



MEMORANDUM
Community Development Department
513-524-5204

TO: Oxford Board of Zoning Appeals

FROM: Sam Perry, AICP
Director

DATE: April 21, 2022

RE: **BZA-2020-04, 36 E High Street**, Examination of egress door with respect to prior variance approval of Skydeck

Per a letter received March 23, 2022, on behalf of the ownership of 36 East High Street, clarification of conditions of variance approval is needed on the July 2020 front yard setback variance. This is due to the installation of a door that is potentially in violation of a condition of approval.

In July 2020 the Board reviewed and approved a request for front yard setback variance in order to allow a second level ("Skydeck") to be added to the existing outdoor covered area of Brick Street Bar. The board heard and discussed the case, ultimately approving the requested variance with the following conditions:

1. The skydeck's rail height shall be increased to the height of the columns/posts (4'-8").
2. There will be no egress from the inside of the building to the outside deck, thus limiting to just the two stairways.

In April 2021 the Board reviewed and approved a request to extend the variance approval because the 6-month validity had expired before the project got underway.

Included in the meeting packet are records of the prior two BZA discussions. Video recordings are also available online. Below is a summary sequence of events available from City records.

June 15, 2020 – Setback variance submitted for Board of Zoning Appeals review

June 20, 2020 – Certificate of Appropriateness (COA) submitted for Historic and Architectural Preservation Commission (HAPC) review

July 8, 2020 – HAPC approved COA with condition (letter attached)

July 15, 2020 – Setback variance approved with conditions (minutes and approval letter attached, youtube video recording of meeting available online)

September 30, 2020 – Building Permit application submitted

October 14, 2020 – HAPC approved revisions with conditions (letter attached)

January 15, 2021 – Variance expiration

January 25, 2021 – Building Permit issued

March 5, 2021 – Owner notified that work cannot commence unless variance is extended

April 21, 2021 – BZA approved extension of variance (minutes attached, youtube video recording of meeting available online)

June 25, 2021 – Foundation/Footer inspection approved

August 11, 2021 – Final Building Code Inspection Passed without door

August 14, 2021 – Staff observed new door to Skydeck

August 16, 2021 – Staff notified owner of door being installed without permit

September 9, 2021 – Building Official issued order to owner to apply for permit for new door (attached)

October 11, 2021 – Architect applied for permit for new door on behalf of owner

October 13, 2021 – Zoning Code review letter sent to Architect (attached)

March 23, 2022 – Letter from architect requesting clarification by BZA

Staff summary: There are not specific decision standards or review criteria for clarification of a condition of a prior variance approval. Staff recommends reviewing the facts and evidence presented in the original case to make the determination. Since the applicant has agreed to submit a letter requesting clarification, this request is not considered an Appeal of Administrator's Decision.

Possible Options:

1. BZA determines that the door installed is not in conflict with the July 2020 condition of approval. Next step: “After-the-fact” Building Permit process proceeds with the zoning approval now accounted for. Building and Fire Code compliance yet to be determined.
2. BZA determines that the door installed is in conflict with the previous condition of approval. Next step: City conducts typical enforcement processes to ensure the door is completely removed. Owner may seek due process rights beyond BZA.
3. BZA revises or removes the previous condition of approval to allow the door to remain in place.

Sam Perry

Community Development Director

City of Oxford

RE: Zoning Review for 36 E High St (Permit #P2021-0409) – Revisions Required

Hello Sam,

This letter is requesting to have the Board of Zoning Appeals revisit their previous decision in conjunction with submitted plans for the new “staff access” doorway, to determine whether or not such feature and proposed usage complies with the spirit of Condition #2. The outcome of this decision will thus determine whether the new doorway can receive zoning approval, or if revisions are necessary.

Condition #2 stated: *There will be no egress from the inside of the building to the outside deck, thus limiting to just the two stairways.*

Please also see attached letter from Mark Weisman stating the purpose for the new door, as it is not a means of egress for the existing building, only a staff access to the bar on the Skydeck.

Thank you,

A handwritten signature in blue ink, appearing to read "Bob Riggs", with a stylized flourish at the end.

Bob Riggs

To BZA Members/Sam Perry
From: Mark Weisman
RE: Employee access door/Brick Street Skydeck

Sam Perry has advised us that we should submit a letter to the BZA pursuant to an April hearing regarding an employee access door on Skydeck at Brick Street. We are happy to provide this information, but our position has always been that this issue should have been resolved administratively. An employee access door is clearly not a means of egress as defined by the code. However, we are willing to offer perspective and clarification.

First some perspective. As part of our due diligence before presenting the Skydeck to the BZA, it was believed with almost 100% certainty that the BZA would make an emergency exit a condition to proceed with the project. We believed strongly, based on feedback from those involved in the design of the project that an emergency point of egress which would be the only direct access to the outside from the second level would be required in the final drawings for submission of a permit.

In fact, everyone we spoke in the industry believed that since there was already an area on the second floor that could lead directly to the outside of the building (to the Skydeck) the requirement would not be considered onerous and unreasonable to the business and therefore a reasonable request. In other words if we did not have a direct access point to the Skydeck from the inside, a requirement to create a means of egress would have been extremely costly and perhaps unreasonable given other exit points; albeit not directly to the outside of the building from the second level.

Admittedly we were somewhat caught off guard when the BZA made the curious request that we were not allowed to have an emergency exit directly to the outside of the building from the inside of Skybox. Given the urgency around timing around the project and recognition of the sensitivity of the review we simply were not prepared to fully address this odd request at the time, and it was not significant to customer experience. We determined that we would ultimately figure out how we could reduce risk and increase safety for employees and customers as the process evolved.

Once we had time to digest the request, we began to do more research to better understand what the thought process was at the time of the review. We were not able to find any examples in the country where a board of zoning would not allow an emergency exit in a club given tragedies such as fires, mass shootings and other unforeseen tragedy where an additional exit directly to the outside of the building could save lives. To be honest, we viewed this kind of request as a first of its kind in the country.

Hopefully, this perspective gives the BZA a sense of how bizarre and unprecedented the request was and why it caught us so off guard. We have always been accustomed to the BZA making extra requirements to increase safety as part of an approval. We have never had an instance where just the opposite occurred. One on hand the BZA insisted rightfully on a higher railing on the patio to reduce the risk of a fall. On the other hand the BZA said that if there was an emergency such as a fire on the inside, we are not allowed to have the only door on the second level that would go directly to the outside of the building. Simply put it was hard to reconcile the angle and clearly incongruent.

In an effort to give the BZA the benefit of the doubt we speculated that the BZA may have not understood the makeup of our building and essentially wanted to keep both patios on the outside completely separate from the inside. Perhaps the BZA did not understand that any customer on the outdoor Skydeck level who wanted to enter the inside of skybox on the second level simply had to walk

down the stairs from Skydeck, through open garage doors into the lower level of the building then up the stairs to skybox. The same person could simply go down the stairs from Skydeck and enter the door on the open-air patio on the street level, then up the steps to skybox. Both examples occur in practice all the time.

With respect to getting from the inside of the Skybox to the Skydeck if a person in Skybox wanted to go to Skydeck the person had to go down the stairs through the lower level of the building through the open garage doors to the lower level patio then up the steps to skybox. The common practice all semester was for customers to simply go down the exit stairs from skybox that lead to the outside of the building on the lower level then back up the steps to the Skydeck. Therefore, regardless of a point of egress there was no scenario in which any customer on the inside or on the patios could not access the other area which happens nonstop.

We believe that the intent of the BZA member may have been to ensure that the Skydeck was not part of the skybox in the context of not allowing the Skydeck to be part of the internal skybox area. Although the end result of the stipulation has compromised safety, perhaps the rationale behind the condition was to ensure that we did not extend the floor and create a large opening in which the Skydeck in effect became an extension of the skybox. However, we can all agree that a door between two spaces clearly maintains a separation between the spaces and only increases safety.

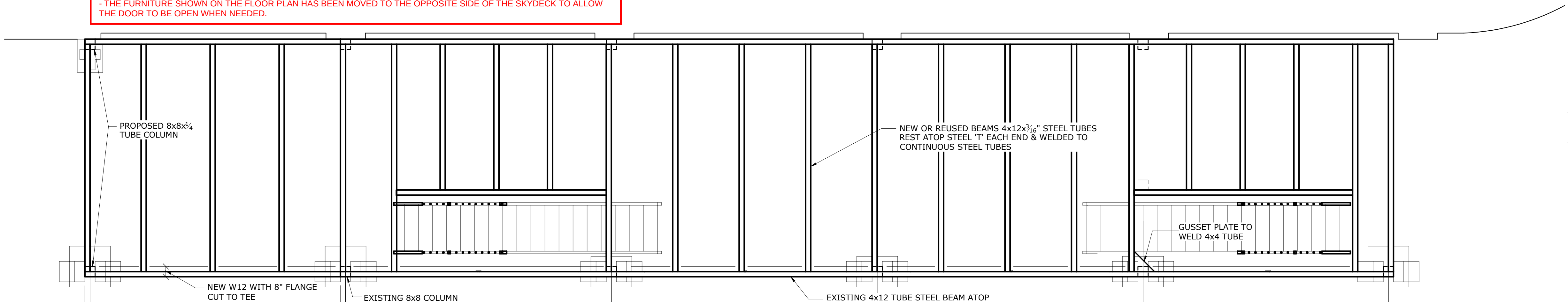
As we reviewed operational efficiency, employee, and customers safety while the project was being completed, we determined that there was no restriction on an employee/access door. An employee access door not a point of egress as it is locked from the inside and would only be open with someone actively at the door limiting access.

My staff alerted me to the harsh reality and the urgency in needing an access door after having time to digest the finished product. They walked through that many issues related to operational efficiency and safety of our employees that would greatly benefit from having an employee access door. Sam is aware of all these efficiencies as I have noted in prior emails.

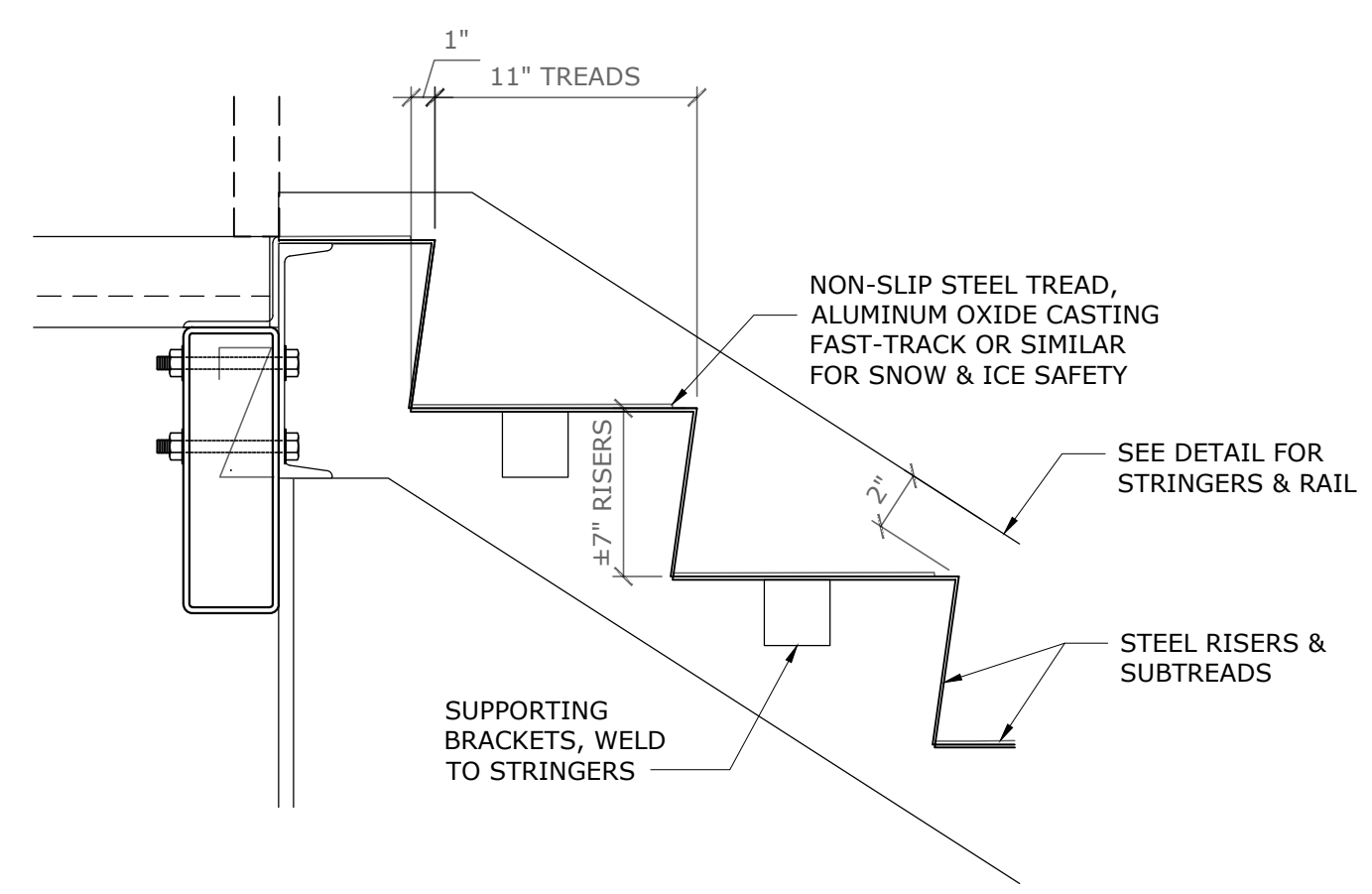
They also pointed out that although the employee service access door is not a point of egress meaning it is locked from the inside (not an emergency exit) in the event of a fire (or another emergency) on the lower level where all of the stairs are compromised and the back stairwell is compromised that at least the skybox manager could open the door to provide another way directly to the outside of the building. Remember any time there are noxious fumes in the inside of a building the #1 goal is to get to open air as quickly as possible. Therefore, given these facts, we decided separate from the building of the Skydeck to add the employee access door immediately.

