

Case No:
BZA-2021-04



Meeting Date:
September 28, 2021

STAFF REPORT

Community Development | Board of Zoning Appeals

APPLICATION DETAILS

Applicant	Scott Webb Architect
Location	113 E Collins
Owner	Clawson & Clawson LLC
Action Request	Variance to <i>Section 1149.06(b)(4)</i> for minimum parking setback
Lot Size	3,643 square feet
Lot Width	66 feet on east (parking) side; 55 feet on south side
Current Use	Single-Family Dwelling
Current Zoning	R3MS Single-, Two-, and Three-Family Mile-Square Residential District
Surrounding Land Uses	Single-Family Dwelling directly to west; Two-Family Dwellings to west, north, and northeast; Three-Family Dwelling to northwest; Lodging House to south; Fraternity Houses to east and southeast

BACKGROUND

The owner recently finished construction of a new 3-story single-family dwelling at 113 E Collins Street, which is an alley lot located directly behind 115 E Collins Street. Both dwellings at 113 and 115 are under the same ownership.

Under the Oxford Zoning Code, every new single-family dwelling is required to provide two (2) off-street parking spaces on the property. The applicant fulfilled this requirement by installing a double-stacked concrete driveway capable of accommodating two parked vehicles. The approved plans that went with the prior permit approval called for a 3-foot 2 ¾ inch setback of this new driveway from the northern lot line, in keeping with the Zoning Code's minimum parking setback of 3 feet. During a Final Zoning inspection performed on August 12, it was discovered that concrete parking had been installed across the property boundary, covering both lots at 113 and 115 E Collins; thus, the Final Zoning inspection was failed on this date.

In conversations with the property owner and applicant following the failure of the initial Final Zoning Inspection, Community Development agreed to temporarily pass the Inspection provided an "after-the-fact" Variance application was submitted. The Board of Zoning Appeals has the power to render a decision on whether a post-construction adjustment to the parking setback distance may be granted. If the BZA decides to approve the Variance, no further action by the property owner would be necessary. However, if

the Variance is not granted, the owner would be required to saw cut the concrete to provide a minimum 3-foot setback distance in order for the Final Zoning inspection to be permanently passed.

DESCRIPTION

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

Requirement	Code Section	Standard	Proposal
Minimum Parking Setback	1149.06(b)(4)	3 feet	0 feet (None)
The Zoning Code provides in <i>Section 1149.06(b)(4)</i> that <i>all driveways, including any areas to be utilized as unenclosed parking spaces, shall not be located within 3 feet of any lot line</i> . In order to accommodate a driveway as currently constructed, the setback requirement would essentially have to be eliminated.			

PUBLIC COMMENTS

Notification was mailed to property owners within 200 feet and a sign was placed on the property. No official public comments have been received as of this writing.

DEPARTMENT COMMENTS

Below are comments from City departments:

Department	Respondent	Response
Economic Development	Seth Copenbaker, Assistant to the City Manager	Returned with Comments
<i>The proposed zoning variance for the properties at 113 E. Collins and 115 E. Collins, as related to the joining of parking areas for these properties into a single pavement slab, do not pose any significant benefit nor burden to the economy of the City of Oxford. The Economic Development staff do not have any concerns regarding this project.</i>		
Engineering	Scott Otto, City Engineer	Returned without Comments
Fire	John Detherage, Fire Chief	Returned without Comments
Police	John Jones, Police Chief	Returned with Comments
<i>Forcing the owner to change this paved strip back to grass would seem unnecessary. College students behavior is to often drive over the grass strip anyway. Keeping it paved would be better for the property at this point.</i>		

BZA SITE HISTORY

Given that the 113 E Collins address is relatively new, there is no prior BZA case history available in the City records specifically attached to this property. However, there are two BZA cases pertaining to the 115 E Collins property (which, by extension, also involved land now addressed as 113 E Collins) available in City records as outlined below:

Case No.	Request(s)
BZA-2014-04	Variance to Principal Entrance Provision
The applicant, Scott Webb Architect, had applied on May 19, 2014 for a Variance to Section 1141.03(b) in order to waive the principal entrance requirement. The Code at the time required all new principal entrances to be upon a street. The applicant proposed to construct a single-family dwelling on the location now addressed as 113 E Collins. The location only had alley frontage, thus a Variance was necessary in order to build. Staff at the time referenced a 1999 Housing Agreement stipulating development on the 113/115 E Collins properties was to be limited to one two-family dwelling which already existed at the time on the 115 portion. Staff concluded the application could not be heard as it would first take a legislative amendment to the Housing Agreement, something the BZA did not have the authority to decide. A letter dated June 23, 2014 was sent to the applicant explaining the reasoning for a denial of consideration by the BZA. The case first arrived at a BZA meeting on August 20, 2014, in conjunction with an appeal request (BZA-2014-08) and was tabled to September 17. At the September meeting, following a decision on BZA-2014-08 to uphold the staff determination that the BZA had no authority to make a decision on the Variance, BZA-2014-04 was removed from the agenda.	
BZA-2014-08	Appeal of Administrator's Decision to Deny Bringing Application to BZA
On July 25, 2014, attorney Jay Bennett submitted an appeal of staff's determination that had been outlined in the June 23, 2014 letter. The appeal request was tabled by the BZA at its meeting on August 20, 2014 in response to a mutual agreement between the City and Petitioner to do so. The appeal case was then heard at the next BZA meeting on September 17, 2014. The BZA voted 3-1-0 to uphold staff's decision to deny a hearing for BZA-2014-04.	
Note: The Oxford Zoning Code was later amended on September 19, 2017 (by Ord. No. 3430) to allow for alley lot development. The principal entrance provision in Section 1141.03(b) was amended to provide an exemption for lots which only have frontage on alleys, thus allowing a new principal entrance to face either alley. During review of the Building Permit in 2020 for the subject dwelling unit at 113 E Collins, staff suggested (but did not require as a condition of Zoning approval) the previous 1999 Housing Agreement be amended to reflect the new makeup of dwelling units on the two properties referenced.	

