



OXFORD BOARD OF ZONING APPEALS

Meeting Minutes

Tuesday, April 26, 2022

[Link for website video here](#)

Full Transcript available online

Meeting procedure: The Board of Zoning Appeals is a quasi-judicial Board. Our primary function is to hear testimony and issue decisions. Unlike other City boards and commissions, we only hear relevant, sworn testimony from the Applicant, his/her duly appointed agent or attorney, and any other person with standing to testify in a particular matter. The Applicant has the right to cross-examine any testimony given. Our hearings are open to public attendance, but public comment, opinion and discussion are not considered testimony and will not be heard.

Please wait until you are recognized by the Chair, state your name and address so that your comments may be properly recorded. Applicants are to limit their testimony to fifteen (15) minutes, including any information presented by his/her duly appointed agent or attorney. This time limit may be extended if the Board requests or approves further testimony. Other persons with standing are encouraged to testify and ask questions about the nature of the appeal, but must be acknowledged by the Chair prior to speaking.

Roll Call

Mike Schnipper, Chair

Roger Ames, Vice Chair

Kate Rousmaniere

Calvin Conrad

Chris Allison

[Time: 0:14](#)

A regular meeting of the Oxford Board of Zoning Appeals was called to order by Chair Mike Schnipper on Tuesday, April 26, 2022 at 6:30 p.m.

Members in attendance were Mike Schnipper, Roger Ames, Calvin Conrad, and Chris Allison.

Members excused: Kate Rousmaniere

Staff Members in Attendance

Mr. Sam Perry, Director, Community Development, Mr. Christopher Conard, Law Director, Ms. Eunike Miller, Administrative Assistant.

Staff Members Excused

Zachary Moore, Planner

Approval of March 22, 2022 Minutes of the Regular Meeting

[Time: 0:25](#)

Motion – To approve minutes as written

(Voice Vote) 1st Mr. Ames

2nd Mr. Conrad

AYE: (4)

NAY: (0)

ABS: (0)

Old Business

BZA-2020-04

[Time: 0:43](#)

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1. 36 E High Street, Examination of egress door with respect to prior variance approval of Skydeck, Mark Weisman, Applicant

Mr. Conrad recused himself from the case due to not being on the BZA when the original case was discussed. Mr. Schnipper asked the applicant's agent, Mr. Riggs whether he would like to proceed with only 3 BZA members hearing the case. Mr. Riggs said he would like to proceed.

Mr. Conard, Law Director, informed the Board members that the applicant, Mr. Weisman expressed concerns about Ms. Rousmaniere being biased, and asked Ms. Rousmaniere to recuse herself from the case. Mr. Conard responded to the applicant stating there was no conflict of interest, perceived bias is not grounds to force recusal of someone. Ms. Rousmaniere's absence was not related to this request.

Motion – To Enter into Adjudication Hearing

(Voice Vote) 1st Mr. Allison 2nd Mr. Ames

AYE: (3)

NAY: (0)

ABS: (0)

Motion – To Close Adjudication Hearing

(Voice Vote) 1st Mr. Ames 2nd Mr. Allison

AYE: (3)

NAY: (0)

ABS: (0)

Motion – It was not the intent of the Board to allow a door on the upper floor, changes have been made to the plans since then and the Board do not believe a door should be there, and the BZA will not remove the conditions from the variance, therefore the door shall be removed forthwith.

(Roll Call Vote) 1st Mr. Ames 2nd Mr. Allison

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

NAY: (0)

ABS: (0)

Motion to Adjourn Meeting at 7:15 p.m.

Time: 45:38

(Voice Vote) 1st Mr. Allison 2nd Mr. Ames

AYE: (3)

NAY: (0)

ABS: (0)

0:00:02.9 Michael Schnipper: Okay, let's get the meeting started. Welcome to the April 26th, 2022 session of the Oxford Ohio Board Zoning Appeals. First item on the agenda is we have to have approval of the March 22nd, 2022 minutes of the regular meeting.

0:00:23.7 Roger Ames: So moved.

0:00:24.4 Michael Schnipper: Thank you.

0:00:25.2 Calvin Conrad: Second.

0:00:26.3 Michael Schnipper: Moved and seconded, all in favor say, Aye.

0:00:28.0 Board Members: Aye.

00:00:29.6 Michael Schnipper: Without opposition the minutes are approved. Third item on the agenda is old business, which is BZA 2020-04, 36 East High Street and examination and restore with respect to variance approval with Skydeck and Mark Weisman is the applicant.

0:00:48.8 Michael Schnipper: Before we get started on this, because this is a very unique type of hearing tonight, I'd like to go through a few things so that everybody understands what my thoughts are on how to handle this. And Mr. Conrad, you're welcome to jump in at any point.

0:01:04.9 Michael Schnipper: First off we're not gonna have a full board tonight. We knew that going in Kate Rousmaniere is not here, so you're gonna be dealing with a four member board.

0:01:18.0 Calvin Conrad: Excuse me.

0:01:18.9 Michael Schnipper: Yes, sir.

0:01:20.1 Calvin Conrad: Since I was not on the board at the time that the original request occurred, I would like to recuse myself.

