Neighborhood Business Development at 5111 Morning Sun Road.

5115

Thank you,

Signed: 

Shane Coffman

3-16-20

Date:

Board of Zoning Appeals
City of Oxford
15 South College Avenue
Oxford, Ohio 45056



**SCOTT
WEBB**

A R C H I T E C T

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

www.scottwebbarchitect.com

Re: Variance to Primary Entrance requirement
New Mixed Use Development in the
Neighborhood Business District
5115 Morning Sun Road

December 21, 2020

Board Members

Please accept this letter as a formal petition for a Board of Zoning Appeals review hearing for a variance to requirement that every principle entrance to a building must face the street in the new Neighborhood Business Zoning District for a new mixed-use Structure.

The Board should be familiar with the project and the difficulties of the site from our previous lot coverage variances approved in April of this year.

The newly created Neighborhood Business Zoning District encourages small-scale retail and services on sites in or near residential areas, while having little impact on them. Development is intended to be compatible with the scale of surrounding residential areas and through its defined, permitted uses, encourages mixed-use structures in residential scale buildings.

Parking however is required for both commercial and residential uses and per 1143.16(d)(9) shall be located to the side or to the rear of the building. Given the grade of the site and the accessibility requirements of the ADA, the required commercial parking is located along the side of the building. The grade continues to fall, giving the opportunity for lower level garages in a "walk-out basement" accessed from the rear.

This arrangement accomplishes two program requirements: competition for parking between the residents and the businesses is eliminated and residential parking is located behind & under the building to preserve greenspace.

While the precedent for requiring situations such as these to seek a variance has been established by staff, BZA and Planning Commission have historically understood the benefit of separating these entrances for different uses in mixed-use buildings and developments, granting variances or encouraging it through a PUD process.

1141.03(b) requires "every building to have its principal entrance upon a street bordering the lot". Staff has interpreted this to mean that a principle entrance for every use must meet this standard.

The development at hand is unique, in that it uses two lots to create a mini mixed-use development, similar to Stewart Square, where storefronts face the street and residential parking is behind & under the buildings.

Through shared access easements, on-site traffic and service vehicles have access to all sides of the building from all directions. Additional directional signage could be provided to assure clarity of wayfinding for service vehicles and visitors.

The following are responses to the decisions standards outlined in the application;

- 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 property has remained undeveloped for a number of years. Variance is necessary to accommodate the buildings and parking allowed by the new Zoning District and the practical difficulties presented by the topography of the lot.

- b) *Whether the variance is substantial;*

The variance is not substantial, recognizing the unique situation presented by the topography and the mitigation provided by the comprehensive planning of the two adjoining lots.

- 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 essential character of the neighborhood would be improved, developing a long vacant lot with new buildings that reflect the design guidelines of the Mile Square.

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

All utilities & government services are available at this location. Care has been taken to allow (2) entrances to the development to assist in emergency access, facilitated through a shared access agreement between the two parcels.

Wayfinding signage can be provided at each entrance directing service vehicles and visitors and as a mixed-use building, will be fully fire-suppressed

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

The property owner was made aware of staff's likely interpretation, but has chosen to proceed through the variance process for an arrangement that better serves the commercial businesses/customers & residential occupants of the building.

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

The Ground Floor commercial spaces could be compromised to provide a "ceremonial" residential entrance on the front of the building, but with all residential parking behind the building and a full story below, this entrance would simply never be used.

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

The spirit of the Zoning Code is observed, providing the parking in the rear and side of the building as required, and separating them by uses. The proposed building provides distinct entrances adjacent to, and convenient for, each function for a successful mixed-use project.

- h) *Any other relevant factor;*

Developed separately, the rear location of the residential entrance a story below on a dead-end drive would be potentially problematic. The comprehensive planning of these

two lots allows for a clear and distinct location of the residential entrances and parking clearly separated from the commercial uses its parking.

This redevelopment project aligns with the goals of the Comprehensive Plan, encouraging infill and redevelopment within the City, and providing the first Neighborhood Business District development that compliments the neighborhood.

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", written in a cursive style.

Scott Webb, Architect

Board of Zoning Appeals
City of Oxford
15 South College Avenue
Oxford, Ohio 45056



SCOTT
WEBB

ARCHITECT

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This arrangement accomplishes two program requirements: competition for parking between the residents and the businesses is eliminated and residential parking is located behind & under the building to preserve greenspace.

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Through shared access easements, on-site traffic and service vehicles have access to all sides of the building from all directions. Additional directional signage could be provided to assure clarity of wayfinding for service vehicles and visitors.

The following are responses to the decisions standards outlined in the application;

- 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 property has remained undeveloped for a number of years. Variance is necessary to accommodate the buildings and parking allowed by the new Zoning District and the practical difficulties presented by the topography of the lot.