DECISION CRITERIA

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

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

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

Criterion A	Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance
Does not support granting the Variance	The property is currently developed as a single-family dwelling and has temporarily received approval of its Final Zoning inspection. There are no other Zoning-related issues that would prevent the passage of the Final Zoning inspection at this time. Once the property passes all of its final inspections, it will be able to yield a return and be put to beneficial use. There is a clear path for the applicant to reap benefit from the property without the Variance, by saw-cutting pavement to comply with the Code's setback requirement thus allowing staff to pass the Final Zoning inspection.
Criterion B	Whether the variance is substantial
Does not support granting the Variance	The applicant is asking for a 100% reduction (elimination) of the Code standard, which on its face would normally be considered substantial. However, staff believes some Zoning standards can carry greater weight/importance than others, especially given the context of the situation, so to this regard the Board may choose to view the 3-foot setback as substantially less important in certain situations than in others. In this case, both properties involved (113 E Collins and 115 E Collins) are under the same ownership and parking spaces are directly accessed from an alley, so a parking setback matters less than it would if two different owners were involved and parking was accessed from the street. Specific <i>only to this criterion</i> , however, staff believes it should be rated as not supporting the Variance given the complete elimination of the standard.
Criterion C	Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance
✓ Supports granting the variance	As can be seen by visiting the site, the essential character of the neighborhood is not substantially altered or negatively impacted by having concrete pavement stretching across a property line. If anything, by removing the concrete to comply with the Code, it may actually open up the property to a more unpleasing aesthetic for the neighborhood as residents parking in the area may drive over any installed landscaped or mulched areas within the setback, leaving tire tracks and/or earthen debris behind.
Criterion D	Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage)
✓ Supports granting the variance	Staff does not believe government services will be adversely impacted. Engineering and Fire Departments all returned the application without comments. The Police Department returned comments stating they are actually more favorable to the applicant's proposal as opposed to sticking to the normal Code provision that would require putting in a grass strip.

Criterion E	Whether the property owner purchased the property with knowledge of the zoning restriction
Does not support granting the variance	The property owner was made aware of the parking setback provision given what was depicted on the site plan that went with the approved Building Permit. The decision to extend concrete across the property line was made in the field without attention to the resulting deviation from the approved site plan.
Criterion F	Whether the property owners' predicament feasibly can be obviated through some method other than a variance
Does not support granting the variance	The owner could engage in additional work to bring the site up to compliance with the Code. As the applicant suggests, the owner could install new landscaping or rocks, or plant grass.
Criterion G	Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance
✓ Supports granting the variance	Staff agrees with the applicant's interpretation of the general spirit of the setback provision. In staff's view, the parking/driveway setback standard is written primarily to allow breathing room between predominately single-family properties so that cars are not parked directly next to adjoining neighbors, helping to avoid issues of encroachment and allowing for a courtesy distance where uncovered/green yard areas help to buffer properties from one another.
Criterion H	Any other relevant factor
✓ Supports granting the variance	It is also the position of staff that the parking setback provision could be better revised via a future Zoning Code text amendment for situations involving parking spaces accessed directly from an alley. The way the Zoning Code is currently structured, design-related provisions for parking are arranged into only two categories: residential and non-residential. The residential category applies the same way to all residential properties, no matter the location in town or the specific zoning district. Mile Square properties probably deserve different treatment than properties located in more suburban-oriented neighborhoods (R-1A, R-1B, etc.) which lack alleys. Staff believes the Variance process is the best for process for now to achieve Code compliance while keeping the existing on-site condition, which is preferable, in-tact.

SUBMITTED BY:



Zachary Moore, AICP
Planner

DATE: September 13, 2021

BZA MOTION FOR VARIANCES

With regard to the Request for Variance # **BZA 2021-04**, being a Variance to Section 1149.06(b)(4) for a minimum parking setback:

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-2021-04

Surrounding Property Owners Notifications Map

Legend

- Subject Area
- 200 Ft. Buffer
- Oxford Corp. Limit
- Address Point
- Parcel
- 16.5' Vacated ROW
- Building Footprint