0:01:33.8 Michael Schnipper: Thank you. I appreciate your honesty. That puts a new wheel on our wagon Mr. Riggs would you? You now have a three member board, it takes three votes to pass any motion before this board, would you like to proceed with the hearing tonight or would you like to table it?

0:01:52.6 Bob Riggs: Go ahead and proceed.

0:01:56.5 Michael Schnipper: Okay. Let the record show that Mr. Riggs has chosen to proceed. Tonight's hearing's not a normal variance... And let me back up one step, I appreciate your honesty. You can either stay where you are but you cannot participate in any way, or you can take a seat in the audience, whichever you're most comfortable with, and I have no preference.

0:02:13.2 Calvin Conrad: I'll stay here.

0:02:14.8 Michael Schnipper: Okay. That's fine. Anyhow, not a normal hearing. We're not re-hear the original case. The most closely comparable type of hearing that we've gotten is an

administrative appeal. And this is not even that we're being asked to review the conditions of a previously granted variance.

0:02:42.0 Michael Schnipper: I think that what we're gonna do, because we're not gonna re-hear the case is it will treat it very similarly to an administrative appeal. And what I mean by that is that, we will swear in the witnesses, have testimony, have questions and answers, and then have Mr. Riggs give his testimony, we'll have questions and answers there.

0:03:08.0 Michael Schnipper: After the conclusion of that, we're gonna reconvene into a regular session just as we normally do. And that'll be the opportunity for us to have a discussion between the board members and make a motion determine of this case.

0:03:22.0 Michael Schnipper: One thing that I'd like to do is that, if we have questions during our regular session, I'd like to have you ask me to recognize you before you ask the question. The reason I'm doing that is that staff and legal counselor here have a microphone at their table and they can respond from there without having to return to the podium. However, Mr. Riggs, while he is still under oath, I'd like to have him approach the podium before you ask him a question so that when he responds, his response is accurately recorded.

0:03:55.7 Michael Schnipper: Let's see here, got my cheat sheet. There's three possible outcomes of the hearing tonight, and they've been offered as part of our package. We'll have an opportunity to discuss those and make a motion and then vote.

0:04:19.7 Michael Schnipper: These outcomes can be modified as part of the motion. Additionally, the motion can stipulate a time completion of the motion, such as forthwith or within a definite time using 30 days as an example. Mr. Conard, do you have anything that you'd like to add before we begin?

0:04:38.4 Christopher Conard: Well, I would say that, Mr. Weisman, had raised some issues before the meeting tonight over the past few weeks about his belief that Ms. Rousmaniere had bias and therefore she should recuse herself from listening to any case that was presented on that basis involving Brick Street.

0:05:03.8 Christopher Conard: I responded back and indicated that there was no conflict of interest perceived. Bias is not grounds to force recusal of someone. Even though Ms. Rousmaniere is not here tonight, that's not the reason she is not here, is not related to that request. So I would simply like the minutes to reflect that.

0:05:26.1 Michael Schnipper: Thank you, sir. Mr. Conard, do you agree with what I've outlined determined procedure for this?

0:05:33.0 Christopher Conard: I think it's logical. Yes.

0:05:34.9 Michael Schnipper: Okay. Very good. I need a motion to enter into adjudication.

0:05:43.0 Chris Allison: I move.

0:05:43.2 Michael Schnipper: Thank you, Chris.

0:05:45.0 Roger Ames: Second.

0:05:46.0 Michael Schnipper: All in favor say, Aye.

0:05:48.0 Board Members: Aye.

0:05:48.4 Michael Schnipper: Without opposition, we are in adjudication. Please state your name and title for the record, please.

0:05:56.3 Sam Perry: Sam Perry, Community Development Director for City of Oxford.

0:06:00.5 Michael Schnipper: And raise your right hand for me. Do you swear to tell the truth, the whole truth and nothing but the truth in matters before this board?

0:06:05.0 Sam Perry: Yes, I do.

0:06:05.6 Michael Schnipper: Please proceed.

0:06:06.8 Sam Perry: Thank you, Mr. Chair. Good evening, everyone. Thanks for the overview. That's very helpful. This case is not a variance and not an appeal but there are some similarities and procedures. It is, as Mr. Chair said, this is a review of a condition of a prior variance approval, so I'll go back through some of that history and some of these things will be somewhat redundant just to help to, in the slides. To just to help, to clarify or reconfirm what I've already said. Just to help a little bit because of the sequence...

0:06:47.6 Sam Perry: So, 36 E High Street is the Brick Street, bar and restaurant and I will say that Mr. Bob Riggs is here as well, on behalf of Mark Wiseman, the business owner, and he was architect and designer for the project when it originally came before this board in July of 2020. Waiting for it to look up here, there we go. Okay. So on the corner of Poplar and High Street is the property that I think you all are familiar with, so I won't dwell on that and the zoning as the Uptown Zoning District. This is a recent photograph that shows the finished product and so pay attention to this slide, because the next slide will show the previous condition prior to the variance approval.