We strongly believe that it is critical that a member(s) of the BZA come up during a busy time to understand how we use the door and why it is not applicable to their intent. We believe that this extra effort will clarify our position and highlight that a complete restriction from the only direct access to the outside of the building from the second floor, whether an access door or an emergency exit with a bar is actually a consequential decision as it relates to safety and not consistent with other safety requirements such as the higher railings. Best regards, Mark

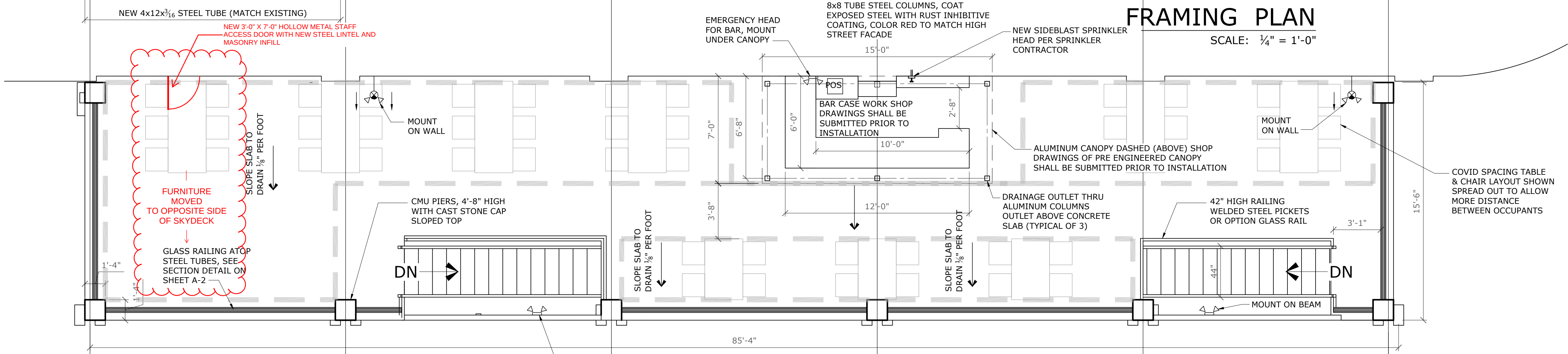
NOTE ABOUT NEW DOOR:
- IT WAS DECIDED AFTER THE DECK WAS BUILT THAT A STAFF ACCESS DOOR WOULD HELP STOCK THE BAR ON THE SKYDECK IN LIEU OF COMING UP THE NEW EXTERIOR STAIRS. THIS DOOR IS A NON-EGRESS DOOR WITH NO PANIC HARDWARE, NO EXIT SIGN, AND THE ABILITY TO BE LOCKED FROM EACH SIDE. WHEN THE DOOR IS NOT BEING USED BY STAFF IT IS LOCKED SHUT SO IT CAN'T BE USED BY PATRONS TO MOVE BETWEEN THE SKYDECK AND THE INTERIOR OF BRICK STREET. THERE IS ALSO A 'STAFF ONLY' SIGN ON THE DOOR. BEING A STAFF ACCESS DOOR ONLY, THIS DOES NOT ENCROACH ON THE B2A CONDITION THAT NO EGRESS DOOR SHALL BE ADDED TO THE SKYDECK. EGRESS DOORS ARE REQUIRED TO HAVE PANIC HARDWARE, AN EXIT SIGN, AND REQUIRED LIGHTING ON EACH SIDE OF THE MEANS OF EGRESS. AS STATED, THIS DOOR HAS NONE OF THOSE ITEMS AND IS ONLY OPEN WHEN OPERATED BY STAFF WHEN THE SKYDECK BAR NEEDS ATTENTION.
- THE FURNITURE SHOWN ON THE FLOOR PLAN HAS BEEN MOVED TO THE OPPOSITE SIDE OF THE SKYDECK TO ALLOW THE DOOR TO BE OPEN WHEN NEEDED.



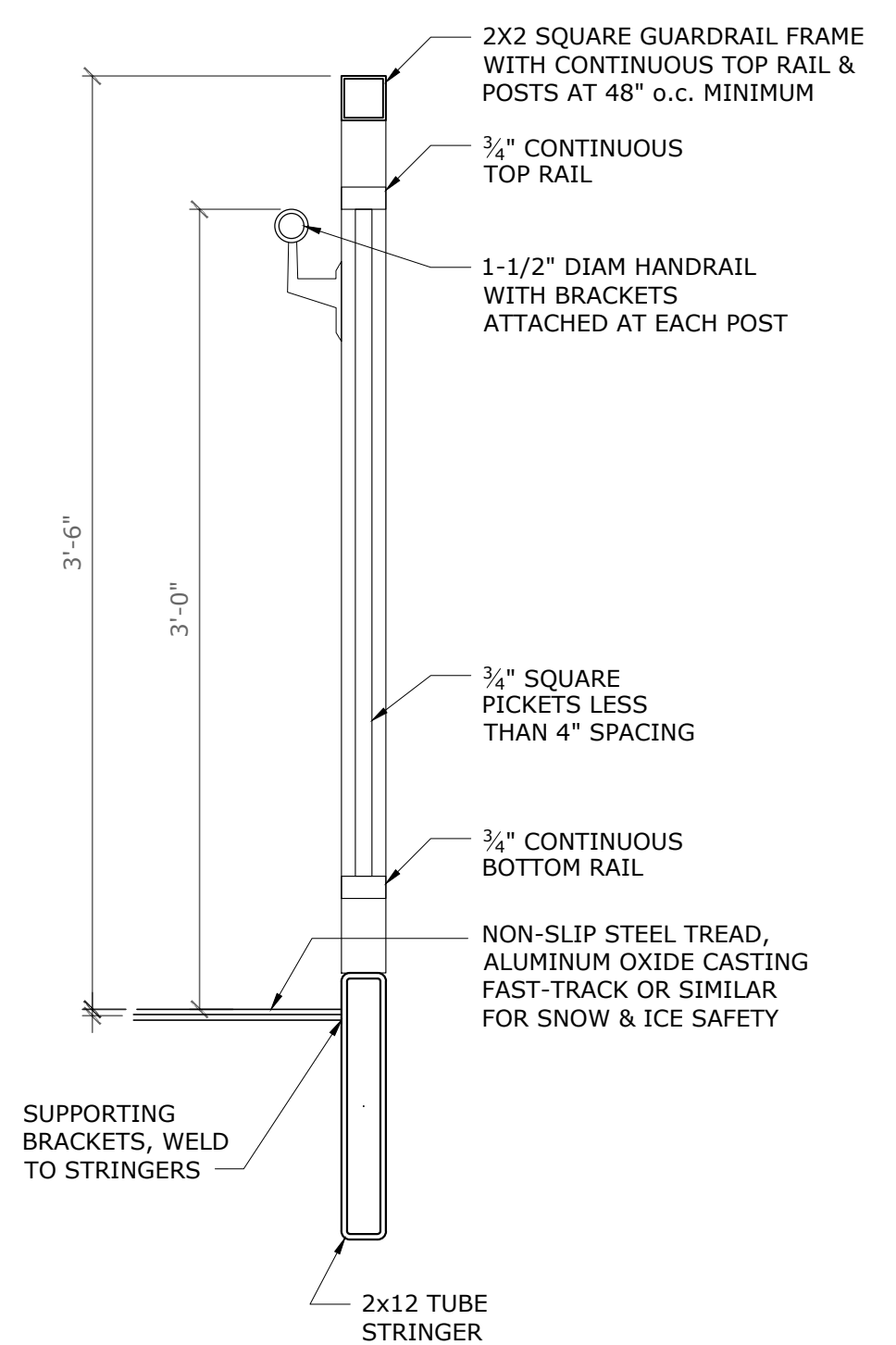
FRAMING PLAN
SCALE: 1/4" = 1'-0"



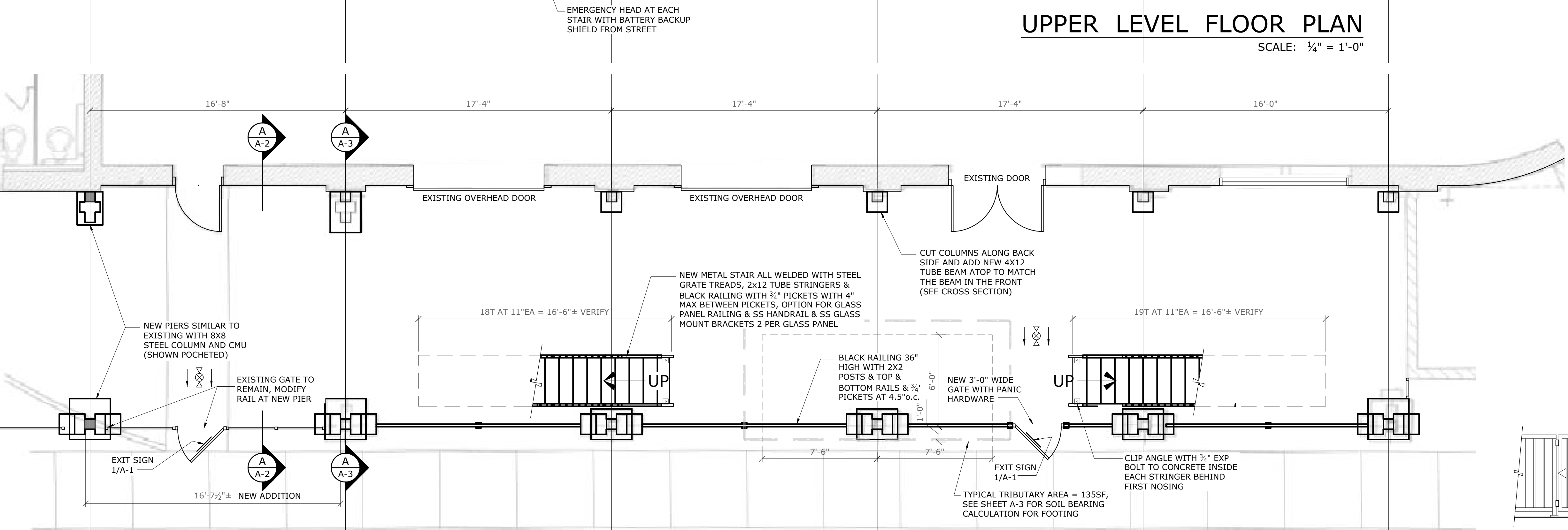
STAIR TREAD & RISER
SECTION
SCALE: 1 1/2" = 1'-0"



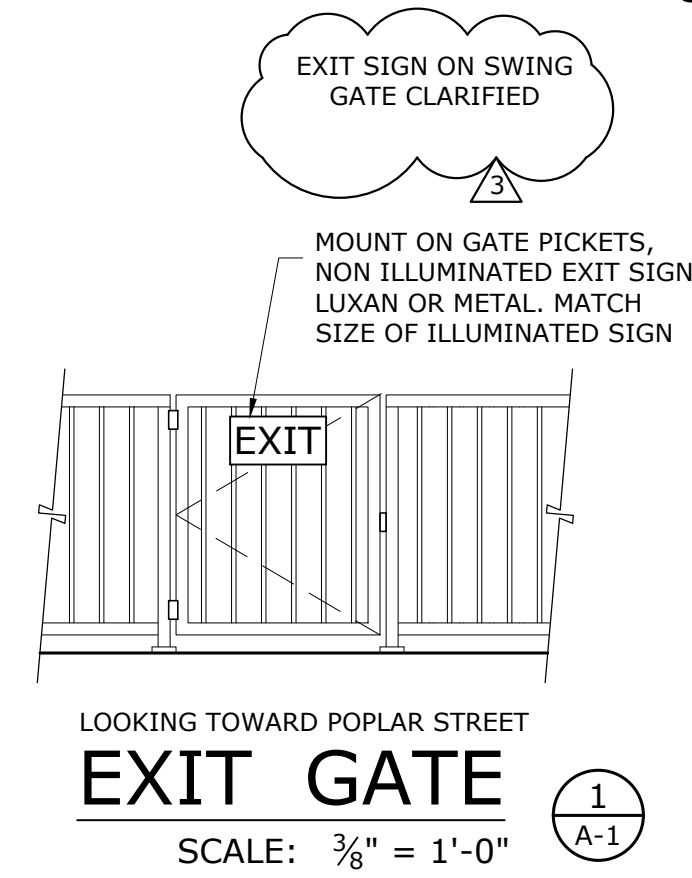
UPPER LEVEL FLOOR PLAN
SCALE: 1/4" = 1'-0"



STAIR STRINGER
SECTION
SCALE: 1 1/2" = 1'-0"



STREET LEVEL FLOOR PLAN
SCALE: 1/4" = 1'-0"



LOOKING TOWARD POPLAR STREET
EXIT GATE
SCALE: 3/8" = 1'-0"

NEW SKYDECK OUTDOOR PATIO FOR:
BRICK STREET BAR
36 HIGH STREET
OXFORD, OHIO 45056

JOHN R. GRIER ARCHITECT INC.
11501 DEERFIELD RD
CINTI, OH 45242
513-489-3690

DRAWN BY: TWH, RWD
ISSUE DATE: 09-28-2020

10-08-2020	HAPC	Δ
10-22-2020	BLDG	Δ
12-21-2020	BLDG	Δ
1-11-2021	BLDG	Δ

CONCEPT #
A-1
FILE: C-5
JOB #2028



Office of the Building Official
City of Oxford, Ohio
15 South College Avenue, Oxford, Ohio 45056
P-513-524-5204
www.cityofoxford.org

Adjudication Order
Ohio Building Code, Section 109

Date: 09-09-2021

Date of Mailing: 09-10 -2021

Location: 36 E. High St.
Oxford, Ohio 45056

Owner: Mark Weisman
185 Varick St.
New York, NY 10014

Subject Violation: Installed door on upper patio/deck without plan approval.