1 inch = 100 feet

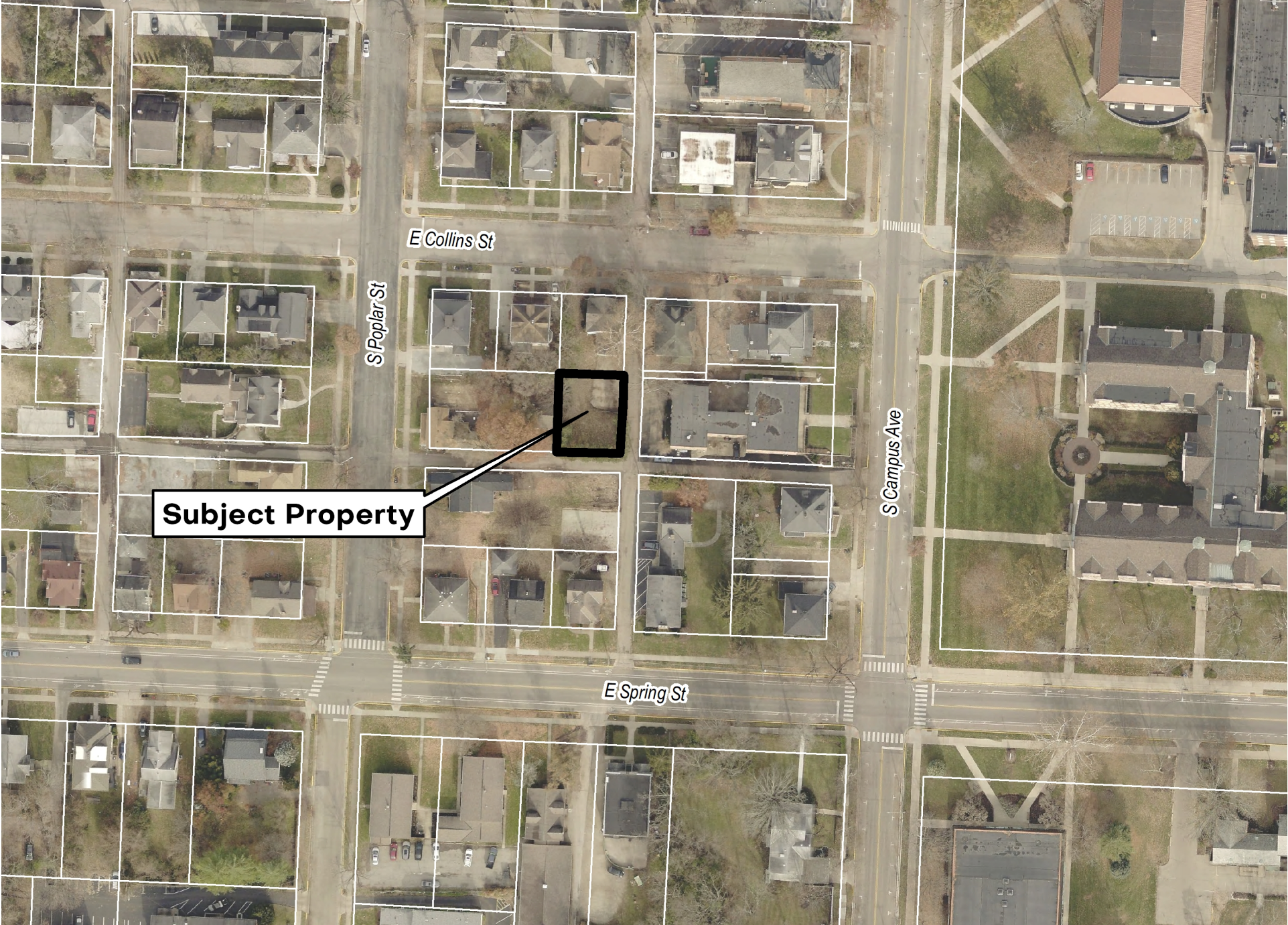
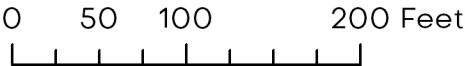
Prepared on Friday, August 20, 2021

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



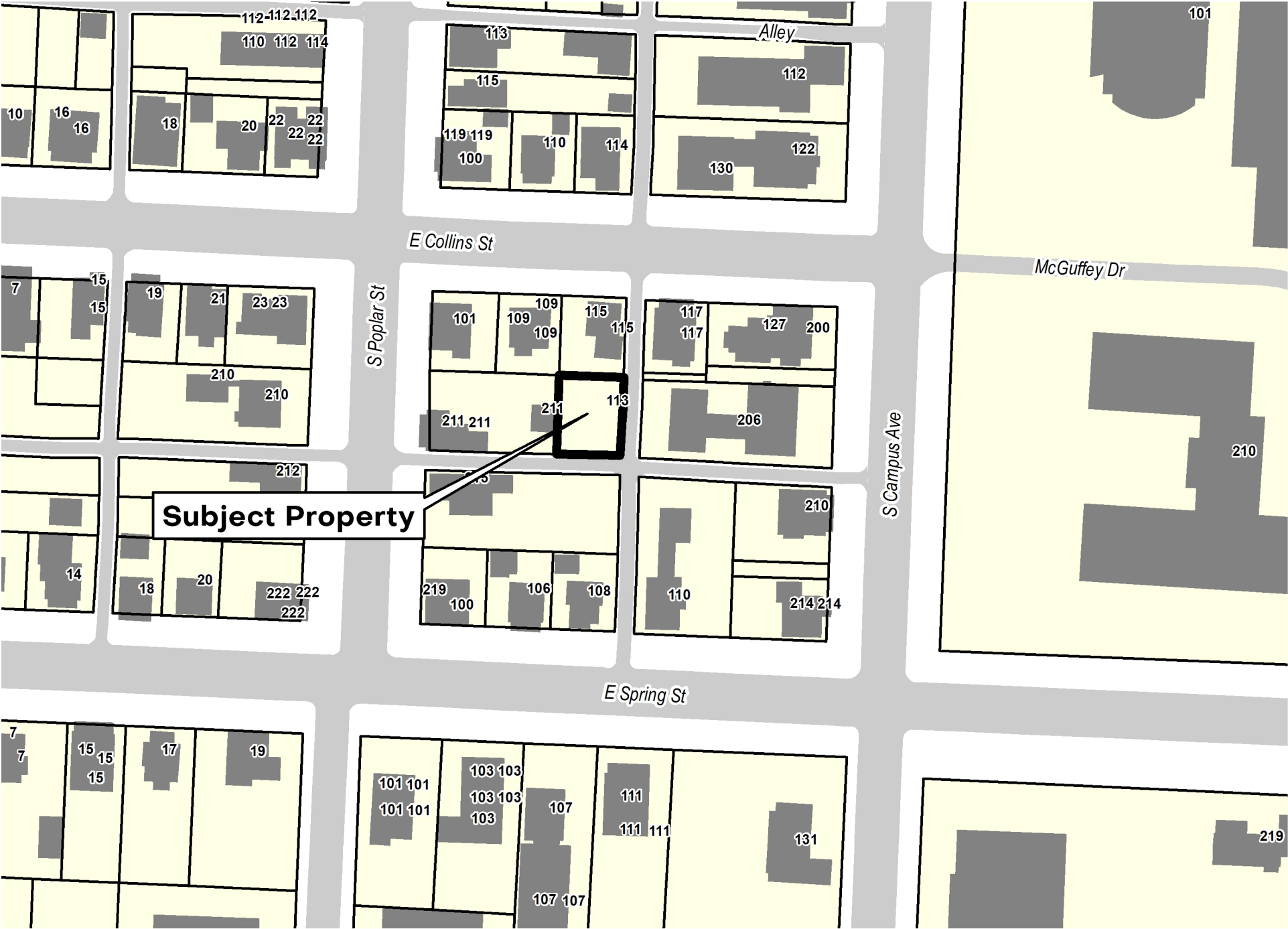
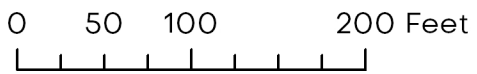
Location Map