0:07:47.7 Sam Perry: So you can see on this slide, the one story nature of the outdoor patio and what we're talking about tonight, that has been requested is actually in this location on this wall, so going back to that previous slide and you can see, there's a door there, which is the nature of the one of the conditions of the variance approval from July of 2020, which was actually extended, it came back to board zoning appeals for an extension because the project had not gotten underway. Since this is actually the third time this case has been in front of the Board Zoning Appeals and then the photo at the bottom is the same thing, just from a slightly different angle, there was a condition of the side and front yard setback variance, that there would not be an egress door between the interior of the building and the Skydeck.

0:08:52.1 Sam Perry: So here's the, the fun stuff here with the sequence, a little bit that you've had exposure to, this is the same information that was in your packet. The majority of these are things that have been handled outside this board, we wanted you to have an overview of the sequence, so you can see at the beginning when it was originally submitted to staff to be put on the agenda back

in June of 2020. The sequence actually resulted in a Historic and Architectural Preservation Commission review, prior to the Board of Zoning Appeals review and then there was an approval with a condition from the HAPC as well. And then later on in the month of July, that was when the setback variance was approved with a condition, which I'll touch on here in a moment, a couple of conditions one had to do with the railing height and one with the egress door. And then the building permit was submitted a couple of months later, in September.

0:09:47.5 Sam Perry: There was a revision made that required review by the Historic Commission. There was a bar that was added to the Skydeck. The variance expired then in January, the building permit was actually issued even after the variance expired so all of those revisions, that was an internal administrative process those did result in approval of the permit, and then in March, the staff notified the owner that the work cannot start because there are two attributes required in order for the variances to still be valid, that has to do with the timeframe of six months, and also work commencing, so that that was void, so they did come back for an extension, which was granted then in April and then from our records, there was a progress in June of last year to get the construction underway.

0:10:51.2 Sam Perry: And then a couple months later, in August, there was a final inspection that passed without the door, which is what's being discussed tonight. Staff observed that we did notify the owner. The building official eventually issued what's called an adjudication order, which is an instrument to require compliance from the building official, so this was not a zoning order. This was a building initial order because anytime there's a door at commercial building, any kind of alteration like that, effects potentially safety and flow of the occupants of the building, for safety purposes there needs to be a building permit done for that. So the building officials did issued that adjudication order, and then the architect applied for a permit for that door, on behalf of Mr. Wiseman and as part of that, there are reviews that are done by the building official, fire chief, zoning administrator, and the zoning code review, which was included in your packet was one of those, and that was where that condition was pointed out that the zoning code review for the building permit could not be found compliant because of the condition in staff's view.

0:12:14.0 Sam Perry: And several months later, after many emails, the architect did submit a request to be placed on this agenda. There was an effort to allow it to be done administratively and eventually we did gain agreement from the owner that this needed to be determined by BZA, that there would be a clarification as to what the reason for the condition was, to determine whether this door would comply with that condition. So I've got the verdict of this condition here, which is the condition two, condition one is not really the subject of tonight's discussion and the condition reads, there will be no egress from the inside of the building to the outside deck that's limiting to just the two stairways.

0:13:10.7 Sam Perry: And I'll be happy to go back to that slide, but I did want to backtrack just a little bit on the support within the code for conditions of approval, because this was actually a setback variance to add the second level to the deck, because any time there was, to the patio, I'm sorry. Any time there is an expansion of a prior, there was a variance to the prior patio roof system. But anytime there's an expansion either horizontally, or vertically, there has to be a new variance submitted. And that's what occurred in 2020. So, that allowed the structure to be built with no setback from the right away. And the code support for attaching those conditions, you'll see here that the Board of Zoning Appeals, this is straight out of the Oxford Code, Oxford Zoning Code. The BZA shall grant, grant with conditions or deny a variances application as presented and shall clearly

state the findings upon which this decision is based. Board of Zoning Appeals shall base its decision only upon the decision standards in this chapter. In this decision the Board of Zoning Appeals may waive or modify dimensional regulations of zoning code or impose more strict regulations, and in the additional conditions, guarantees and safeguards and deems necessary to satisfy the purposes of the zoning code.

0:14:35.3 Michael Schnipper: So it's another way of saying the same thing, it is within your power to attach conditions to variances. And then this follows up on in that same chapter 1139, that it is our job as staff to not issue any permits that would not comply with the orders of the Board of Zoning Appeals. And our focus in following up on enforcement and requiring that this would not be allowed to continue without a remedy, here's the final sentence here. Any action that exceeds a granted variance shall constitute a violation of the zoning code. So, I wanna point out that this is not an appeal of the staff decision, because there was a willingness to submit the letter asking for clarification, and so since that is there, that is what you have in front of you tonight is to discuss that wording. Just for a little bit more history, I wanted to show you the renderings that were submitted, so this is not actual photographs, but this is what was submitted at the time. The July 2020 review, and you can see that's what was built with the exception of the bar and the door. Those are alterations that were determined to be within the scope, except for the door, the bar was determined to be within the scope of the setback variance.