105.1 Approvals required. Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, or change the occupancy of a residential building or structure, or portion thereof, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical, plumbing system, other residential building service equipment, or piping system the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the residential building official of a certified residential building department and obtain the required approval.

Action Required: Apply for and receive Zoning and Building approvals for door on upper deck.

The owner/agent shall bring the items listed into compliance within 15 calendar days of mailing of this notice.

109.2 Response to orders.

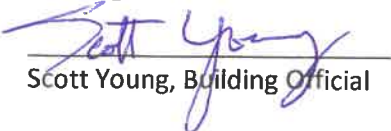
The person receiving an order shall exercise their right to appeal within 30 days of the mailing of the order, comply with the order, or otherwise be released from the order by the Building Official.

You have a right to appeal this decision. If you choose to appeal, this letter is to be used as an adjudication order pursuant to OBC Section 109. Please notify our office of your appeals board request. You have the right to be represented by counsel, present arguments or contentions orally or in writing, and present evidence and examine witnesses appearing for or against you. In order to appeal, you must file a request within 30 days of the mailing of this notice.

If an appeal is waived, failure by the owner to respond to the order to comply per OBC 109.2 could result in prosecution and subject to a maximum of \$500.00 as provided for in section 3791.04 of the Ohio Revised Code.

Any questions please call 888-433-4642

Building Official:


Scott Young, Building Official



Community Development Department
Zoning Review
513-524-5204

October 13, 2021

Robert Riggs
Conger Construction Group
2020 McKinley Blvd
Lebanon, OH 45036

VIA EMAIL:
briggs@congerbuilt.com

RE: Zoning Review for 36 E High (Permit #P2021-0409) – Revisions Required

Dear Mr. Riggs:

I have reviewed your permit application received October 11, 2021 for a new door to the upper level skydeck at 36 E High Street (Brick Street) in Oxford, Ohio. Below are comments pertaining to review of the submitted plans for compliance with the Oxford Zoning Code and the Oxford Board of Zoning Appeals' previous decision on a Variance pertaining to the project:

1. The Oxford Board of Zoning Appeals (BZA) originally approved a front yard setback Variance at its meeting on July 15, 2020 subject to 2 conditions. Condition #2 specified the following: *There will be no egress from the inside of the building to the outside deck, thus limiting to just the two stairways.* The BZA later granted an extension to this approval at its meeting on April 21, 2021, subject to the same conditions. The doorway shown on the submitted plans thus does not comply with Condition #2 from the BZA approval. Your options are the following:
 - a. Revise the plans to comply with the literal wording of the BZA's condition, by removing the door and filling in the wall to ensure there is no direct means of access/egress between the interior of the building and the upper level skydeck; or
 - b. Submit a written request to have the Board of Zoning Appeals revisit their previous April decision in conjunction with the submitted plans for the new "staff access" doorway, to determine whether or not such feature and proposed usage complies with the spirit of Condition #2. The outcome of this decision will thus determine whether the new doorway can receive zoning approval, or if revisions are necessary per letter (a.) above.

In order to approve the zoning code compliance for this permit, additional information and/or revisions to the application as specified in the comments above is required. Please submit such revisions to our office within 30 days of the date of this letter. This review is only for compliance with the zoning regulations. Other departments may also have comments that will need to be addressed before any permits can be issued.

Please contact me if you have any questions.

Respectfully,

Zachary Moore, AICP
Planner

zmoore@cityofoxford.org

513-524-5204



**MEETING MINUTES
BOARD OF ZONING APPEALS
WEDNESDAY, April 21, 2021
6:30 P.M.**

**Virtual Meeting held via Zoom and broadcast to YouTube
in accordance with House Bill 404**

I. Call to Order

Those members present: Roger Ames, Michael Schnipper, Dan Haizman, Chris Allison, and Kate Rousmaniere
Those members excused: None.
Staff members present: Sam Perry and Benjamin Mazer
Staff members excused: Zachary Moore

II. Approval of February 17, 2021 Minutes of the Regular Meeting

Mr. Ames made motion to approve the February 17, 2021 minutes as written. Mr. Haizman seconded the motion. All were in favor.

III. Old Business

BZA-2020-04, 36 E. High Street, Variance to Chapter 1143.10(c)(2) to allow 0' setback for a new skydeck, **Mark Weisman, Appellant** – Extension approval for BZA decision

Mr. Haizman made motion to enter into Old Business BZA-2020-04 approval of a BZA decision extension. Ms. Rousmaniere seconded the motion. All were in favor.

Mr. Perry, Community Development Director, was sworn in by Mr. Schnipper. Mr. Perry described the original approved request of July 15, 2020 for the construction of a skydeck. Due to Covid circumstances and Miami's in person sessions, time expired. The applicants are asking for an extension since work had not yet begun. Mr. Perry stated that there have been no major changes in scope of work, nor changes in code; however, there was a slight change in the footprint with the addition of a small bar on the skydeck. Mr. Weisman and Mr. Riggs, owner and contractor were present. Ms. Rousmaniere inquired if the original plan was to complete work in December and January. Mr. Perry responded yes, and that the project was planned as a pandemic response to create more space distancing. Mr. Mark Weisman, owner, Brick Street, was sworn in by Mr. Schnipper. Mr. Weisman elaborated on Mr. Perry's response. Mr. Bob Riggs, Construction Manager, Conger Construction Group was sworn in by Mr. Schnipper. Mr. Riggs stated they got the permit right on the 60 day timeframe, and by that time there was no time left of Miami's break so decided to complete during the summer break.

Mr. Haizman made motion to enter into regular meeting. Ms. Rousmaniere seconded the motion. All were in favor.

Ms. Rousmaniere inquired about the original reasoning for the skydeck being Covid to create more social distancing space and if that whole logic was now a little shakier? Ms. Rousmaniere inquired if BZA could go back and review the original variance request. Mr. Schnipper responded that this was a hearing to approve an extension, not to approve the variance request. Mr. Allison reminded everyone that he and Ms. Rousmaniere originally voted against the variance and intended to vote against the extension. Discussion followed. Ms. Rousmaniere inquired if the vote was against the extension, would they have to reapply for the variance? Discussion followed.

Mr. Ames made motion to approve the request for a variance extension based upon there were extenuating issues getting the building process started within 6 months. Mr. Haizman seconded the motion.

AYE: Mr. Haizman, Mr. Ames, Mr. Schnipper (3)

NAY: Mr. Allison, Ms. Rousmaniere (2)

ABS: None (0)

IV. New Business

Update on Review Procedures Prior to Accepting Variance Applications

Mr. Perry led the discussion on new review procedures prior to the acceptance of variance applications. Mr. Perry explained that this actually goes back several years. When a variance was submitted sometimes a review took place before a submittal and sometimes did not. Staff plans moving forward for a clean process and will be doing reviews before processing a variance application. Mr. Perry continued that there are some questions regarding how the code is written, but have discussed with the Law Director and are moving forward.

V. Adjudication Hearings

BZA-2021-03, 224 E Vine Street, Variance to Sections 1143.07(c) rear yard depth, lot coverage and 1143.07(d)(13)(A) curb cut, David Kellems, Appellant

Mr. Schnipper announced that Mr. Kellems was a customer of his and that the relationship was not substantial and the annual revenue was very small. Mr. Schnipper asked the BZA if there was a problem with him continuing in the hearing. Mr. Ames and Mr. Haizman both agreed that Mr. Schnipper could proceed as part of the hearing.

Ms. Rousmaniere made motion to enter into public hearing BZA-2021-03. Mr. Haizman seconded the motion. All were in favor.

Mr. Perry, Community Development Director, was sworn in by Mr. Schnipper. Mr. Perry provided a review of the request for variances for minimum rear yard depth, maximum lot coverage and allowing for a new curb cut on a public street. Mr. Kellems, the property owner, is requesting to add an additional unit onto an existing building. Mr. Perry displayed a map fronting on Vine Street. Mr. Perry described the various surrounding property zoning districts. Mr. Perry stated that the addition would be located on the back side of the existing structure. Mr. Perry displayed a view showing the proximity of the existing building to the newer building and that it would be a 2 story addition. Setbacks proposed for the front, rear, and side were reviewed. Mr. Perry continued that the lot coverage proposed was 45.7', from 45' code; accessibility for curb cuts are discouraged. No curb cuts are allowed if an alley is present. Off street parking access is from the street, not the alley. Mr. Perry reported that the rear setback was right on the property line for the existing building and that the existing porch addition would be removed. Mr. Perry reviewed a previous lot consolidation that had not been recorded and referred to a previous BZA case. Mr. Perry noted that the lot coverage request was minor. Mr. Perry noted that no comments were received from Police in regards to taking away one of the parking spaces. Mr. Perry reviewed the decision criteria.

- A. Can generate a reasonable return without the variance; however, zoning was changed within the last few years implying that there is potential for additional units.
- B. Whether the variance was substantial. There are 3 variances.
- C. Essential character of the neighborhood affected by the variances? Mr. Perry referred to curb cuts on E. Vine Street already exists; therefore an additional curb cut would not be contrary to what already exists.
- D. Variances will affect government services? Mr. Perry reported that no negative comments were received.
- E. The property owner's knowledge of restrictions? Mr. Perry referred to the zoning district change that took place during the property owner's ownership.
- F. Mr. Perry reported that the predicament could be obviated by some other method, as this property is quite wide so there are other options but the building would be oddly shaped in order to meet minimum rear yard setback distance. Mr. Perry explained how parking could be reworked and the existing structure could be demolished and redesigned.
- G. Spirit and intent would be observed. Mr. Perry reported it was supported because of the upzoning and spacing between the buildings.

Mr. Allison inquired about the exterior materials for the building, if it would be considerably different from the existing building or were they going to match the existing building? Mr. Perry reported this was a reasonable condition. Mr. Allison referred to the location of the curb cut and driveway, or being too close to the building creating a hazard for the Fire Department. Mr. Allison inquired about the power line and or if it was just a service line. Mr. Allison inquired if there would be any sewer issues?

Ms. Rousmaniere referred to there having been two design plans and what is the difference. Mr. Perry responded that the original plan was closer to the rear yard. Mr. Haizman inquired if there was any way to get another parking spot. Mr. Perry stated that Mr. Kellems would answer.

Mr. Dave Kellems, Owner, was sworn in by Mr. Schnipper. Mr. Kellems stated that he was open for any questions the BZA may have. In reference to the power line it is 4' off the house. There are no windows anywhere near; the code is 3'. Mr. Kellems described where the sewer line would run which would be across another property which he owns. If he could get more lot coverage he would. There are two spots on the alley; however, there are no services in the alley (meaning no snow plowing, salt, and garbage pickup is a problem) unfortunately, so cannot increase parking, but can doublestack.

Mr. Haizman made motion to reconvene to regular meeting. Ms. Rousmaniere seconded the motion. All were in favor.

Ms. Rousmaniere stated that curb cuts bother her the most because it is so clear in the zoning code. However, the only way to have parking there is to have a curb cut. Mr. Allison noted that it creates a problem with the front yard as well. Discussion followed. Mr. Perry noted that the driveway was included in the front yard calculations. Ms. Rousmaniere inquired about parking in the front yard. Discussion continued. It was agreed that there was not enough room.

Mr. Mazer spoke regarding Mr. Schnipper's earlier comment to be part of the discussion and his relationship with Mr. Kellems. Mr. Mazer noted there were two pieces to this: Mr. Mazer asked Mr. Schnipper that he did not have a significant relationship with the applicant and inquired if Mr. Schnipper would experience any financial impact with the outcome of this property. Mr. Schnipper responded no. Mr. Mazer agreed that Mr. Schnipper would not have to recuse himself unless he choses otherwise.

Ms. Rousmaniere asked for clarification the property was upzoned and agreed the goal was to increase density near the University and that this was ideal.

Mr. Ames agreed this seemed to be a perfect lot location; it won't affect the neighborhood, but will improve it.

Ms. Rousmaniere made motion to approve with regard to the request for variance BZA-2021-03, being variances to Sections 1143.07(c) for minimum rear yard depth and maximum lot coverage and 1143.07(d)(13)(A) for an additional curb cut, based upon the property will yield a reasonable return, variance will improve property is not substantial, essential character would not be altered, will not affect government services, and that the predicament cannot be obviated through any other methods. Mr. Ames seconded the motion.