 Site Parcel(s)



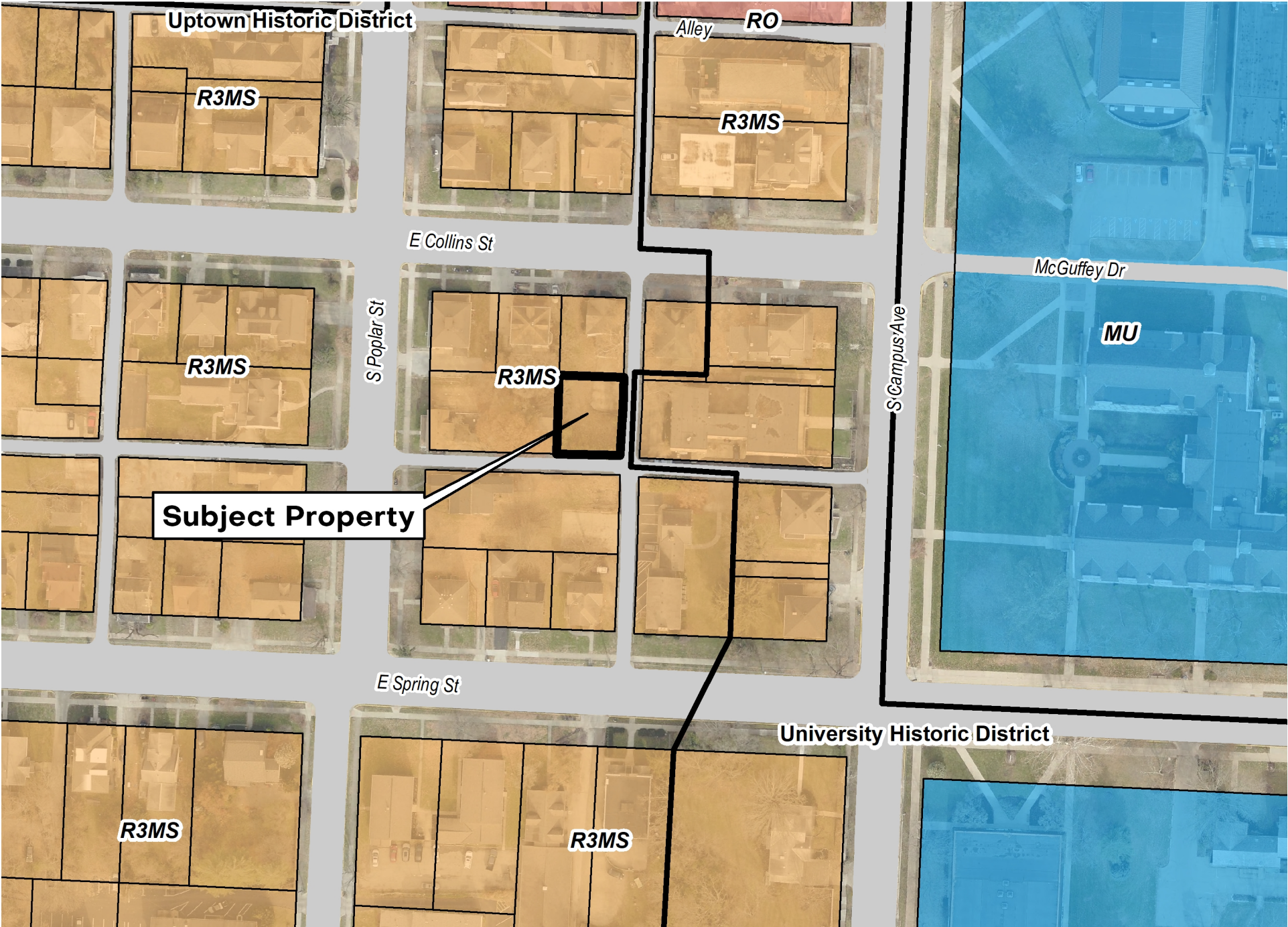
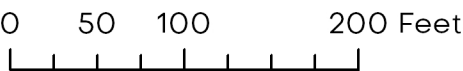
Location Map

 Site Parcel(s)



Location Map

 Site Parcel(s)



**Internal Use Only:**

Case No.

BZA-2021-04

Date Filed

8/16/2021

Petition for Zoning Variance

Petitioner Information

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

Name * Scott Webb, Architect

Mailing Address * 103 West Walnut Street

City, State & Zip Code * Oxford, Ohio 45056

Telephone Number(s) * (513) 523-3838

Email Address scott@scottwebbarchitect.com

Owner Information

Name * Clawson & Clawson LLC

Mailing Address * 125 W Spring Street

City, State & Zip Code * Oxford, Ohio 45056

Telephone Number(s) * (513) 524-9500

Email Address jim@hoteldevelopment.net

Variance and Lot Information

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

1149.06(b)(4) Parking area setback from Property Line

Location of Requested Variance * 113 East Collins

Name of Building

Legal Description * Parcel #H4000003000200

Zoning District * R-3MS Total Acreage * .083

Existing Use of Site * single family residence

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.

No change in occupancy. Parking area variance only

Required Plans and Documentation

From Section 1139.02(a)².