0:16:09.5 Sam Perry: Floor plans that were submitted, you can see it's clear that there was no door shown, no bar shown and this is the lower level, so that's not the door at question. Same thing here, street view from Poplar Street, you can see there's no opening shown. This is just the structure of the deck itself, and then the current condition photos which you've seen already, those are in the original part of my presentation. And then the floor plans, these are actually in your packet, they're also part of the building permit that is still on hold pending the outcome of this review. And you can see here the door that's shown which is being requested. So, these are the plans that the building official and the fire chief and zoning administrator would review as part of the normal administrative process, but because of the condition, it was not allowed to proceed. The building official could go ahead and render an approval for just their element, and so could the fire chief but the zoning administrator would not be able to, so therefore, the permit could not be issued for that door to allow to continue to exist.

0:17:25.3 Sam Perry: An elevation drawings, you can see that clearly here, from the doorway. And I'm not gonna go into, I'll back up to the wording of the condition. I'll just touch on the reasoning, which there is a letter in the packet about the use of the door, it was the owner's determination that it would be helpful for staff to move through the door for accessing the upper level without using the exterior stairs, but they would be using the interior stairs to access the Skydeck. And that concludes my presentation. Happy to answer any questions you might have and again Mr. Bob Riggs is here as well.

0:18:12.0 Michael Schnipper: Thank you sir, well done we appreciate your thoroughness. Is there any question from the board? Mr. Ames?

0:18:13.5 Roger Ames: Yes, on the drawings, the show of the new door, did the original application have that door there, or was it like? 'Cause we have the new ones, we don't have the old ones.

0:18:29.0 Sam Perry: I'm sorry. Yes, that is correct. There was not a door shown on the original application either in the building permit or in front of this board.

0:18:42.2 Roger Ames: Thank you.

0:18:42.8 Michael Schnipper: Chris?

0:18:43.2 Chris Allison: You said this went through review with the fire marshal, was there any mention that the door was required?

0:18:54.4 Sam Perry: No.

0:18:55.4 Michael Schnipper: I got a couple of questions, you mentioned emails between you and Mr. Weisman, do you happen to know when those emails started that were relative to this door, approximately?

0:19:10.2 Sam Perry: They were all between our discovery of it and this meeting.

0:19:14.7 Michael Schnipper: And as I remember your discovery was October 14th last year, is that right?

0:19:19.8 Sam Perry: It was August 14th.

0:19:20.9 Michael Schnipper: Okay, thank you. There was a mention in the packet from our building administrator about a \$500 OBC fine. Just to clarify to the board, what does OBC stand for?

0:19:36.6 Sam Perry: Ohio Building Code.

0:19:38.7 Michael Schnipper: Okay. And our local chief building official was authorized to enforce that code?

0:19:44.4 Sam Perry: Correct.

0:19:44.9 Michael Schnipper: Okay. Let's see here, to the best of your knowledge, we've got a potential fine from OBC violation, is there a stipulation in the Oxford Code for a fine for violation of the zoning?

0:20:04.7 Sam Perry: Yes, there is.

0:20:06.5 Michael Schnipper: Do you happen to know anything about that? Could you explain it to us just a little bit?

0:20:10.5 Sam Perry: There's a general fine for 1129 violation of the zoning code on administration for not obtaining permits and it's a class D \$500 as well. There is also a minor misdemeanor penalty, which is a criminal violation. So the city would not be able to use both of those, but could choose which one to remedy the situation if it came to that.

0:20:37.8 Michael Schnipper: Okay. The \$500 fine you mentioned, is that a one time?

0:20:42.8 Sam Perry: It is. And then if it's resolved, then there would not be additional fines. If it's not resolved, then it would double.

0:20:51.0 Michael Schnipper: Okay. I'm interested in the delay between October last year and March of this year, relative to the door. It was very quickly discovered that a door had been put in within 72 hours of the final inspection which I saw in the package, do you have any explanation why there was a five month delay in going from October to March? Was this just communication back and forth and the delay because of that?

0:21:21.8 Sam Perry: Yes.

0:21:23.5 Michael Schnipper: Okay.

0:21:25.5 Sam Perry: There was a lot of communication but there was a significant unwillingness to actually come back to this board for a review. And so I think our desire was to not use enforcement mechanisms and it's typically our approach. So we extended as much patience as we could and this was our last effort, this meeting, and then we would be moving to administrative enforcement.

0:21:56.2 Michael Schnipper: You said unwillingness, are you saying unwillingness on the part of the city staff or on part of the owner?

0:22:02.6 Sam Perry: On the part of the owner.

0:22:04.1 Michael Schnipper: Thank you. You don't want to add anything else?

0:22:07.9 Chris Allison: That was a good point.

0:22:10.8 Michael Schnipper: Thank you sir. Mr. Riggs, are you gonna present for Mr. Weisman?

0:22:16.5 Bob Riggs: Yes, Sir.

0:22:17.0 Michael Schnipper: Would you step to the podium please? State your name and title for the record.

0:22:21.8 Bob Riggs: Bob Riggs, Preconstruction Manager at Conger Construction Group.

0:22:25.5 Michael Schnipper: Can you raise your right hand for me? Do you swear to tell the truth, the whole truth and nothing but the truth and that is before this court?