AYE: Mr. Haizman, Ms. Rousmaniere, Mr. Allison, Mr. Ames, Mr. Schnipper (5)

NAY: None (0)

ABS: None (0)

VI. Other Business

Mr. Schnipper began a discussion regarding Ohio House Bill 404 and it expiring July 1, 2021; therefore, allowing for in person meetings. Mr. Schnipper stated this would affect the July 21, 2021 BZA meeting. Mr. Mazer responded that he has not heard anything and expected House Bill 404 to expire in July. Mr. Perry shared that discussion is taking place regarding providing separation at the dais with Plexiglas and masking. There will not be any hybrid meetings, and all boards and commission will decide one way or the other (live or zoom) how to conduct meetings. Mr. Schnipper stated that he was okay with meeting live; however, if others have a problem, to let Mr. Perry know.

Mr. Schnipper announced Lynn Taylor's retirement and thanked her for her service.

VII. Adjournment

Mr. Ames made motion to adjourn the meeting. Mr. Haizman seconded the motion. All were in favor. The meeting was adjourned at 7:28p.m.



Sam Perry
Community Development Director

Dear Sam,

Per your email on March 5th, please add the Brick St Skydeck onto the BZA Agenda for the April 21st meeting to request an extension to our previous approval. By the time we received building department approval, Miami was back in session, so the project was pushed off until the Summer to not decrease the revenue at Brick St even more than already happening with State of Ohio Covid mandates.

Thank you very much and please reach out with any questions.

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

Bob Riggs
Conger Construction Group
513-907-4130

April 27, 2021

Mr. Mark Weisman
Weisman Enterprises/36 East High LLC
36 E. High Street
Oxford, OH 45056

BZA-2020-04, 36 E. High Street, Variance to Chapter 1143.10(C)(2) to allow 0' front yard setback for a new skydeck. **Mark Weisman, Appellant, Extension**

Dear Mr. Weisman:

The Oxford Board of Zoning Appeals met virtually on April 21, 2021 and voted 3-2-0 to approve your request for an extension of a variance previously approved at their July 15, 2020 meeting.

The two conditions defined at that time still stands:

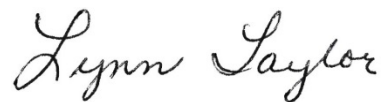
1. The skydeck's rail height shall be increased to the height of the columns/posts (4'8").
2. There will be no egress from the inside of the building to the outside deck, thus limiting to just the two stairways.

Per Section 1139.02(e)(2), this approval is valid for six months, unless a building permit is obtained and the work has started within such period, or an extension is requested in writing and granted by the Board. And,

Per Section 1139.02(f)(1) appeals to this decision shall be made to the Court of Common Pleas of Butler County.

Should you have any questions or need additional information regarding this action, please contact the Community Development Department at 524-5204.

Sincerely,

A handwritten signature in cursive script that reads "Lynn Taylor".

Lynn Taylor
Administrative Assistant
Community Development Department

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, July 15, 2020

Call to Order

Those members present: Roger Ames, Michael Schnipper, Dan Haizman, Kate Rousmaniere, and Chris Allison.

Those members excused: None.

Staff members present: Sam Perry, Zachary Moore, and Christopher Conard.

Staff members excused: None.

Also present was John Jones, Police Chief and John Detherage, Fire Chief.

Approval of May 20, 2020 Minutes of the Regular Meeting

Mr. Ames made motion to approve the minutes as written. Mr. Haizman seconded the motion. All were in favor.

Adjudication Hearings*

BZA-2020-04, 36 E. High Street, Variance to Chapter 1143.10(C)(2) to allow 0' setback for a new skydeck. Mark Weisman, Appellant

Ms. Rousmaniere made motion to adjourn to Adjudication hearing BZA-2020-04. Mr. Allison seconded the motion. All were in favor.

Mr. Zachary Moore, Planner was sworn in. Mr. Moore announced this case was in regards to a variance request to Chapter 1143.10(c)(2) for a front yard setback in the UP (Uptown) District located at 36 E. High Street. The current use is Brick Street Bar. The project is to add a second level to the existing outdoor patio structure facing North Poplar Street. The zoning code requires a 16.5' minimum setback. Mr. Moore noted that the setback was only taken from the Poplar Street frontage.

Mr. Moore displayed a location map, zoning map, site photos, and the front entrance and patio and dumpster enclosure area. Mr. Moore displayed the Birds Eye View highlighting the property. Mr. Moore reviewed the applicant's submitted site plan and two prior BZA approvals. The first approval to accommodate a new dumpster enclosure and the second the conversion of an open air seating area to a covered patio. Mr. Moore commented that the patio occupied the entire 16.5 foot setback. Mr. Moore described the request was similar to the 2002 approval of the covered patio and basically the same setback request, though the proposed skydeck would replace the existing patio roof. Mr. Moore stated that a new approval by the BZA was required for two reasons: (1) the proposed project would increase the number of stories beyond the scope of patio plans that went with the 2002 decision; and (2) the proposed Skydeck extended 17 feet further south from the current patio roof overhead, to occupy an area currently open to the sky. Mr. Moore reviewed the submitted renderings. Mr. Moore noted that these were approved by HAPC as presented last week and they approved this design. Mr. Moore reviewed the floor plan and elevations.

Decision criteria reviewed:

- a. Whether the property in question would yield a reasonable return or whether there will be any beneficial use of the property without the variance. The subject property is already developed as an entertainment venue, which is sufficient evidence to demonstrate beneficial use. Staff believes more evidence is needed to demonstrate the applicant would be deprived on reasonable economic return.
- b. Whether the variance is substantial. Mr. Moore stated the applicant is asking for a 100% decrease (elimination) of the front yard setback, which on its face is found to be a substantial numerical adjustment. Mr. Moore advised the BZA they may weigh the substantiality based on either the overall scope of the new Skydeck, or just the portions being extended from the scope of the 2002 approval.

- c. Whether the essential character of the neighborhood would be substantially altered. Mr. Moore reported that the Skydeck feature could complement the neighborhood, and didn't believe there would be any other detriment felt by adjoining properties, as no response comments were received.
- d. Government services affected by the variance? Mr. Moore responded no, and referred to the Fire Chief and Police Chief comments.
- e. Whether the property owner purchased the property with the knowledge of the zoning restriction. The owner was aware.
- f. Whether the owner's predicament feasibly can be obviated through some other method other than the variance. While the universal truth is recognized that Covid-19 affects financial return for many businesses including bars and restaurants, the issue to consider is whether a (hopefully) temporary pandemic supports a permanent change.
- g. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. While projects within the front setback area have been approved in the past, the concept of an open-air deck in the front setback would be new territory for Oxford's Uptown district.

Mr. Allison inquired if any regulations supported the Skydeck in any way as he was trying to find something to support the spirit and intent. Mr. Moore responded that the general intent appeared only to preserve wider corridors, there really wasn't any other examples like this in Uptown, and there really wasn't much else beyond that. Mr. Perry offered that the original ordinance dated from 1853, and the zoning standard reinforcing that policy has been on the books for decades.

Mr. Bob Riggs, Agent for the appellant was sworn in by Mr. Schnipper.

Mr. Riggs explained his first meetings with Mr. Weisman on how to make things safer for Brick Street during the pandemic, looking at trying to have more people outside vs. inside. Replacing the patio roof with a deck was found to be a solution in increasing the square footage where people could be outside. Mr. Riggs noted they were not looking to add any occupancy load, just to spread them out. Mr. Riggs referred to Criterion A – with health mandates decreasing the allowed percentage inside the building, having people outside would help increase the chances of a reasonable return. The confidence level of people coming to the establishment would increase, because they could be outside. Mr. Riggs stated he didn't feel this was a substantial variance per Criterion B, because the setback was awarded in 2002, and they are only increasing vertically and the footprint is not expanding. The character of the neighborhood would not be altered. HAPC approved the application last week, in terms of the architecture complementing the existing building. Mr. Riggs noted that they were taking down the glass block to open up the first floor patio, with new railing installed to match what is existing at the High/Poplar corner. On the second floor, the railing would be high enough to meet Building Code. Columns were extended upward as anchor points to provide support for the railing across the Poplar length of the space.

Mr. Mark Weisman, owner of Brick Street was sworn in by Mr. Schnipper. Mr. Weisman agreed with Mr. Riggs' rationale for the Skydeck and emphasized the need for spreading customers out. They are not looking for additional occupancy. The driver was what could be done to create a great experience and make it safer in light of the pandemic.

Mr. Ames inquired about policies and procedures put in place to separate people and guarantee the balcony isn't overcrowded on a nice summer night when everyone wants to be outside. Mr. Weisman responded that the tables are spread out to meet requirements. Mr. Weisman described the challenges; not really letting people stand. The intent is strictly customers sitting at tables and servers coming to the tables.

Mr. Ames whether there would be access from the upper interior floor. Mr. Weisman said not at this point, though they had looked at it as a potential option. The plan is for the stairs to be located

outside. Mr. Ames commented to the chair that he would like to hear the Fire and Police Chief's opinions.

Mr. Allison inquired about the construction timeline. Mr. Weisman responded perhaps Thanksgiving break, or summer 2021.

Ms. Rousmaniere inquired if there was a second story to the main building. Mr. Weisman responded yes, called the Skybox inside, a couple thousand square feet in size. Mr. Riggs said the second floor area does not cover the entire first floor footprint, situated more to the High Street end. Mr. Allison inquired if he had looked at the air exchange inside the building. Mr. Weisman reported meeting with Schneider Electric next week. They have a robust newer system in place. Mr. Allison asked about whether the systems circulate air or bring in outside air. Mr. Weisman responded he thought it was outside air, but didn't know for sure.

Mr. Schnipper asked the Police Chief and Fire Chief for their responses.

Mr. John Detherage was sworn in. Mr. Detherage reported they do receive a lot of service calls for Brick Street. One of the present concerns is people and going over the interior balcony rail and becoming injured. This is another one of those items that could lead to similar incidents.

Mr. Detherage informed the Board that the occupancy of the building is a grandfathered number from the Fire Code in the 1980s, based on 3 square feet per person, and the current requirement is 5 square feet per person. The building is quite full when at full capacity.

Mr. Haizman inquired of how high the railing would be. Mr. Riggs answered that the railing height is 42", which is the minimum standard per Code. The Skybox railing is that height. Mr. Schnipper inquired if they would be willing to go higher out of concern and safety of patrons. Mr. Weisman responded he would be willing, so long as the height was within reason. Mr. Schnipper asked Mr. Detherage what height he would like to see. Mr. Detherage said he hadn't really thought about it, but probably a height greater than 42 or 46" to help prevent people from falling over.

Mr. John Jones, Police Chief, was sworn in. Mr. Jones provided comments in his review and expressed he shared the same concern over the height of the railing. Mr. Jones stated any height to prevent someone falling or being pushed over would be beneficial. Mr. Jones stated he understood the desire of making the railing not too tall that impedes views, having been to other rooftop bars. We've got to balance public safety with economic development. Mr. Jones said he has worked in the past with Mr. Weisman on improving a number of safety elements. Having enough security and monitoring in place for the new deck will help, with a main concern being someone falling or objects thrown over the railing.

Mr. Schnipper inquired if Mr. Jones could give an idea on how many falls have taken place. Mr. Jones said he had a report from 2018 that showed 2 falls, though it doesn't provide context for the nature of the fall, whether it be down the stairs, in the front of the building, etc. There are a lot of calls for this location, many of which are officer-initiated.

Mr. Weisman asked to speak. Mr. Weisman reported only being aware of one legitimate fall off the Skybox to the lower level. Chief Detherage reported that in last 3-5 years, he was there for one that fell over the rail and another that he wasn't there for. Mr. Ames asked Chief Jones whether he had concern for pedestrian and people throwing stuff over. Mr. Jones thought that could be mitigated with proper supervision from staff. There aren't any other skydecks in the Uptown area, so his experience is more from rooftop parties in residential districts. There have been things dropped from upper floor apartments in the Uptown, though he wasn't aware of any serious injuries. There is certainly the potential, so he

would ask Mr. Weisman to focus on that concern. Mr. Ames inquired about items being thrown over inside. Mr. Weisman responded that yes it does happen time to time but wouldn't characterize it as a problem and they address it as quick as they can.

Ms. Rousmaniere inquired the Chiefs about their general concerns regarding stairs. Mr. Jones said he didn't much a response issue, just that it would take a little bit longer to reach someone upstairs. Mr. Detherage said steps in bars can be wet and slippery, making it tougher to navigate, and it has caused a problem. The combination of inebriated patrons and wet stairs is not a very good situation.

Mr. Haizman inquired about future noise levels and if there were any concerns. Mr. Jones said if the music is too loud, Brick Street has been responsive in turning it down. There is a little bit of a trade-off between some public disorder and economic development. Mr. Jones responded that this was not an issue they can't deal with.

Mr. Riggs spoke about railings and posts in submitted drawings: the rail is 3'6", the posts are 4' 8" tall. So the most the rail height could be extended without increasing the height of the columns is 4'8".

Ms. Rousmaniere made motion to reconvene to regular meeting. Mr. Haizman seconded the motion. All were in favor.