- (1) **Contents of application for variance.** Eight complete sets of all information shall be submitted with an application. The Zoning Administrator may modify this requirement based upon the type of materials included. **The applicant is encouraged to contact the Zoning Administrator prior to submitting an application to discuss the submission requirement.** If any information is submitted in color or on non-standard paper, more copies may be required.
 - A. Application Fee.
 - B. Description of Use and Site.
 - C. The name, mailing address, and telephone number of the applicant and the property owner.
 - D. If the applicant is not the owner, a statement from the owner that the applicant is entitled to apply on his or her behalf (Letter of Agency).
 - E. A legal description of the site, including all separate lots.
 - F. A description of the existing uses of the site.
 - G. The zoning district in which the site is located.
 - H. A description of the existing and proposed use.
 1. A description of operations, including type of goods sold, services performed, and expected number of customers, clientele, delivery, and service vehicles.
 2. The hours of operation.
 - I. The nature and magnitude of the requested variance.
 - J. The Code section from which the variance is requested.
 - K. A separate narrative statement that explains how the proposed variance satisfies **each** of the Decision Standards required to grant a variance ([see Decision Standards section](#)).
 - L. A list of the names and mailing addresses of all landowners within 200 feet of the perimeter of the site ([see Surrounding Property Owners section](#)).
- (2) **Site Plan.** A scaled site plan shall include the following information in detail. The required information may be submitted on multiple site plans if inclusion of all information on a single plan makes it illegible or difficult to understand.
 - A. North arrow.
 - B. Scale.
 - C. Vicinity map.
 - D. All existing and proposed lot lines within the site.
 - E. Dimensions of all lots and of the entire site and any adjacent rights-of-way.
 - F. Location, height, and use of all proposed and existing structures.
 - G. Location and design of all proposed vehicle management areas.
 - H. Location, size, and type of all proposed signs.
 - I. Location, height, and type of all proposed screening and landscaping.
 - J. Distances to residential zoning districts if within 1,000 feet.
 - K. The use of land and location of structures on adjacent property and across adjacent rights-of-way.
 - L. An indication of the regulation from which the variance is requested.
 - M. Other information as required by the Board of Zoning Appeals.
- (3) **Elevations.** Elevations of proposed structures, or typical elevations if structures are not yet designed, may be required by the Zoning Administrator if the proposed location, height, or bulk of the structure is such that it may negatively affect an adjacent use.
- (4) **Other.** Photographs of the existing use and its surroundings and other information regarding the proposed use, site, or surrounding area as may be pertinent to the application or required by the Board of Zoning Appeals.

Surrounding Property Owners

On a separate sheet, provide the parcel numbers, names, and mailing addresses of all property owners within 200 feet of all boundaries of the property in question. The [Butler County Auditor Real Estate Search](#)¹ is helpful when searching for the mailing address of adjoining property owners. It allows you to search by owner, address, or parcel number.

Decision Standards

From Section 1139.02(c)(2). *See Chapter 1139 Variances*² for the full text.

- A. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;
- B. Whether the variance is substantial;
- C. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

- J. 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 \$300.00, plus \$100.00 for each additional variance request up to a maximum of \$1,000.00, plus \$10.00 postage charge. **Fees may increase if staff determines that you need more variances.**

Sign and Date

Petitioner Signature *

Date *

Submit Application, Plans and Documentation, and Fees

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

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

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

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

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

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

Clawson & Clawson Rentals, LLC
125 West Spring Street
Oxford, Ohio 45056
513-523-7263

LETTER OF AGENCY

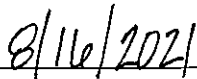
City of Oxford
101 East High Street
Oxford, OH 45056

To Whom It May Concern:

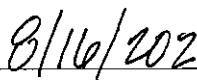
Please be advised that Scott Webb, Architect has permission to represent our interest with the City of Oxford's Board of Zoning Appeals regarding a single family residence at 113 East Collins Street, owned by Clawson and Clawson Rentals, LLC, as well as the neighboring property 115 East Collins Street, owned by CKC Rentals, LLC.

Thank you,

Signed: 
James Clawson, Managing Member
Clawson & Clawson Rentals, LLC


Date:

Signed: 
James Clawson, Managing Member
CKC Rentals, LLC


Date:

CKC Rentals, LLC
125 West Spring Street
Oxford, Ohio 45056
513-523-7263

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



SCOTT
WEBB

ARCHITECT

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

www.scottwebbarchitect.com

Re: Variance to Parking Setback from Property Line
New Single-family Dwelling
113 East Collins.

August 16, 2021

Board Members

Please accept this letter as a formal petition for a Board of Zoning Appeals review hearing for a variance to the minimum setback requirement for parking areas.

The existing parking area for 115 East Collins was disturbed by the construction of the new single family residence on the 113 East Collins Alley Lot behind it. With contractors on the site, the owner of the abutting properties decided to pave and connect the two adjacent parking areas, rather than leave an island between them. This was discovered during the City's final Zoning Inspection and brought to the owner's attention Aug. 12, 2021. The owners were given the opportunity to remove the offending paving or apply for a variance as follows:

1149.06(b)(4) Driveways, including any areas to be utilized as unenclosed parking shall not be located within 3 feet of any lot line.

The existing parking areas for 115 East Collins and 113 East Collins (behind it) are connected and do not provide the 3'-0" min. offset at the property line.

The parking as installed is simply better, benefiting each property by providing additional room for maneuvering that is easier to maintain, and improves control of the stormwater runoff.

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

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

The approved Site Plan shows required parking for 113 provided without the need for a variance. The encroachment of the existing parking for 115 East Collins was removed and its parking lot improved.

- b) *Whether the variance is substantial;*

The variance is not substantial nor is the standard valuable in this instance. Provisions for parking offsets allow room for hedges and fences and provide a courtesy distance valuable in Side yards, but do not serve such a purpose where parking areas could adjoin.

- 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 has been improved, regrading & paving adjacent parking lots, similar to those provided throughout the alley.

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

No change in the delivery of utilities & government services is necessitated by this application.

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

The approved Site Plan showed the required offset for the new parking area. The owner decided in the field to improve the parking of each of his properties.

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

The owner could cut and remove a section of the new concrete and replace it with grass, or landscape rocks.

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

The spirit of the Zoning Code is to protect and benefit adjacent property owners, and not to create inflexible rules that benefit neither.

- h) *Any other relevant factor;*

This redevelopment project aligns with the goals of the Comprehensive Plan, encouraging infill and redevelopment within the City.

Further, it is within the area Planning Commission & City Council targeted for redevelopment and greater density based on its adjacency to the university.

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

Respectfully,

A handwritten signature in dark ink, appearing to read 'Scott Webb', is written over a light blue rectangular background.