0:22:32.4 Bob Riggs: Yes, I do.

0:22:33.2 Michael Schnipper: Please proceed.

0:22:35.4 Bob Riggs: Okay. So, as I said, my name is Bob Riggs, we were hired by Mr. Weisman as a design build contractor for this project about a year before we actually started construction. So

going through the process, we understood going through HAPC, also understood going through BZA, would be the process to get this project built and get it built correctly. And there was no understanding from the owner or from us that there would be any way to circumvent that we'd wanna go through the correct process. So we filed for the HAPC, we filed for BZA, we went through both of those processes. And then the two conditions that are on the screen about the handrail and also the means of egress where conditions are; BZA set aside to be able to build this structure.

0:23:26.2 Bob Riggs: So in that... In those two pieces, we agreed to that and built the project based on those two conditions, the rail is 4 foot, 8 inches tall. It sits on top of two steel beams to create toe kicks. The means of egress was also built with no means of egress as part of the project. We finished the construction of the project the first week of August, allowed the owner to go ahead and get the bar set up, get the bar built and start opening the project in mid... I think it was August 4th, mid-August. During that process, Mark came to us and asked if we could put a staff access door on the one side of the construction that you saw in the picture. Once you realize that with the bar up on top, on the second floor, to be able to access that and bring product to and from that bar, to bring glassware or other items to and from that bar, it made it a lot easier to come up through that staff door into the second floor, instead of going down the exterior two stairs, going through the patio, coming in from the outside into the building. So we did the door for him with the methodology that it's not a means of egress door as the stipulation states.

0:24:40.2 Bob Riggs: A means of egress door would be that the door has panic hardware on the inside, it has an exit sign on the inside that alerts people to go to that door deck, exit the building. This door's not built with any of those characteristics. It's built with a locked handle on the inside and the outside, no sign that it's an exit door and a sign on both sides of the door that says, "This is a staff access door only. For employees only." So that being the case, it was our... Under our assumption and the owners that did not fall under the means of egress stipulation, where the BZA was requesting that there would not be people running out that door and to have access out that door onto the Skydeck to use those two exterior stairs and get out of the building. The door is locked 99% of the time and only used when staff need to come in and out of the building to refresh in the bar area on the upper level, or take trash back into the building to take it... To get rid of it. So, and that being the case then when it was notified to us that the door was having to go back through this process, the delay from that time until four or five months later, was the owner and us going back and forth requesting that this be administrative process, because we didn't feel that this was...

0:26:00.6 Bob Riggs: That it felt under the number two requirement, that it was a means of egress. Because there's nothing about this door that require... That... If you look at OBC under means of egress, means of egress stipulates all those items I said before, and we didn't meet any of those requirements. So we were trying to get this as an administrative issue, we didn't think it needed to go back to the BZA. And then, it kept going on and on, and we decided, okay, we'll come back, state the case, show that why it's there, give the reasons for it, why it was done as part of a separate permit process, and not done as part of the project. It was never intended to be part of the project. It was never even thought of to be part of the project. Then I said... After we finished, the realization came into play that, there needed to be access in and out from that upstairs area, to help with the access of the bar that was being... That was allowed on the second floor. And that's where we went ahead and installed the door with a lock on both sides.

0:26:54.1 Bob Riggs: And it's staffed from the exterior, each side that's in operation. So with that,

we feel as an ownership group and a design co-entity, that we have it straight from the variance approval, and we'll like the approval to keep the door there as a staff access door, in the manner that it's used today as not a means of egress, but just access in and out for employees to service the upper area of the Skydeck. That's all.

0:27:26.0 Michael Schnipper: Thank you, sir. Any questions for Mr. Riggs?

0:27:29.5 Roger Ames: Yes.

0:27:29.9 Michael Schnipper: Please go ahead, Roger.

0:27:31.7 Roger Ames: Were there no staff going up and down the outside steps when you originally approached the board for the Board to appeal?

0:27:39.7 Bob Riggs: When we first approached the... For the appeal, there was not a bar upstairs in the design.

0:27:43.3 Roger Ames: Was there staff going up and down the stairs was my question.

0:27:48.9 Bob Riggs: There were staff. There were security staff going up and down the stairs. Yes.

0:27:53.0 Roger Ames: And serving staff?

0:27:54.3 Speaker 4: No serving staff. No. Everything was served from the inside of the building.

0:28:00.2 Roger Ames: But there was staff?

0:28:01.1 Bob Riggs: There was security going up and down the building, but not serving staff.

0:28:04.0 Roger Ames: Thank you.

0:28:05.1 Bob Riggs: Correct.

0:28:05.4 Michael Schnipper: You have anything? Earlier in the presentation, you made a comment about going through the process and knowing what the process was. I'd like to know why you didn't attempt that same process to get this door. You waited six months practically from the time you opened to the time that you sent a letter to the city asking to come back to this board. You had an opportunity, in my opinion that you could have complied with a known procedure. You'd complied with it before. Why did you choose not to comply?