Ms. Rousmaniere inquired if it was correct that occupancy was not being increased, and how is the occupancy set, monitored at the entrance, and on different floors? Mr. Schnipper supposed it would be monitored by staff at the door, and asked Mr. Weisman to verify whether he was correct. Mr. Weisman responded they have a wireless system and counters that feed into a central system. If Chief Detherage comes in, he can get a count. People are at each entrance counting people coming in and going out. It is monitored very closely.

Ms. Rousmaniere inquired about social distancing. Mr. Weisman stated patrons would be relegated to tables. The spirit of the law today is that people sit at tables situated 6 feet apart. It is uncharted territory. Mr. Schnipper reminded everyone this portion of the meeting was for the Board members to have discussion. Mr. Allison stated his belief that the Board shouldn't legislate. Mr. Allison felt the fall timeframe for construction lent itself more to the COVID argument than starting the project in the summer of next year. Construction next year also allows enough time to go the legislative route by way of the Planning Commission. Ms. Rousmaniere stated she was concerned about a permanent solution to a temporary problem.

There was discussion on how to appropriately construct a motion in consideration of the decision standards.

Mr. Haizman asked the other board members how they felt about the railing height. Mr. Allison noted that this wasn't what the BZA were being asked to vote on. Mr. Ames responded that the rail height could be a condition. Discussion followed. Mr. Schnipper responded that the variance was about the setback.

Ms. Rousmaniere made a motion to approve BZA-2020-04. Mr. Ames seconded the motion.

The BZA reviewed the Decision Standards:

A. Can the property in question yield a reasonable return. Mr. Schnipper stated the business could continue without the variance, so he felt this Criterion did not support the variance. The other Board members agreed.

B. Is the variance substantial? There was not agreement between Board members on this Criterion. Mr. Ames and Ms. Rousmaniere expressed their view that it was substantial, as it is a 100% setback affecting

a second story, therefore substantial.

C. Essential character of the neighborhood substantially altered. Mr. Schnipper felt this Criterion supported the variance. The other Board members agreed.

D. Affect the delivery of government services. Mr. Schnipper felt government services would not negatively affected. Ms. Rousmaniere disagreed, as she felt it would, in terms of fire and police. Mr. Ames said there is a safety factor, but not a delivery factor.

E. Whether the owner knew of the variance. The owner was aware, but having gone through the process back in 2002, Mr. Schnipper felt this Criterion couldn't be used as a negative. The other Board members agreed.

F. Property owner's predicament could be obviated through some other method. Mr. Schnipper felt the predicament could not be obviated through another method, given the current regulations. Mr. Allison stated he felt the air flow could be improved inside the building, and that the extended timeframe did not really support the pandemic argument. Mr. Schnipper said they were considering a setback request, not air circulation within the building.

G. Spirit and intent be observed without the variance. Mr. Schnipper stated in 2002 it was not a big enough problem, and the Board is currently at the same juncture. Ms. Rousmaniere mentioned Mr. Moore's comment about the spirit being for wider sidewalks, and felt the request did go against the spirit and intent of the Zoning.

H. Any other relevant factors? Ms. Rousmaniere inquired about in the winter time and rain, etc., only part of the year would be utilized. Mr. Schnipper agreed, acknowledging limited use due to weather.

Mr. Ames asked for two conditions to be added to the motion: (1) that the outdoor rail height be increased to the height of the columns, within the scope of the design; and (2) that, there will not be egress from the inside to the outside of the building, thus limiting to the two stairways. Ms. Rousmaniere, having made the motion, expressed support for Mr. Ames' conditions. Ms. Rousmaniere identified Criteria C and F supporting passage of the variance. Mr. Conard asked the Board if there were any factors to consider. Mr. Ames stated Criterion G should be added to the list, the spirit was upheld.

Mr. Perry commented for the record that there were no members of the public during the course of the virtual meeting wishing to speak.

Ms. Rousmaniere made a motion to amend her previous motion to approve BZA-2020-04, 36 E. High Street, to include two conditions: (1) that, the rail height be increased to a height of 4'8"; and (2) that there will be no egress from the inside to the outside of the building. Mr. Haizman seconded the motion.

Mr. Haizman made a motion to accept Ms. Rousmaniere's amended motion. Mr. Ames seconded the motion. All were in favor.

AYE: Mr. Ames, Mr. Haizman, Mr. Schnipper (3)

NAY: Ms. Rousmaniere, Mr. Allison (2)

ABS: None (0)

New Business

None at this time.

Old Business

There was none.

Adjournment

Mr. Ames made motion to adjourn the meeting. Mr. Haizman seconded the motion. The meeting was adjourned at 7:54 p.m.

City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-2020-04

July 15, 2020

APPLICATION

Applicant:	Mark Weisman
Location:	36 East High Street
Owner:	36 East High Street LLC
 Action Request:	 Variance to Section 1143.10(c)(2) front yard setback
 Current Use:	 Bar/Music Entertainment Venue
Zoning:	UP Uptown District
Surrounding Land Uses:	Commercial / Mixed Use / Church

BACKGROUND

Brick Street is a popular entertainment venue in Oxford, offering drinks, food, and live music in a primarily indoor setting. Owner Mark Weisman has requested relief from the required 16.5-foot front yard setback in the UP Uptown District for the purpose of replacing an existing covered patio with a new skydeck, thus allowing patrons to socialize with one another on a second story platform above ground level. The UP Uptown District requires a 16.5-foot front yard setback from all streets, except on High Street where buildings may be built directly abutting the public right-of-way. Observing that the subject property is a corner lot abutting both High Street and Poplar Street, the setback is only taken from the Poplar Street frontage. The applicant indicates in his narrative that the COVID-19 pandemic has spurred the need to spread patrons out across more floor area, as a more favored option in lieu of decreasing the occupant load inside the main building.

The site at 36 East High Street has undergone two (2) variance case reviews in the past relative to the 16.5-foot setback area. The first case, approved by the BZA on August 27, 1992, reduced the required setback along Poplar Street to “four feet more or less” in order to accommodate a new dumpster enclosure in the northeast corner of the site which still exists to this day. A more recent second case, approved by the BZA on September 30, 2002, approved the conversion of an open-air seating area into a covered patio occupying the entire 16.5-foot setback; this variance was approved on condition that: (1) the patio enclosure would remain an open air structure; and (2) the wrought iron proposed at the time would not be replaced with any kind of solid barrier. Subsequent COA approvals eventually allowed the painted concrete block and glass tile that encloses the patio today, as well as the installation of metal fencing at the corner of High and Poplar Streets.

DESCRIPTION

The applicant’s requested variance can be summarized as follows:

Requirement	Code Section	Standard	Proposal
Minimum Front Yard Setback	1143.10(c)(2)	16.5 feet	0 feet
Explanation: The UP Uptown District requires a 16.5-foot minimum front yard setback along all streets, except High Street where at least 70% of a building must meet the right-of-way line. The requested variance is a 100% reduction, essentially eliminating the requirement altogether. Although this is the exact same numerical reduction previously approved in 2002, staff finds that a new approval by the BZA is required due to two (2) factors: (1) the			

proposed project increases the number of stories beyond the scope of patio plans that went with the 2002 decision; and (2) the proposed skydeck extends 17 feet further south from the current patio roof overhang, to occupy an area currently open to the sky.

STAFF RECOMMENDATION

If the BZA determines that difficulties exist which are sufficient to warrant the variance, the staff recommends that the BZA cite any new or different specific evidence not yet identified and approve the variance request. At the time of this report, **staff believes more evidence is needed in order to support the variance request** to allow for a reduction in the front yard setback.

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).

COMMENT FORMS

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	Returned with Comments
<i>I believe that sky decks are a positive amenity in a community and support economic development. They provide a fun, outdoor atmosphere and if done properly and safely, can add a pleasant atmosphere for a community. I support this proposal and hope that this roof top/ lofted restaurant and/or recreational space concept is supported.</i>		
Engineering	Scott Otto, City Engineer	Returned without Comments
Fire	John Detherage, Fire Chief	Returned with Comments
<i>Brick St. is a popular location for calls for EMS and police service which a vast majority, if not all, are alcohol consumption related. I would have to expect that a second floor patio would only increase these issues. More than once we have responded to this location and found patrons that have fallen or been pushed from the second floor balcony inside. I can only imagine that this type of behavior would happen in this proposed outdoor area also.</i>		
Police	John Jones, Police Chief	Returned with Comments
<i>1. We currently work closely with bar staff to ensure security measures are in place and have no reason to believe this would change. In order to avoid additional burdens on public safety, the business would need to provide additional staff to monitor the upper deck, as they do the current patio.</i> <i>2. In addition to security staff, I would want to ensure the fence/railing is high enough. If there is a way to prevent items from being thrown or dropped from the second floor deck, they should be taken.</i> <i>3. If occupancy is not increasing, and this allows for patrons to space out more, this would increase safety in the establishment.</i>		

BZA SITE HISTORY

There are two prior BZA cases available in City records for this property, as outlined in the table below:

Request	Case No.	Standard	Granted
Variance to Minimum Side Yard Setback	BZA-05-1992	16.5 feet	4 feet more or less
Explanation: Reduced setback from Poplar Street granted by the BZA in order to comply with the City's requirement for a refuse container storage area, given that the building already occupied nearly 100% of the real property. Variance granted on August 27, 1992 by a 4-0-0 vote. The Code at the time defined a front setback for a corner lot as being measured from the <i>shortest lot line ... which abuts upon a street</i> ; therefore, the setback from Poplar was construed as being from the side rather than the front.			
Variance to Minimum Front Yard Setback	BZA-14-2002	16.5 feet	0 feet
Explanation: Setback from Poplar Street granted by the BZA to allow a previous patio seating area (open to the sky, identified in the staff report as a <i>sidewalk café</i>) to be converted to a covered open-air patio. Variance granted on September 30, 2002 by a 3-1-0 vote, subject to 2 conditions. As is current policy in the current Oxford Zoning Code, at the time corner lot front yards were measured from both abutting streets.			

ANALYSIS

The burden of proof is upon the Applicant to present reliable and substantial evidence that supports the request for variance (Section 1139.02(c)(1)). Furthermore, the BZA must find that practical difficulties exist that would render strict application of the Code unreasonable (Section 1139.02(c)(2)). 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 narrative addressing the review criteria from Mr. Weisman. Staff's review of the criteria is included below:

Regarding **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**: The property's previous and continued use as an entertainment value is sufficient to demonstrate that there can be beneficial use of the property without the variance. The purpose of the request, as stated by the applicant, is to reduce indoor occupancy in response to the current pandemic. However, staff feels the evidence contributed is insufficient to demonstrate this criterion supports the variance request because the owner/applicant would have to be deprived of *reasonable* economic return. Denying the variance would not deprive the owner of continuing to operate the business under the current setup and conditions, which may or may not continue to yield a return that is reasonable.

Regarding **Criterion B, whether the variance is substantial**: The applicant is asking for a **100%** decrease (elimination) of the front yard setback. On its face, staff finds this numerical adjustment to be a substantial request. However, in consideration of the current covered patio's previous approval by the BZA in 2002, this raises the question of whether the substantiality of the request should be applied to the overall scope of the project, or only to those portions that increase the bulk, scale and scope of the current patio amenity; staff advises the BZA that they may weigh this criterion from either perspective. The overall height of the replacement structure is estimated to be only about 1 foot taller (the previous plans depict the roof ridge at a 15 foot height from grade, while the tallest feature on the proposed project measures right above 16 feet). Despite this minimal change in overall height, staff finds the intensity of the use would increase in a vertical fashion by adding a second story not currently in existence.

Regarding **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**: Oxford's Uptown district is characterized by a plethora of locations, including restaurants, bars and other venues for social activity and entertainment, especially for college students. A sky deck feature could serve to further complement Brick Street as a popular Oxford venue. As of the writing of this report, staff does not believe adjoining properties will suffer any additional detriment through the granting of this variance to allow for a second story sky deck.

Regarding **Criterion D, whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage)**: Community Development staff advises the BZA to rely upon comments from the Fire Chief and Police Chief in consideration of this criterion.

Regarding **Criterion E, whether the property owner purchased the property with knowledge of the zoning restriction**: Mr. Weisman's narrative clarifies that he was aware of the restriction, and this request serves as an extension of the project scope approved in 2002.

Regarding **Criterion F, whether the property owners' predicament feasibly can be obviated through some method other than a variance**: The owner makes clear in his narrative that the predicament faced is the COVID-19 pandemic, necessitating a policy of spreading out patrons to lessen chances for transmission of the virus. However, hint is also given at the "long-term future of the establishment," thus the request appears to be intended not only to combat the current economic hardship posed by the pandemic but also serve as a substantial permanent improvement for years to come.

Regarding **Criterion G, whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance**: The spirit and intent of the 16.5-foot setback appears to be an aesthetic one, as the community has opted for wider corridor envelopes along its side streets as compared to the primary thoroughfare along High Street. Various variances and construction projects have been allowed to occur within the front setback areas of Uptown side streets in the past, including such examples as the addition at 45 East High Street and the municipal parking garage. However, the concept of a standalone open-air deck along the frontage of any side street and within the front setback would be new territory for Oxford's Uptown district.

Regarding **Criterion H, any other relevant factor**: There are no other factors staff believes warrant comment, but the BZA may rely on other evidence contributed by the applicant during the hearing in making a determination on whether to grant the variance.