Scott Webb, Architect

Project Photos



Joined parking areas



PRELIMINARY SITE PLAN

1" = 20'-0"

SITE DEVELOPMENT REGULATIONS (R3MS ZONING DISTRICT)

OVERALL LOT AREA: (6,000 SF MIN. FOR 1-FAMILY) 3,643 SF
 SECTION 1137.05 EXCEPTION: (3,000 SF MIN. FOR 1-FAMILY)
 OVERALL LOT WIDTH: 60' MIN.) 66.24 FEET

BUILDINGS:	120 SF
DRIVEWAY PARKING:	400 SF
SIDEWALKS:	102 SF
TOTAL:	1,222 SF

FRONT YARD LOT COVERAGE

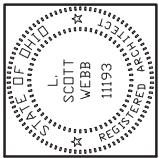
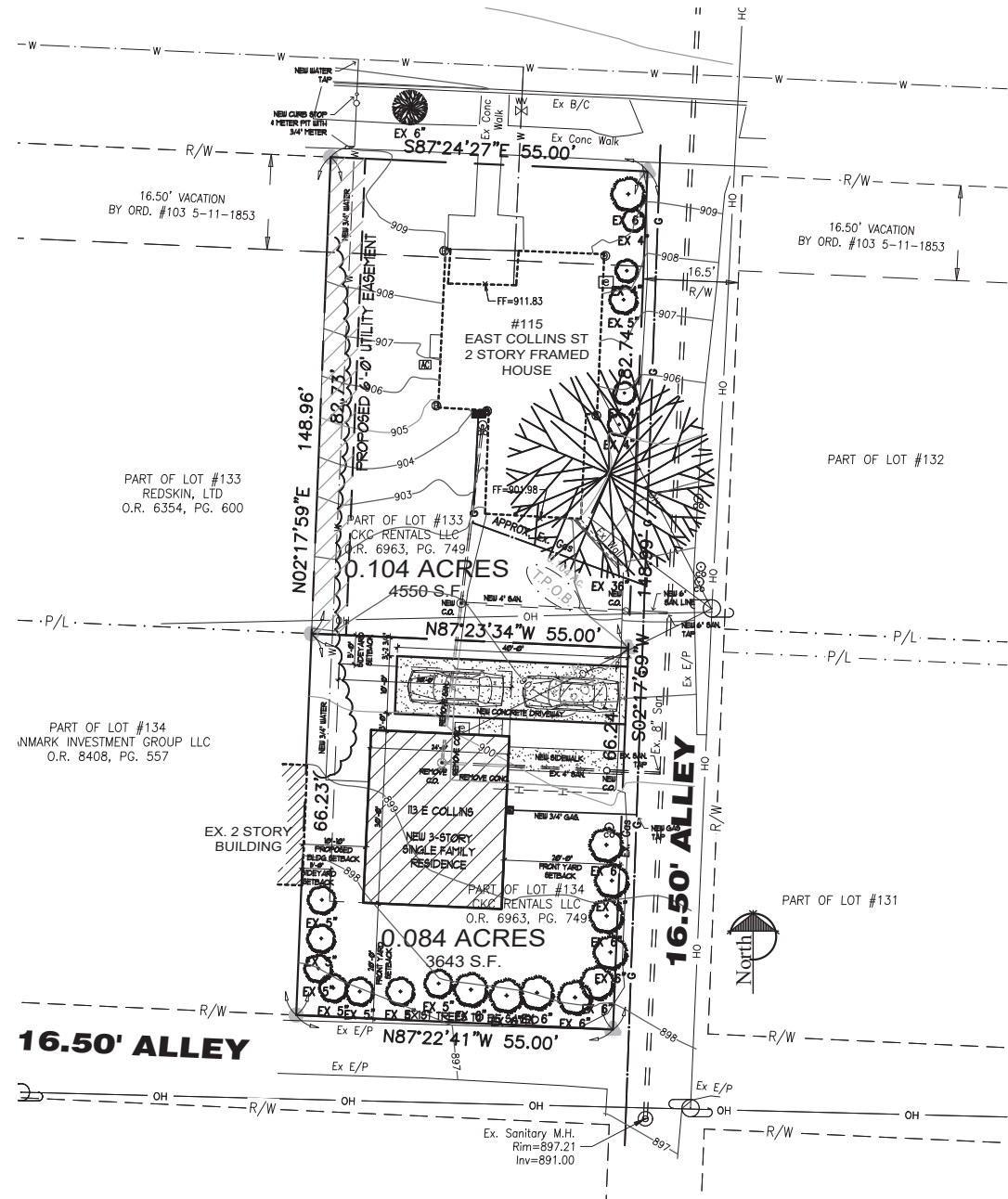
ACTUAL FRONT YARD: 490 SF / 2084 SF = 23.5%
 ALLOW. FRONT YARD: RIMS = 25%

TOTAL LOT COVERAGE

ACTUAL LOT COVERAGE: 1,222 SF / 3,643 SF = 33.5%
 ALLOW. LOT COVERAGE: RIMS = 45%

PARKING

(2) SPACES REQUIRED - (2) PROVIDED



PROPOSED NEW RESIDENCE
 115 East Collins (Alley Site)
 OXFORD, OHIO 45056

DATE
September 11, 2020
REVISIONS

A=1



MEMORANDUM
Community Development Department
513-524-5204

TO: BZA Members
FROM: Sam Perry, AICP
Director
DATE: September 23, 2021
RE: Rules of Procedures Revisions – Revised Memo

Based on recent schedule changes, the following revisions to the Rules are proposed. If approved at this meeting these would go into effect immediately. City Council approval is not required.

1. Remove specific meeting time to allow flexibility.
2. Meeting date change from 3rd Wednesday to 4th Tuesday.

A handwritten signature in black ink that reads "Sam Perry". The signature is fluid and cursive, with a long horizontal line extending from the end.

Sam Perry, AICP
Community Development Director

**RULES OF PROCEDURE
OF THE BOARD OF ZONING APPEALS OF OXFORD, OHIO –**

PROPOSED CHANGES FOR REVIEW ON SEPTEMBER 28, 2021

ARTICLE I – MEMBERSHIP

The Board of Zoning Appeals is established by Section 8.08 of the Oxford Charter. Membership consists of five citizens serving three-year, staggered terms.