0:28:40.6 Bob Riggs: Well, in our terms, we were attempting to do that process by submitting a new permit application for the door. We submitted a new application to get a building permit for the use of the door by how we considered the door being used, and submitted that application to Building and Zoning, to get the permit for the door after it was installed. And then, that's when we were realized, and it was brought to our attention that, from an administrative standpoint, that was pushing it under this condition number two, which called it out as an egress door, which we never intended it to be, it was never meant to be, and it was never planned to be an egress door. So that's

why there was a delay in from the very beginning to get to this point. We attempted to go through the process of getting it permitted as it was meant to be, and then as that permit was returned back to us stating this needs to go back to the BZA, that's when we started the conversation of getting it done administratively and then if it didn't get done administratively, come back to the BZA board.

0:29:40.5 Chris Allison: So you built the door without a permit, and then went after the permit after the door was built?

0:29:46.0 Bob Riggs: We built the door in the construction of the project, realized from Building and Zoning that the door based on that had to be permitted, then we filed the permit for it.

0:29:58.9 Chris Allison: Yes. So I read number two, I don't see any sign of an egress door in that requirement as seen in action of egressing the building.

0:30:04.3 Bob Riggs: Correct. And if you look out...

0:30:13.5 Chris Allison: Those aren't the same thing.

0:30:14.8 Bob Riggs: Right.

0:30:15.1 Chris Allison: I mean, for a door, it's specifically moving between the inside and the outside, it's something totally different.

0:30:22.8 Bob Riggs: Correct. And if I can add and say that, in the building code, if you look up egress, egress is leaving the building through that opening. You're not leaving the building from that opening. You're passing from one side to the other, for a specific purpose. You're not exiting the building to leave the property.

0:30:49.0 Michael Schnipper: Roger, do you have anything?

0:30:49.3 Roger Ames: In the reviewing the minutes of the original meeting and watching the tape a couple of different times, I specifically asked Mr. Weisman about the egress door, a door being there, egress door, he stated, using his words from the notes and from the video, that at that... He had at one time thought about it, but looked at it from the fact that, there was only going to be two stairs. Then when he wrote the letter to the board and to the staff, fourth paragraph, just initiated a curious request. And then later, in the same paragraph, so he made an odd request... We didn't make any request at all, maybe termination that there was a condition to be put on it. Maybe that condition still stands.

0:31:36.1 Bob Riggs: In what regard?

0:31:39.5 Roger Ames: A door is a door. If that door wasn't up there, you wouldn't have your variance right now. It would've gone down 3 to 2 codes but its not.

0:31:49.7 Bob Riggs: In what regard do you see that that door being an egress door?

0:31:52.1 Roger Ames: It's a door, people go in and out of it. That's egress.

0:31:57.3 Bob Riggs: But its... People are not...

0:31:58.8 Roger Ames: It's a door, people move in and out of it. That's egress.

0:32:00.3 Bob Riggs: People are not moving in and out of it, 'cause it's a locked... Because it's a locked door. It's not egressable... Egress-able.

0:32:02.2 Roger Ames: Are the staff walking in and out of it?

0:32:06.4 Bob Riggs: Staff will, yes.

0:32:08.6 Roger Ames: That's people.

0:32:09.1 Bob Riggs: But the general public, no...

0:32:09.6 Roger Ames: It's an egressable door.

0:32:10.4 Bob Riggs: And that's what OBC said.

0:32:12.4 Roger Ames: In my humble opinion.

0:32:12.8 Bob Riggs: Okay.

0:32:15.6 Michael Schnipper: Chris... Excuse me... Excuse me, do you have anything else?

0:32:22.8 Chris Allison: No.

0:32:22.9 Michael Schnipper: You made a comment about the Ohio Building Code and that this does not fall under their terminology of egress. That was... That section and the actual verbiage of that was not in Mr. Weisman's letter. Can you give us an explanation of what OBC means in terms of egress?

0:32:39.8 Bob Riggs: A means of egress is a way that identifies a pathway for patrons in the building to exit the building in an emergency. So if there's an emergency in the building and people need to exit that building, there's a pathway defined by exit signs and there's a door or means of egress out, that people can go through, even if the door were to be locked, there's a panic bar, some mechanism on inside to get out of the building, if there's a fire, if there's a tragedy of some kind, some kind of emergency that will get you out of that building safely. This door has none of those items, there's no sign to tell you that's it's an exit door, there's no panic bar to tell you that you can open the door at any time. It's not lit to show you that there's a door there, which is another requirement of OBC, so none of those requirements are part of this door. It is strictly a door to be able to get staff back and forth in a manner to be able to access the bar area in both the second floor and the Skydeck.

0:33:45.1 Michael Schnipper: Let me read you something to see if you agree with it. This is from OBC, chapter two, section 202, which is definitions. Under means of egress, a continuous and unobstructive half vertical and horizontal egress travels from any occupied portion of the building or structure to a public way. Do you agree with that?

0:34:09.9 Bob Riggs: Yes.

0:34:12.0 Michael Schnipper: It says it consists of three aspects, exit access, that portion of a means of egress that leads from any occupied portion of a building or structure to an exit. Would you agree with that?

0:34:27.5 Bob Riggs: I agree with what you're saying, but I don't agree that this is an exit.