SUBMITTED BY:



Zachary Moore, AICP
Planner, Community Development Department

DATE: July 6, 2020

BZA MOTION FOR VARIANCES

With regard to the Request for Variance # **BZA 2020-04**, being a Variance to Section 1143.10(c)(2), front yard setback at 36 East High 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-2020-04 Surrounding Property Owners Map

Legend

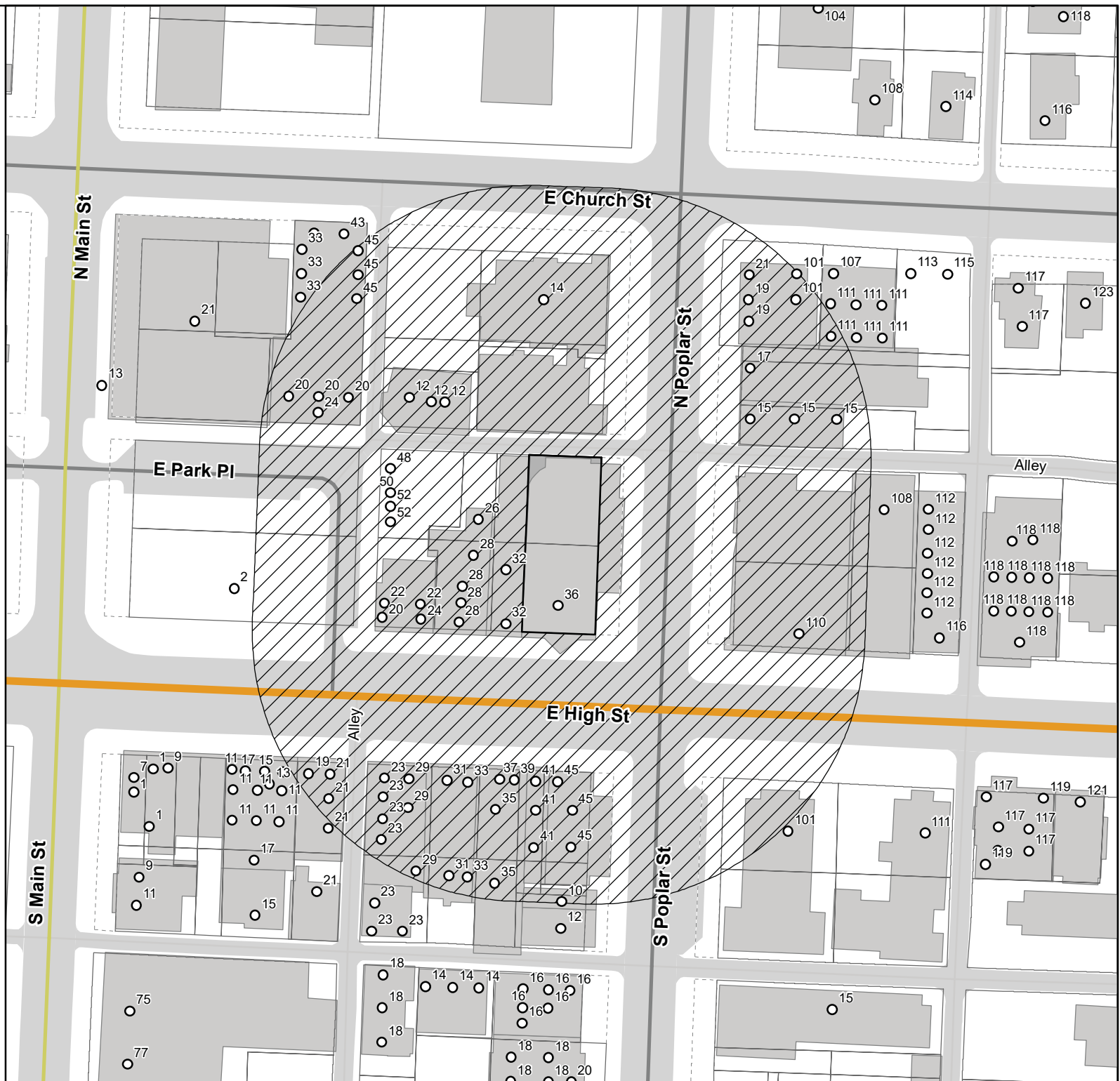
-  Subject Parcel
-  200 Ft. Buffer
-  Oxford Corporation Limit
-  Parcel
-  Vacated Right-of-Way
-  Building Footprint
-  Paved Roadway



1 inch = 100 feet

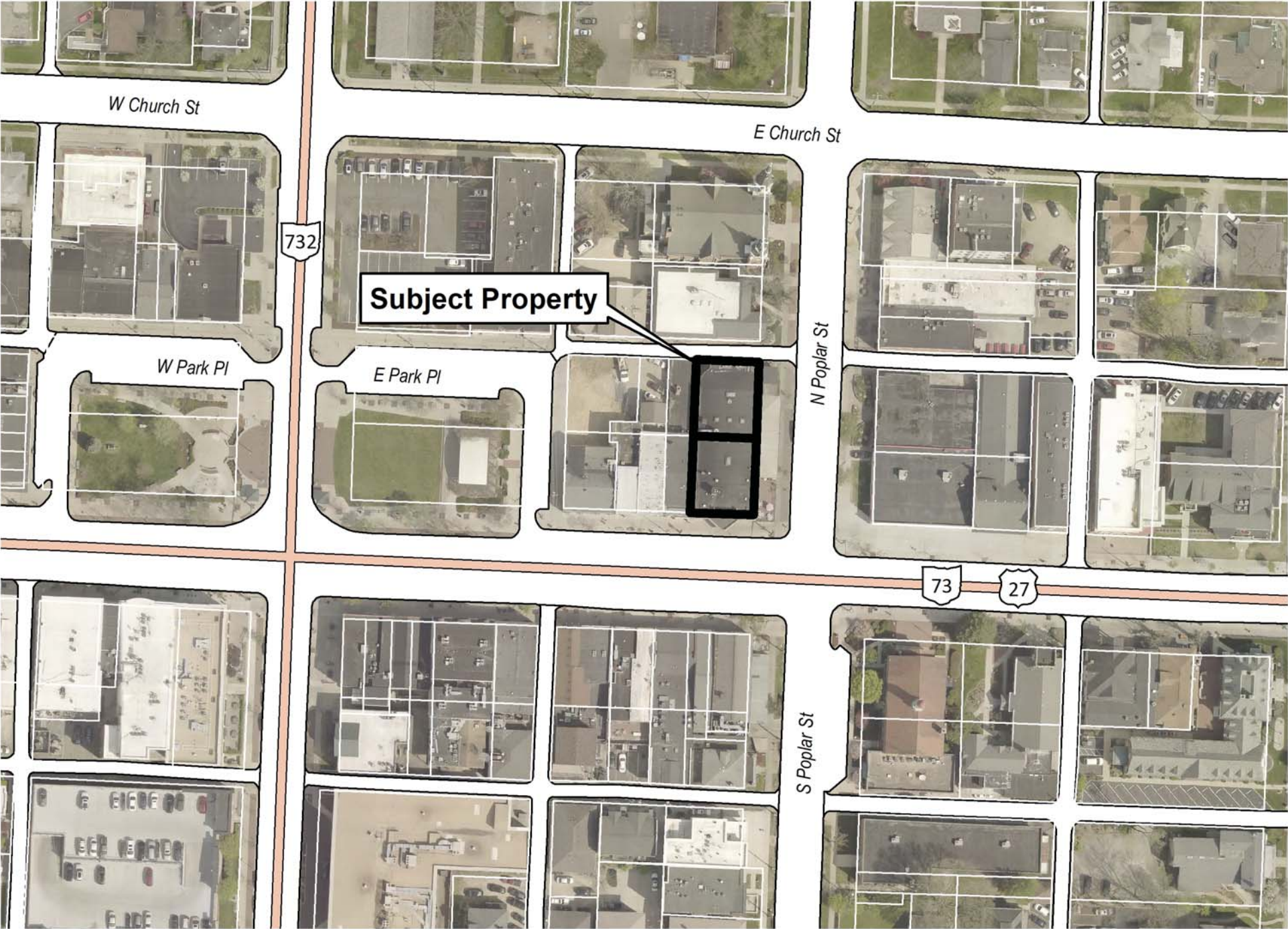
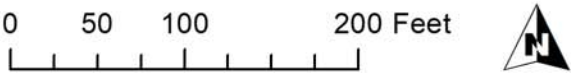
Prepared on Wednesday, July 1, 2020

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.



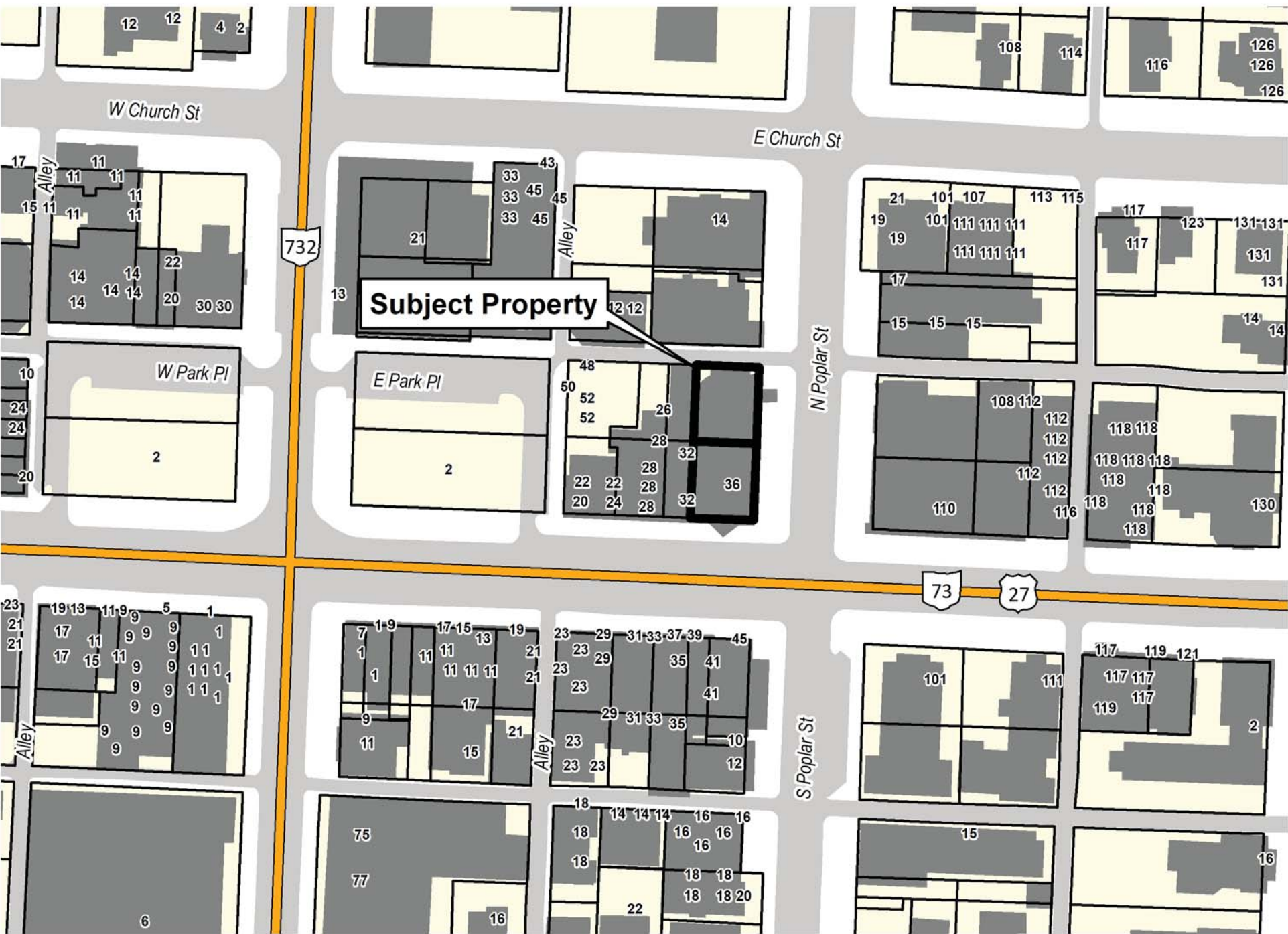
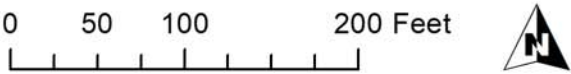
Location Map

 Site Parcel(s)