ARTICLE II - JURISDICTION AND FUNCTION

According to Section 8.09 of Oxford’s Charter, “The Board shall have the power to hear and determine appeals from refusal of building permits and to permit exceptions to and variations from the zoning regulations in individual cases as may be required to afford justice and avoid unreasonable hardships to property owners. The standards in all instances to be applied by the Board shall be established by Ordinance of Council.”

The Decision Standards have been enacted by Council, and they appear as Section 1139.02(c)(2) of Oxford’s Code of Ordinances. A copy of Section 1139.02 (c)(2) appears as Appendix “A” to these Rules and Procedures.

ARTICLE III – OFFICERS

Section 1 - At the first meeting of each year, the Board shall elect one of its members as Chair, one as Vice-Chair, and one as Executive Secretary. At the first meeting of each year, the Law Director or his or her designee shall administer an oath of office to all members of the Board.

Section 2 - The Chair shall preside at meetings of the Board, call special meetings, and perform such other duties commonly prescribed to such office.

Section 3 - The Vice-Chair shall perform the same duties as the Chair in his/her absence.

Section 4 - In the event the Chair and Vice-Chair are absent from a meeting, the three remaining members shall select a Chair Pro-Tem who shall perform the same duties as the Chair for the balance of the meeting.

Section 5 - The Executive Secretary shall present the minutes of each meeting for approval at the next meeting and attest to the Board’s approval of the minutes.

ARTICLE IV – MEETINGS

Section 1 - The regular meetings of the Board will be held in the Oxford Courthouse **at 6:30 p.m. on the third Wednesday fourth Tuesday** of each month on the call of the Chair. The regular meeting date may occasionally change at the direction of the Board with public notice of the meeting. Special meetings may be called by the Chair, or by two (2) members of the Board, provided that special meetings must be called by the delivering of a written notice thereof to each Board member, or the residence of each member, and to those news media that have requested notification, at least twenty-four (24) hours prior to the time set for the special meeting. Said notice shall contain information as to the date, time, place and purpose of the meeting. No action shall be taken by the Board at a special meeting upon any matter not listed upon said special meeting notice (See appendix “B”).

ARTICLE V – VOTING

Section 1 - No motion to over-rule the decision of an administrative office of the City shall be adopted

except by the affirmative vote of three members of this Board (Section 8.08 of Oxford Charter). No variance shall be approved except by the affirmative vote of three members of this Board.

Section 2 - A majority vote of those members present shall be necessary to carry out all other regular business of the Board and a quorum of three members shall be necessary to conduct business and to constitute an official meeting of the Board.

Section 3 - The Chair shall vote in all matters under consideration by the Board.

Section 4 - No Board member shall participate in the discussion or vote in any matter in which the member has a personal interest. That person shall recuse themselves from the Board for that portion of the meeting in which the member has an interest.

Section 5 - A record shall be made in the minutes showing the vote of each member on each question, or, if absent or failing to vote, indicating such fact.

Section 6 - The Board of Zoning Appeals shall base its decision only upon Section 1129.11 or the Decision Standards in Chapter 1139. A copy of Section 1139.02(c)(2) appears as Appendix A to these Rules of Procedures.

ARTICLE VI - APPEALS PROCEDURE

Section 1 - (By Whom)

- (a) An appeal and supporting documentation as provided for in Chapter 1129 and 1139 of the Planning & Zoning Code may be made to the Board by any person who has been denied a building permit, or who desires an exception to or variance from the Planning and Zoning Code, or by any officer, department, board or bureau of the City of Oxford affected by a decision of the Zoning Administrator within 30 days of the date of the Zoning Administrator decision.
- (b) If the appellant represents the owner or occupant authority of the premises under consideration, the appellant shall document on the appeal that authority to represent that owner or occupant.
- (c) The application for an appeal shall be submitted pursuant to Chapter 1129 and 1139 of the Planning & Zoning Code. The Board will not hear any appeal on an application the Board deems incomplete under Section 1139.02
- (d) Instruction sheets may be prepared and approved by the Board for the guidance of appellants and copies of these Rules of Procedure shall be available to the public without charge at all times in the office of the Zoning Administrator.

Section 2 - (Action on Application)

- (a) The Zoning Administrator shall notify by regular mail the appellant and all owners of property within 200 feet of the property in question as to the date, time, place and purpose of the hearing at least 10 days prior to the hearing. The notice shall provide a form on which comments may be submitted to the Board of Zoning Appeals. This notice is not jurisdictional and is provided for only as a matter of courtesy. Failure by the Zoning Administrator to mail such notice or failure by a land owner described above to receive such notice shall not invalidate any action resulting from the public hearing.

The Administrator shall also cause an official legal notice, which is jurisdictional, containing the date, time, place and purpose of the hearing to be published once in a local newspaper of general circulation at least 7 days prior to the hearing. At least 7 days prior to the public hearing, the applicant shall post a sign on the site, provided by the City, along each, but not in, the public right-of-way that abuts the site and at other

locations or intersections near or leading to the site in the right-of-way, at the discretion of the Zoning Administrator. The signs shall state that the site is the subject of a public hearing and shall list the type, time, and place of the hearing, and shall be legible from the public right-of-way. This is a courtesy notice. Failure by the Zoning Administrator to provide such signs as described shall not invalidate any action resulting from the public hearing. Removal of such signs, once set, shall be a violation of this Code in addition to any other laws against their removal that may apply.

- (b) The Zoning Administrator shall transmit to the Board, approximately one week prior to the meeting or as soon thereafter as possible, the appeal application and all papers or information required or necessary for proper hearing of the appeal, and copies as required shall be sent to all Board members.
- (c) An appellant may, at his or her request, postpone an application that has been submitted, but not yet been heard, if a hard copy letter stating such request is submitted to and acknowledged by the Zoning Administrator at least seven (7) days prior to the scheduled meeting. This allows adequate time for rescheduling meetings and/or amending agendas as appropriate. In the case of unexpected emergencies resulting in a postponement request less than 7 days prior to the hearing, the Administrator and the Chair or Vice-Chair of BZA shall allow flexibility. A postponement may result in an additional fee paid to the City.