- b) *Whether the variance is substantial;*

The variance is not substantial, recognizing the unique situation presented by the topography and the mitigation provided by the comprehensive planning of the two adjoining lots.

- 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 essential character of the neighborhood would be improved, developing a long vacant lot with new buildings that reflect the design guidelines of the Mile Square.

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All utilities & government services are available at this location. Care has been taken to allow (2) entrances to the development to assist in emergency access, facilitated through a shared access agreement between the two parcels.

Wayfinding signage can be provided at each entrance directing service vehicles and visitors and as a mixed-use building, will be fully fire-suppressed

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The property owner was made aware of staff's likely interpretation, but has chosen to proceed through the variance process for an arrangement that better serves the commercial businesses/customers & residential occupants of the building.

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The spirit of the Zoning Code is observed, providing the parking in the rear and side of the building as required, and separating them by uses. The proposed building provides distinct entrances adjacent to, and convenient for, each function for a successful mixed-use project.

- h) *Any other relevant factor;*

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two lots allows for a clear and distinct location of the residential entrances and parking clearly separated from the commercial uses its parking.

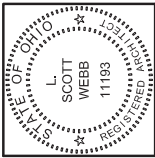
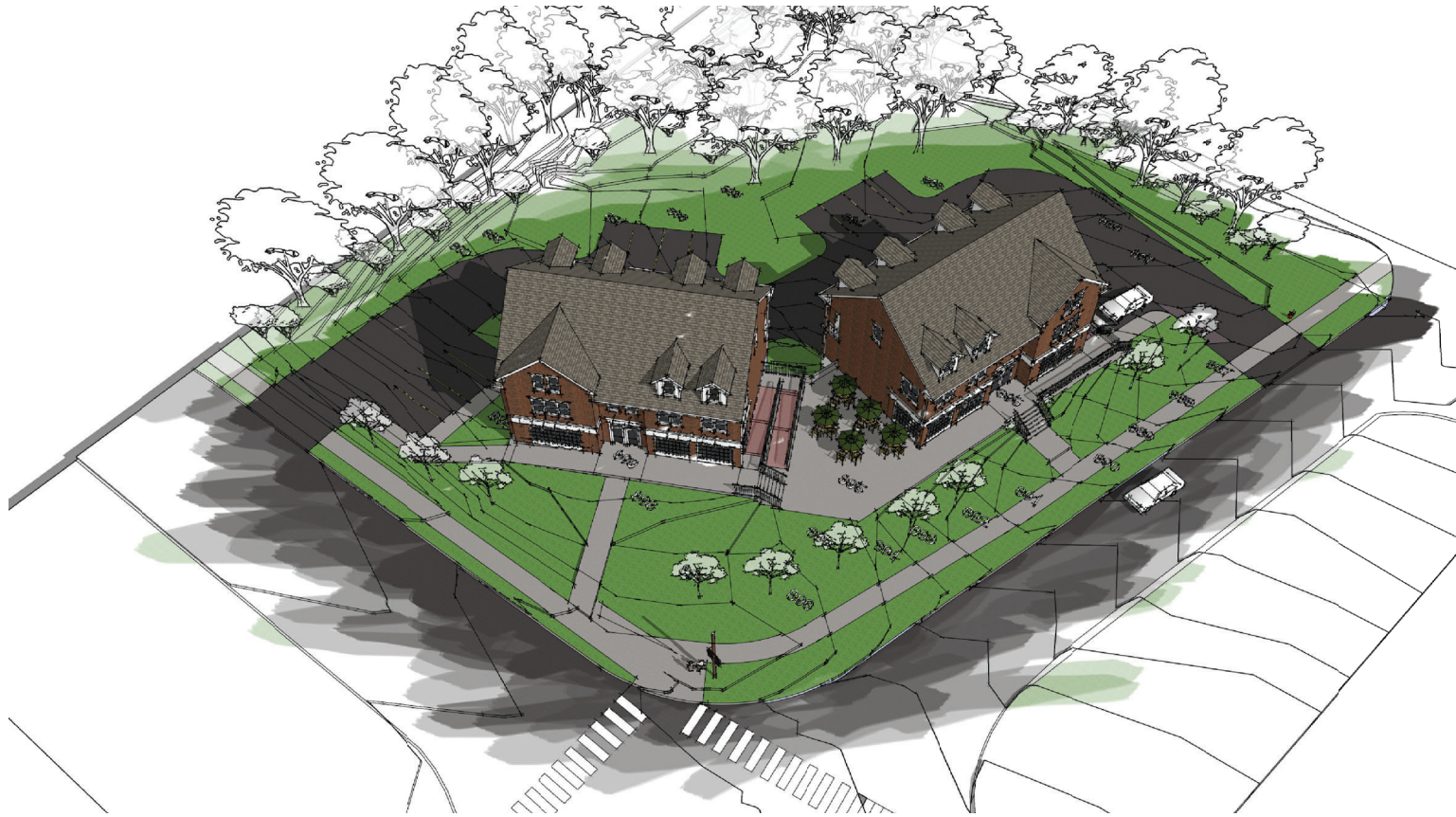
This redevelopment project aligns with the goals of the Comprehensive Plan, encouraging infill and redevelopment within the City, and providing the first Neighborhood Business District development that compliments the neighborhood.