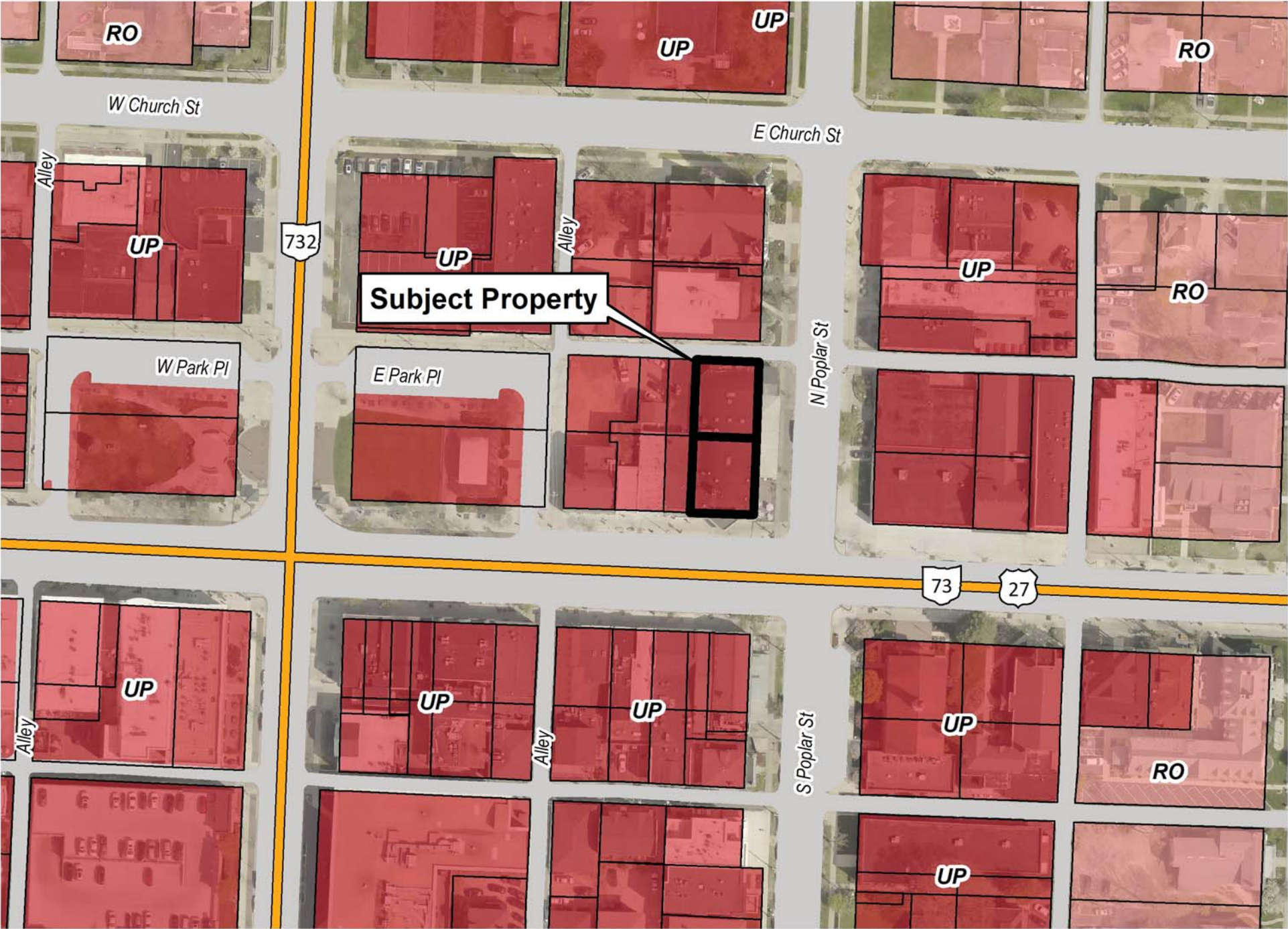
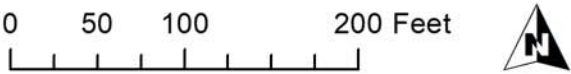
Location Map

 Site Parcel(s)



Location Map

 Site Parcel(s)



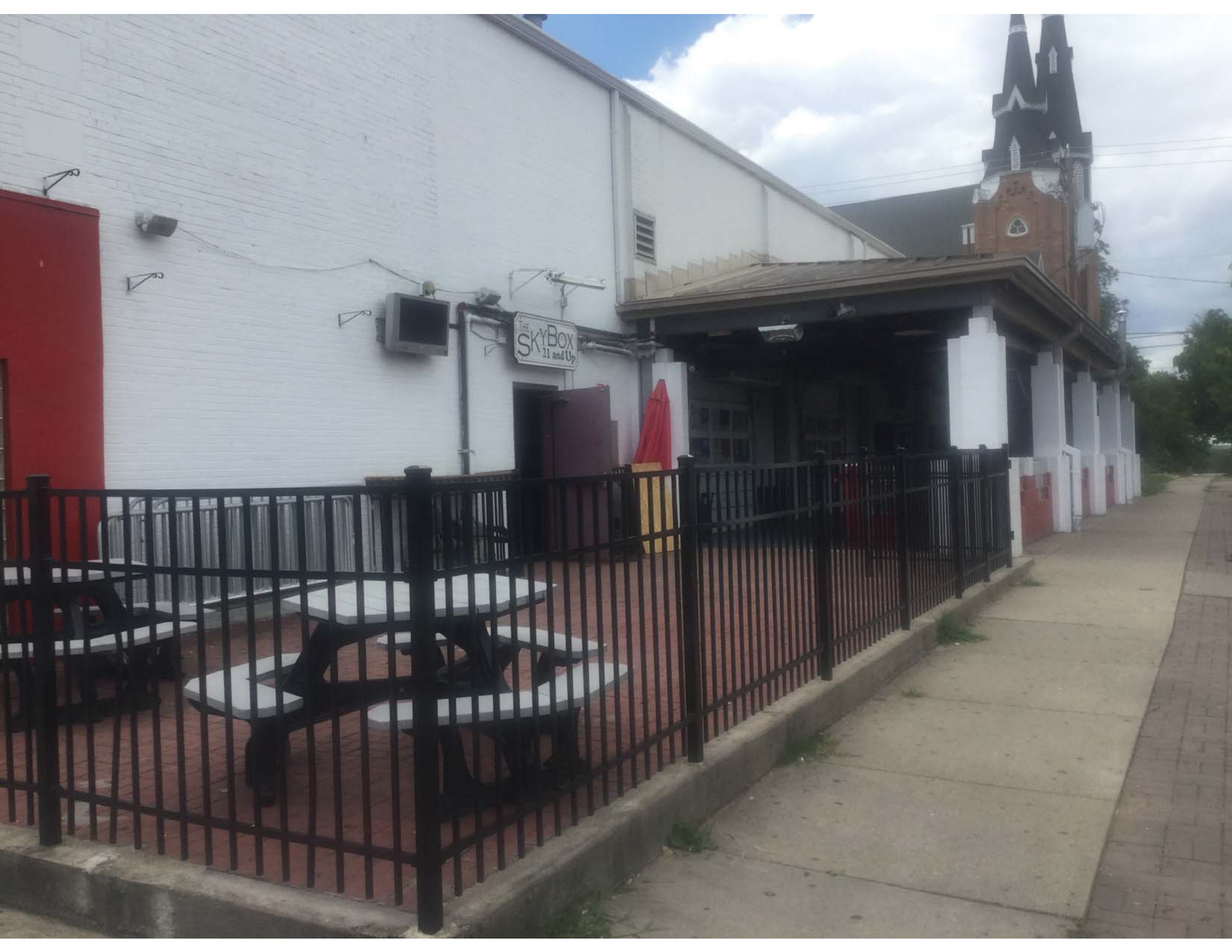


SNOW
ROUTE
NO PARKING
DURING ANY LEVEL
OF SNOW EMERGENCY
OR WHEN SNOW IS 2"
OR GREATER
TOW-AWAY ZONE
8:00 A.M. - 5:00 P.M.

DO NOT
ENTER







The SkyBox
21 and Up



Certificate of Appropriateness

Letter of Approval

October 16, 2020

Mr. Mark Weisman
6337 Carriage Oak Way
Liberty Township, OH 45011

Re: HAPC-2020-09 Certificate of Appropriateness
36 E. High Street, addition of a second floor exterior patio - Modification

Dear Mr. Weisman:

The Historic & Architectural Preservation Commission met on October 14, 2020 and approved modifications made to your original Certificate of Appropriateness with conditions listed below:

1. That the awning will be complementary with the structure's architecture;
2. That, the color of the steel tubing under the glass railing will be administratively approved prior to installation;
3. That, any modifications to the design as a result of any other City Board or Commission; or permit review decisions, are re-presented to the HAPC or designee.

This Certificate of Appropriateness shall be valid for a period of one year from the date of approval by the HAPC at which time a building permit must be obtained. All work shall be substantially completed within two years from the date a building permit issued.

Should you have any questions, please feel free to contact us at 524-5204.

Sincerely,

Lynn Taylor
Administrative Assistant
cc: File



Certificate of Appropriateness

Letter of Approval

July 15, 2020

Mr. Mark Weisman
6337 Carriage Oak Way
Liberty Township, OH 45011

Re: HAPC-2020-09 Certificate of Appropriateness
36 E. High Street, addition of a second floor exterior patio

Dear Mr. Weisman:

The Historic & Architectural Preservation Commission approved your Certificate of Appropriateness application as submitted with the condition listed below:

1. That, any modifications to the design as a result of any other City Board or Commission; or permit review decisions, are re-presented to the HAPC or designee.

This Certificate of Appropriateness shall be valid for a period of one year from the date of approval by the HAPC at which time a building permit must be obtained. All work shall be substantially completed within two years from the date a building permit issued.

Should you have any questions, please feel free to contact us at 524-5204.

Sincerely,

Lynn Taylor
Administrative Assistant
cc: File

LETTER OF AGENCY

To Whom It May Concern:

Please be advised that Mark Weisman has permission to represent our interest with the City of Oxford and act on our behalf for 36 East High street regarding the property located at 36 E. High St Oxford, Ohio 45056

Thank-you,

Signed: _____

Date: 7/6/2020



Internal Use Only:	
Case No.	BZA-2020-04
Date Filed	6/15/20

Petition for Zoning Variance

Petitioner Information

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

Name *	Mark Weisman
Mailing Address *	36 East High St
City, State & Zip Code *	Oxford, Ohio 45056
Telephone Number(s) *	513-255-2851
Email Address	mw120396@gmail.com

Owner Information

Name *	Weisman Enterprises / 36 East High LLC
Mailing Address *	36 East High St
City, State & Zip Code *	Oxford, Ohio 45056
Telephone Number(s) *	513-255-2851
Email Address	mw120396@gmail.com

Variance and Lot Information

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

Relief is requested from the 16' setback per Oxford Ordinance 1143.10(C)(2) to allow 0' setback for new Skydeck. This is not increasing the footprint of the existing patio that was granted approval in 2002.

Location of Requested Variance *	36 East High St		
Name of Building	Brick Street Bar		
Legal Description *	Commercial - Restaurant / Cafe / Bar		
Zoning District *	Oxf Twp-O Corp-D L	Total Acreage *	.1700
Existing Use of Site *	Restaurant / Cafe / Bar		

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.

Restaurant / Cafe / Bar

- 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 * 6/15/20

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>

BRICK ST BZA APPLICATION – DECISION STANDARD NARRATIVE

Decision Standard comments for the construction of the newly proposed Skydeck for Brick Street Bar at 36 East High Street:

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 approval of this variance will allow Brick St to increase patio / deck square footage without attempting to increase the occupant load of the existing building, thus spreading people out and mitigating risk relative to Covid-19.

B. Whether the variance is substantial;

- This variance does not expand the footprint that the existing variance granted in 2002 allowed.

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 not be substantially altered by the allowance of this variance due to the continuation of the existing architectural detail vertically. The attempt is to blend the new construction into the architectural fabric of the existing building and surrounding neighborhood.

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

- There would be no interruption in the delivery of governmental services due to this variance.

E. Whether the property owner purchased the property with knowledge of the zoning restriction;

- Yes, the property owner was aware of the restriction and this application is to expand vertically to the existing variance approval back in 2002.

F. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;

- Due to the impact COVID19 and current restrictions and risk mitigation recommendations, , this variance approval helps separate people and creates more open air space where Covid-19 and other viruses are much less transmittable. The sky deck creates a less dense population inside without affecting the business revenue for the short term and long-term future of the establishment.

G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

- The proposed Skydeck would be creating space vertically from the previously approved variance and not expanding the current footprint of the business.

BRICK STREET BAR

RICK STREET BAR

EAST HIGH STREET ` OXFORD, OHIO 45056

PROPERTY LINE

OVERHEAD ELECTRIC

EXISTING SIDEWALK

EXISTING CAR/DUMPSTER ENCLOSURE WITH ROOF

LINE OF EXISTING CONSTRUCTION IN THE R.O.W. PRIOR TO R.O.W. EXPANSION

LINE OF EXISTING CONSTRUCTION PER VARIANCE GRANTED IN 2002; THIS REQUEST IF GRANTED WOULD REPLACE THE 2002 VARIANCE CURRENTLY ON FILE

EXISTING ROOF OVER PATIO

HIGH TOP OF RAILING, 16" TOP OF CMJ PILLARS

EXISTING GATE FROM STREET TO REMAIN

EXISTING PARKING METER

EXISTING FIRE HYDRANT

VARIANCE: RELIEF IS HEREBY REQUESTED FROM 15.5' SETBACK PER OXFORD ORDINANCE 1143.10(C)(2) TO ALLOW 0' SETBACK FOR NEW SKYDECK.

EXISTING BUILDING
MERCANTILE CLOTHING SHOP

EXISTING BUILDING
RESTAURANT/ BAR

EXISTING PATIO (OPEN TO ABOVE)

DECORATIVE FENCE 3' HIGH EXISTING

POPULAR STREET

40' STREET

14'-0" SIDEWALK

SITE PLAN

SCALE: $\frac{1}{8}" = 1'-0"$

NORTH

VERIFY R.O.W.'S WITH CITY RECORDS.