0:34:30.0 Michael Schnipper: This doesn't say anything about panic bars, it doesn't stipulate who's using the door.

0:34:35.5 Bob Riggs: I understand, but it does say exit. An exit is a totally different type of...

0:34:39.2 Michael Schnipper: It is a door.

0:34:42.5 Bob Riggs: Not in that term of it being an exit, it is not stated as an exit and it never was meant to be stated as an exit.

0:34:50.0 Michael Schnipper: Okay, let's say that we got a tragedy and people are trying to get out of there. And, do you think it's unreasonable that people would mistake that locked door for a means of exiting the building?

0:35:06.6 Bob Riggs: No, if you're going down the stairs there's no light on the door to show you that it's a door.

0:35:12.6 Michael Schnipper: And in an emergency situation, is it reasonable to think they're gonna try and get out any door?

0:35:18.2 Bob Riggs: In an emergency situation, the owner would open that door to allow to the out because that's what you would do in a safety... In an emergency situation.

0:35:24.7 Michael Schnipper: Is that action permitted by fire code to the best of your knowledge?

0:35:29.0 Bob Riggs: I don't know to my knowledge.

0:35:30.1 Michael Schnipper: Okay. When was this door purchased? Approximately.

0:35:39.4 Bob Riggs: Second week of August.

0:35:41.2 Michael Schnipper: So just before the final building inspection?

0:35:44.1 Bob Riggs: It would have... Purchased... We finished the first week of August and then it would've been the second week of August as the bar was being installed when the owner was doing the... Their final FFNE portion of the project.

0:35:55.4 Michael Schnipper: Okay. Give me a moment to review my notes, please.

0:36:05.7 Roger Ames: I'll ask a question.

0:36:06.7 Michael Schnipper: Go ahead, Roger.

0:36:07.7 Roger Ames: When the bar was installed was the owner aware that the variance for the building did not allow a door right there?

0:36:15.9 Bob Riggs: An egress door, yes.

0:36:25.9 Chris Allison: I go back to point out, this does not say egress door and the discussion at the meeting clearly was not looking for a fire exit, he was gonna use a little space. And the fact that the Skydeck was an extension of the outside piece, not an extension of the service within the building, and clearly you're sticking to egress door opening, egress door was not what our discussion was about. Not what we... What the variance condition on it...

0:37:00.0 Bob Riggs: And I think there might have been...

0:37:00.7 Chris Allison: It's just misleading.

0:37:02.3 Bob Riggs: I don't think it's misleading, I think there might have been some misunderstanding that the variance for the patio on the first floor... There are two, three, four direct access doors from the interior of the building to the existing patio.

0:37:18.0 Chris Allison: Right. And what we were doing was saying that's the service that's being provided, not another service from the same floor.

0:37:29.6 Bob Riggs: Well it was taking that egress from that terminology.

0:37:33.7 Chris Allison: I understand how you interpreted it, but that was not our intent.

0:37:38.9 Bob Riggs: Okay, that was the intent of what the owner took from that condition.

0:37:44.1 Michael Schnipper: Do you have anything else?

0:37:48.5 Chris Allison: No.

0:37:50.4 Michael Schnipper: Nothing? Thank you, sir.

0:37:54.0 Bob Riggs: You're welcome.

0:37:56.4 Michael Schnipper: Alright, since Mr. Weisman is not here, there's nobody else here to testify for the applicant, would we like to move out of adjudication back into our regular session?

0:38:05.1 Roger Ames: So moved.

0:38:10.1 Chris Allison: Second.

0:38:11.0 Michael Schnipper: Thank you, sir. All in favor say aye.

0:38:12.2 Board Members: Aye.

0:38:14.2 Michael Schnipper: Without opposition, we are back in regular session. Discussion or motions?

0:38:21.8 Chris Allison: Not sure of what I'm seeing.

0:38:30.5 Michael Schnipper: In what is making a motion?

0:38:32.7 Chris Allison: Well... Or in having the discussion.

0:38:35.4 Michael Schnipper: We'll now open discussion between us just as we do in the other cases.

0:38:43.3 Chris Allison: I haven't been convinced that there's a need to change anything which will take number three off the... Off the list.

0:38:51.6 Michael Schnipper: There would be no need to change anything... Are you saying no need to change what we originally stipulated in the variance?

0:38:58.1 Chris Allison: Correct.

0:38:58.6 Michael Schnipper: Thank you.

0:39:02.4 Chris Allison: The door in my mind, the way we intended the word egress to work, what it was supposed to mean, number one is off the table as well in my mind because it is in conflict with what we intended.

0:39:27.0 Roger Ames: Okay, alright. I'm sorry, my direct question to Mr. Weisman during the original meeting was about egress for purposes of how many people are you going to have on that lobby. When there's a door available more people are going to come in and out of it. To me it's still... There is a safety factor there, it's a safety factor now. I don't want to throw it.