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", written in a cursive style.

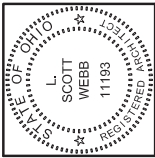
Scott Webb, Architect



PROPOSED MIXED-USE DEVELOPMENT
 5111-5115 Morning Sun Road
 OXFORD, OHIO 45056

DATE	
December 21, 2020	
REVISIONS	

OA-2



PROPOSED MIXED-USE DEVELOPMENT
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OA-3



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DATE	
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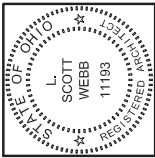
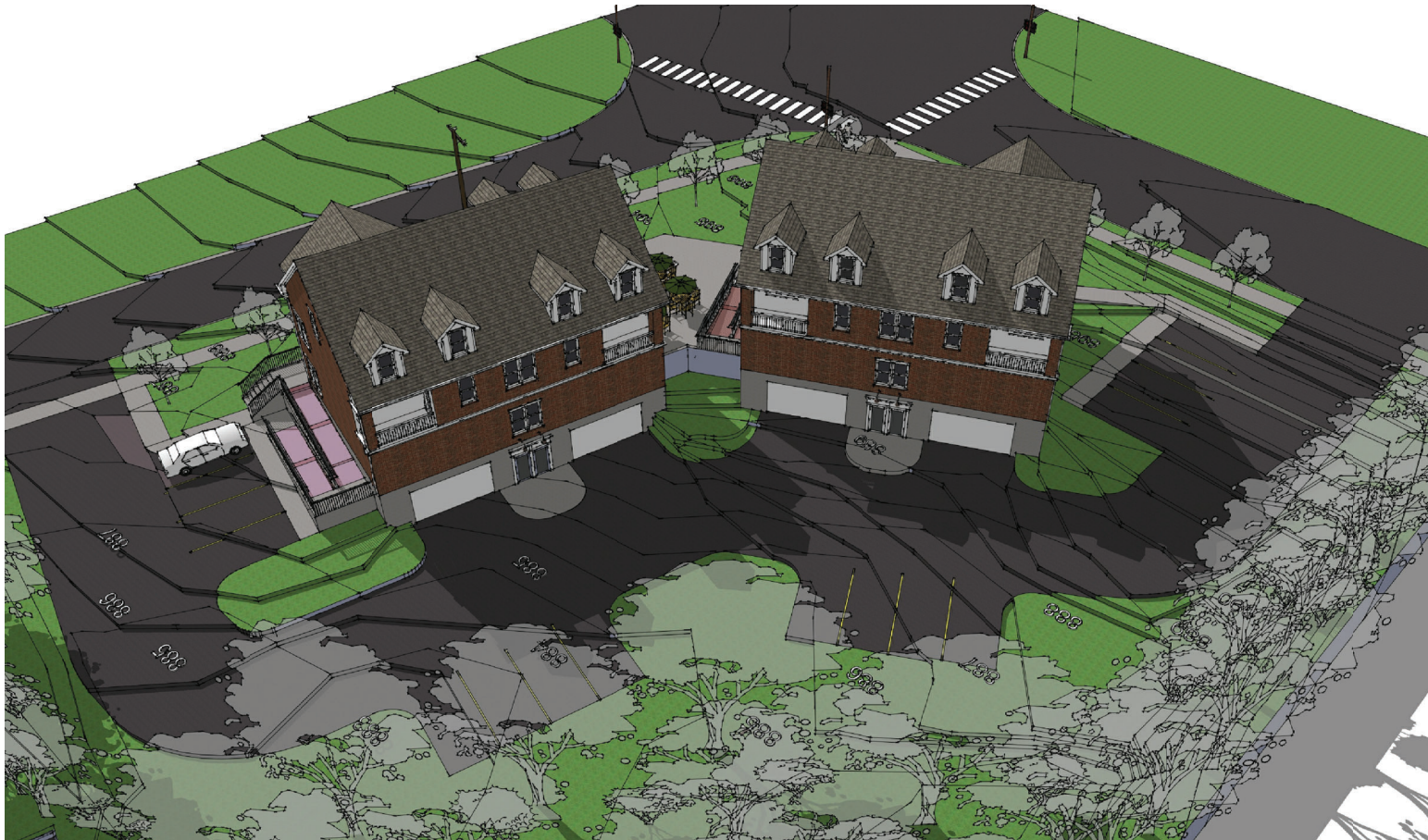
OA-4



PROPOSED MIXED-USE DEVELOPMENT
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PROPOSED MIXED-USE DEVELOPMENT
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OA-6