H I G H S T R E E T

DESCRIPTION OF PROJECT:
PROVIDE A 8'5" X 15'-6" PLATFORM ON EXISTING TUBE
STEEL COLUMNS AND CONCRETE FOOTINGS. TWO
ADDITIONAL FOOTINGS WILL BE ADDED FOR THE
ADDITIONAL COLUMN BAY.

ZONING INFORMATION:
CITY OF OXFORD

BUILDING CODE INFO:
OHIO BUILDING CODE 2017
USE GROUP: A-2
CONSTRUCTION TYPE: 3B
ALLOWABLE SIZE: 9500 SF & 55' HIGH (2-STORY)
BUILDING HEIGHT:
BUILDING AREA:
RESTAURANT 6954 SF FOOTPRINT
PATIO 1075 SF FOOTPRINT
FIRE SUPPRESSION: FULLY SUPPLIED

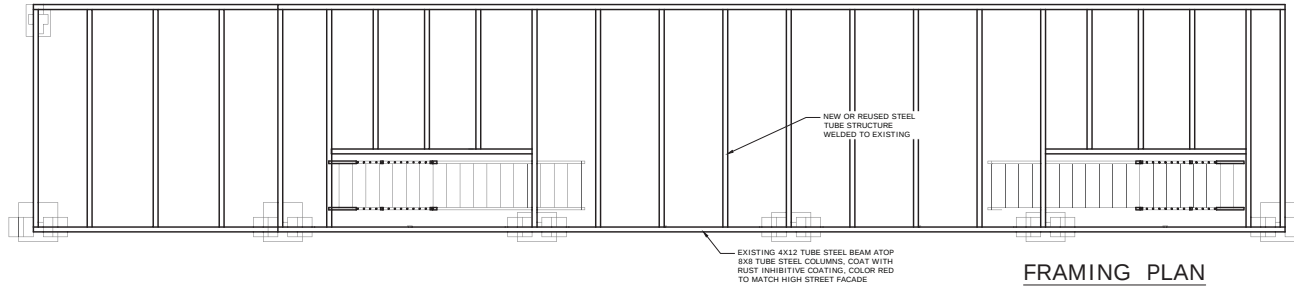
* ALL NEW WORK IS WITHIN THE EXISTING
FIRST FLOOR FOOTPRINT. EXISTING
OCCUPANT LOAD OF THE EXISTING FACILITY.

T-1	TITLE SHEET WITH SITE PLAN
A-1	FLOOR PLANS - STREET, UPPER & FRAMING
A-2	ELEVATION & SECTION/ DETAIL
A-3	RENDERINGS

CONCEPT #
T-1
FILE: C-5
JOB #2028

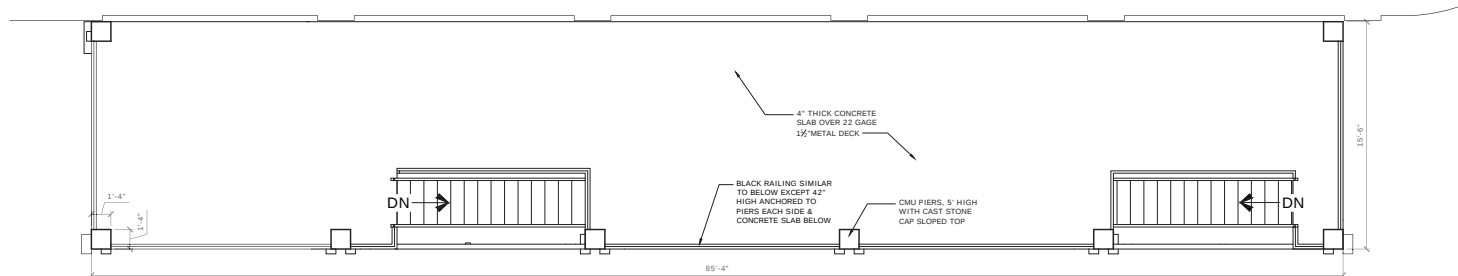
SITE PLAN

SCALE: $\frac{1}{8}" = 1'-0"$
 VERIFY R.O.W.'s WITH CITY RECORDS



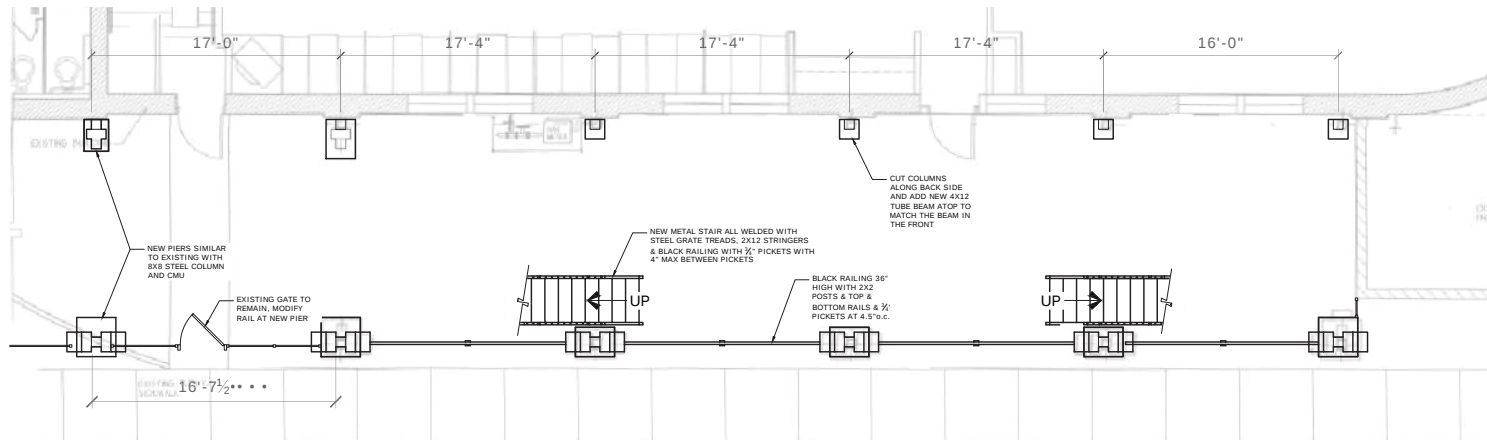
FRAMING PLAN

SCALE: $\frac{1}{4}" = 1'-0"$



UPPER LEVEL FLOOR PLAN

SCALE: $\frac{1}{4}" = 1'-0"$



STREET LEVEL FLOOR PLAN

SCALE: $\frac{1}{4}" = 1'-0"$

NEW SKYDECK CONCEPT FOR:
BRICK STREET BAR
36 HIGH STREET
OXFORD, OHIO 45056

JOHN R. GRIER ARCHITECT INC.
11501 DEERFIELD RD
CINTI, OH 45242
513-489-3690

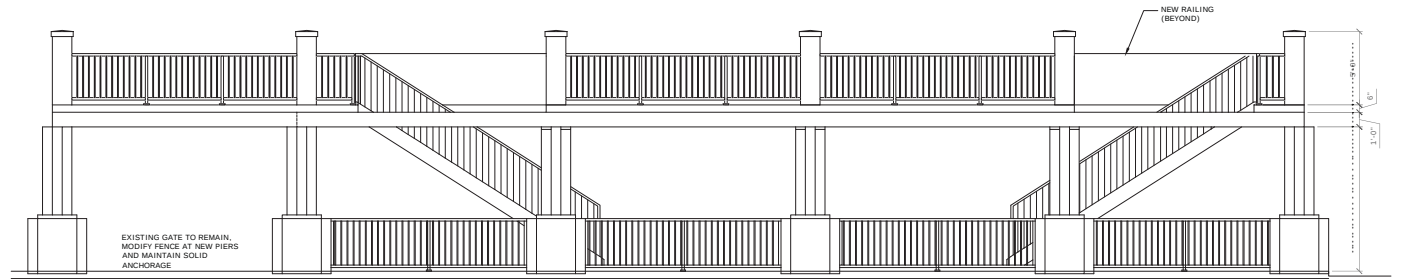
DRAWN BY: TWH & RWD

DATE: 06-11-2020

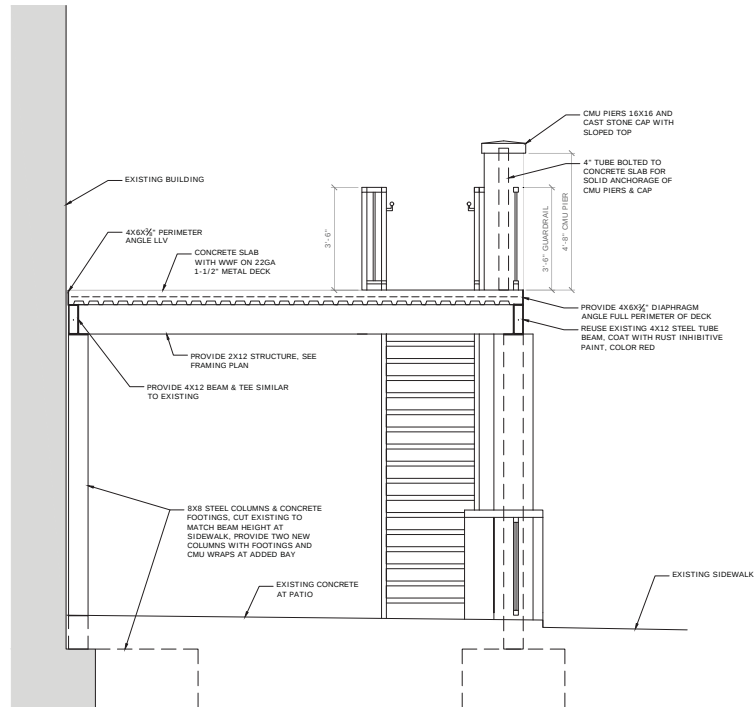
CONCEPT #

A-1

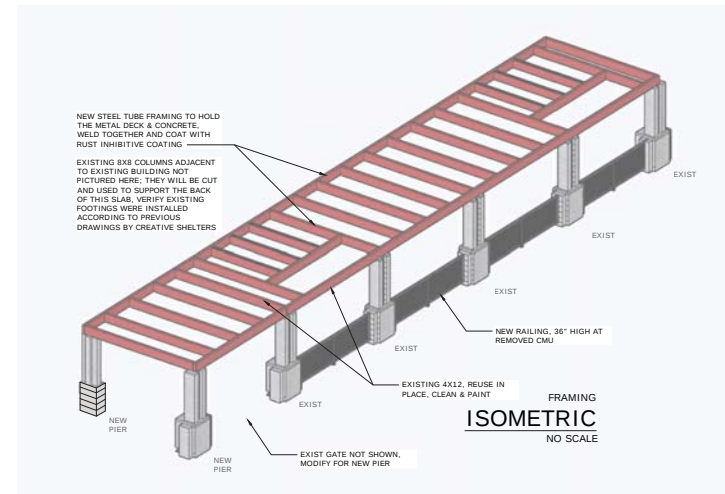
FILE: C-5
JOB #2028



POPLAR STREET
EAST ELEVATION
SCALE: $\frac{1}{4}" = 1'-0"$



SECTION VIEW
SCALE: $\frac{1}{2}" = 1'-0"$



FRAMING
ISOMETRIC
NO SCALE

NEW SKYDECK CONCEPT FOR:
BRICK STREET BAR
36 HIGH STREET
OXFORD, OHIO 45056
JOHN R. GRIER ARCHITECT INC.
11501 DEERFIELD RD
CINTI, OH 45242
513-489-3690

DRAWN BY: TWH & RWD
DATE: 06-11-2020

CONCEPT #
A-2
FILE: C-5
JOB #2028



EAST SIDE/ POPLAR STREET
NO SCALE



SOUTHEAST CORNER/ HIGH STREET
NO SCALE

NEW SKYDECK CONCEPT FOR:
BRICK STREET BAR
36 HIGH STREET
OXFORD, OHIO 45056

JOHN R. GRIER ARCHITECT INC.
11501 DEERFIELD RD
CINTI, OH 45242
513-489-3690

DRAWN BY: TWH & RWD
DATE: 06-11-2020

CONCEPT #

A-3
FILE: C-5
JOB #2028

July 24, 2020

Mr. Mark Weisman
Weisman Enterprises/36 East High LLC
36 E. High Street
Oxford, OH 45056

BZA-2020-04, 36 E. High Street, Variance to Chapter 1143.10(C)(2) to allow 0' front yard setback for a new skydeck. **Mark Weisman, Appellant**

Dear Mr. Weisman:

The Oxford Board of Zoning Appeals met virtually on July 15, 2020 and voted 3-2-0 to approve your variance request subject to two conditions:

1. The skydeck's rail height shall be increased to the height of the columns/posts (4'8").
2. There will be no egress from the inside of the building to the outside deck, thus limiting to just the two stairways.

The BZA's decision was based upon Findings of Fact:

- C. That the essential character of the neighborhood would not be substantially altered by the variance and adjoining properties not suffer a substantial detriment as a result of the variance.
- F. That the property owner's predicament could not be feasibly obviated through some other method other than a variance.
- G. That the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Per Section 1139.02(e)(2), this approval is valid for six months, unless a building permit is obtained and the work has started within such period, or an extension is requested in writing and granted by the Board. And,

Per Section 1139.02(f)(1) appeals to this decision shall be made to the Court of Common Pleas of Butler County.

Should you have any questions or need additional information regarding this action, please contact the Community Development Department at 524-5204.

Sincerely,



Lynn Taylor
Administrative Assistant
Community Development Department