0:39:53.9 Michael Schnipper: Well, we can split hairs about who is coming out of the door, whether it's staff or people, but the point is that, at least as I understand, egress means to leave a structure, a building, a venue, something that sort, so whether it's staff or patrons, there are people in the building. That's still people in the building. To my mind without even getting into splitting it into the minutiae, an emergency exit versus a staff door, I still see as a means of egress in that building. And that is not what we intended. Further discussion? I need a motion from one of you.

0:40:40.7 Roger Ames: Like Chris, what's problem of the motion?

0:40:44.7 Michael Schnipper: Yeah, well, maybe we should ask Mr. Conard.

0:40:46.3 Roger Ames: Mr. Conard, what's the proper motion in a case like this, lay the ground for me.

0:40:51.6 Christopher Conard: Let me... I have to parse this out my brain too, okay. I think that, frankly, what I think about your deliberations isn't relevant to the record, they're your deliberations, but obviously that the focus has been on what the definition of the egress is. And I think the record is reflected with everyone, how people view that. So, the question would be, if there's a belief that this door was not intended with the original variance request, then you have to make, I think a motion to make a finding whether it is or it isn't. Then from that decision, you have to determine whether or not number three, whether or not the BZA wants to revise or remove that condition, which could include in theory, that would cause the need to remove the door entirely. So, essentially, we're kind of, as I see it, and I don't know how Mr. Perry, what he was thinking when he drafted this. But again, as I'm interpreting what he wrote there, and I think he's right, that you still have the ability to make a decision on whether or not to allow the door to exist.

0:42:14.1 Michael Schnipper: Okay.

0:42:15.2 Christopher Conard: And I... Sam, I don't know if that was your intent or not.

0:42:20.6 Michael Schnipper: Well, I... I think there's a consensus among board members that the door is not intended as part of the variance. So I think that it's now a situation of how do we make them? You say make a finding to do it properly for the record. Should there be a motion to make a finding or should we just go directly to the motion?

0:42:42.0 Christopher Conrad: I would encourage you in this case to make a... Do a motion and make a specific factual finding on that issue.

0:42:49.7 Michael Schnipper: Okay. And as chair, I cannot make that motion.

0:42:53.9 Roger Ames: I'm gonna make that motion.

0:42:55.7 Michael Schnipper: Alright sir, go ahead Mr. Ames.

0:42:57.6 Roger Ames: I move the BZA 2020-04 in regards to the variance that was allowed to 1143.10(c)(2), it was not the intent of this board to allow a door on the upper floor, changes have been made and planned since we first looked at it, we still do not allow and do not believe the door should be there, on number three, we will not remove the condition from this variance.

0:43:32.8 Michael Schnipper: Thank you sir. Would you agree with that?

0:43:35.7 Chris Allison: I will second.

0:43:36.2 Michael Schnipper: You will second? Thank you. Roll call vote on that and then a motion.

0:43:44.8 Conrad: Well, I'm hearing the two findings, one that that was not... The door was not part of the original request, and then the second part of that, Mr. Ames was that the door would need to be removed based upon the first finding.

0:44:00.8 Roger Ames: Yes.

0:44:00.9 Michael Schnipper: Chris, would do you agree with that?

0:44:01.3 Chris Allison: Yes.

0:44:01.5 Michael Schnipper: I agree with that also. Do we need to have a motion in the roll call vote?

0:44:08.9 Conrad: Yes, but I believe Mr. Allison did second the original motion of Mr. Ames so you can do the roll call now.

0:44:19.0 Michael Schnipper: We'll do a roll call vote, a motion has been made and seconded, a yes vote will affirm Roger's motion and therefore require removal of the door. Would you point clearing stipulations on that removal?

0:44:35.1 Roger Ames: As soon as possible.

0:44:36.6 Michael Schnipper: Forthwith?

0:44:37.3 Roger Ames: Yes.

0:44:37.9 Michael Schnipper: Thank you, sir. Motion... And do you agree with time stipulation?

0:44:42.4 Chris Allison: Second.

0:44:42.6 Michael Schnipper: I agree with it also. Therefore, we have a motion that the door be removed and that our intent there was not an outer door in the second floor at all. And yes that affirms the motion and requires the removal of the door forthwith. Would that work?

0:45:00.2 Christopher Conard: Yes.

0:45:01.4 Michael Schnipper: Thanks, thank you sir. Mr. Perry, roll call vote.

0:45:05.8 Sam Perry: Mr. Allison?

0:45:06.7 Chris Allison: Yes.

0:45:07.0 Sam Perry: Mr. Ames?

0:45:08.2 Roger Ames: Yes.

0:45:08.8 Sam Perry: Mr. Schnipper?

0:45:10.3 Michael Schnipper: Yes. Vote is three for the outer door to be removed forthwith. Okay we've got one other item on the agenda. You said we did not have a case in May?

0:45:27.4 Sam Perry: Correct.

0:45:29.2 Michael Schnipper: Okay. Well, then I think we're done for this evening. I need a

motion to adjourn.

0:45:32.5 Chris Allison: So we move.

0:45:35.5 Roger Ames: I'll second.

0:45:36.8 Michael Schnipper: All in favor say aye.

0:45:38.7 Board Members: Aye.

0:45:39.1 Michael Schnipper: Motion is adjourned. Thanks to all of you.