Section 3 - (Hearings)

- (a) The Board of Zoning Appeals shall base its review of a variance application upon the complete application, upon any staff report, and upon any relevant and credible public testimony and evidence presented during the adjudication hearing. If the Board of Zoning Appeals finds that the information provided is insufficient to make a determination, it may suspend its review until sufficient information has been provided.
- (b) All meetings and hearings shall be open to the public, provided, however, that hearings are adjudicative in nature and are not a forum open to public comment and discussion. Public participation in meetings will be limited as set forth in subsection (p), below.
- (c) The Applicant shall limit his/her testimony to fifteen (15) including any information presented by his/her duly appointed agent or attorney. The Chair or Vice-Chair may allow additional time, if requested by the applicant.
- (d) For the purposes of these Rules of Procedure, a person has standing to testify at an adjudication hearing before the Board, with or without counsel, if that person has a substantial right that will be directly affected, in a manner that is different from the effect on the general public, by the determination under consideration by the Board.
- (e) All interested parties with standing shall be permitted to appear and be heard in person, or by his/her agent or attorney, in opposition to the final order, adjudication, or decision. The Board shall have the right to dismiss the appeal if the appellant or his/her agent or attorney is not present at the hearing.
- (f) The interested party with standing shall present his/her position, arguments, and contentions.
- (g) The interested party with standing shall be allowed to cross-examine witnesses purporting to refute his/her position, arguments, and contentions.
- (h) The interested party with standing shall be allowed to offer evidence to refute evidence and testimony offered in opposition to his/her position, arguments, and contentions.
- (i) The interested party with standing shall be allowed to proffer any such opposing evidence and testimony into the record, if the admission of it is denied by the officer or body appealed from.
- (j) All testimony adduced shall be given under oath.

- (k) The Zoning Administrator will present and explain the case, setting forth the reasons for the Board.
- (l) The Board of Zoning Appeals shall have prepared minutes of the proceedings containing a report of all evidence admitted or proffered by the Board.
- (m) Any person with standing shall have the right to ask questions about the subject of the appeal.
- (n) At the request of the appellant or the Zoning Administrator and/or on the motion of the Board, the hearing may be postponed for further evidence or information. Such postponement shall be granted or denied in the sole discretion of the Board, and any postponement of a hearing, once commenced, shall be for more than 45 days, except with a written permission of both the Zoning Administrator and the appellant.
- (o) The Zoning Administrator or Board shall file with the minutes, conclusions of facts supporting the final order, adjudication, or decision appealed from.
- (p) At the conclusion of the hearing or hearings the Board will discuss and vote on each appeal and conduct the business section of the meeting to take care of items on the agenda. The public may not participate in this section of the meeting except upon request of the Chair or any member of the Board.
- (q) The Board shall keep a record of its proceeding. Findings of Fact shall be included in the minutes of each case of a requested variation or appeal, and the reasons for approving or denying such variation or appeal shall be specified. All records of proceeding findings, determinations and actions of the Board shall be filed immediately in the Zoning Administrator's office and shall be retained for one year.

Section 4 - (Following Hearing)

- (a) The Board of Zoning Appeals shall grant, grant with conditions, or deny a variance application as presented and shall clearly state the findings of fact upon which its decision is based.
- (b) The Zoning Administrator and/or the Zoning Administrator's Assistant shall inform the appellant by letter as soon as possible following the hearing of the decision of the Board. The Board's decision shall not become final until the expiration of five (5) days from the date such decision is made unless the Board shall certify otherwise.
- (c) The Zoning Administrator shall issue permits to permit the action for which a variance was sought per Chapter 1139.
- (d) No order of the Board permitting erection or alteration of a building or the use of a building or premises shall be valid for a period longer than six (6) months, and upon the expiration of such period shall automatically be deemed revoked, unless a building permit for such erection or alterations is obtained and the work is started within such period, or, where no erection or alteration is necessary, the permitted use is established within such period, or an extension is requested in writing and granted by the Board.
- (e) No application for a variance that is substantially similar to an application that has been denied or granted, wholly or in part, or revoked, shall be submitted to the BZA for a decision per Chapter 1139.

APPENDIX “A”

1139.02(c)(2) Decision Standards.

Variances shall be granted only upon a determination that practical difficulties exist with respect to the property in question that would render strict application of the Planning and Zoning Code inequitable. This determination shall be made without regard to the existence of variances and nonconformities on other land, sites, or structures not presently under consideration.

In determining whether practical difficulties exist sufficient to warrant a variance, the Board shall consider and weigh the following factors:

- a. Whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance;
- b. Whether the variance is substantial;
- c. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
- d. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);
- e. Whether the property owner purchased the property with knowledge of the zoning restriction;
- f. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;
- g. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
- h. Any other relevant factor.

APPENDIX “B”

RULES AS REQUIRED BY R.C. 121.22, COMMONLY KNOWN AS THE SUNSHINE LAW

SECTION 1: All meetings of the Board of Zoning Appeals, other than authorized Executive Sessions, shall be open to public attendance.

SECTION 2: The Board will fully comply with both the letter and the spirit of R.C. 121.22.

SECTION 3: The regularly scheduled meetings of this body shall be held on the ~~third Wednesday~~ **fourth Tuesday** of each month in the Oxford Courthouse, ~~commencing at 7:30 p.m.~~. The regular meeting date may occasionally change at the direction of the Board with public notice. Within the context of this rule, a special meeting is deemed to be any meeting scheduled or called for a date or place or time other than as herein above specified. Such special meeting, as so defined solely for the purpose of this rule, may be for the purpose of:

- (1) Continuing or commencing a regular meeting of the Board in discussing and acting upon all such business as may come before the Body; or
- (2) A true Special Meeting within the context of parliamentary definition wherein the purpose of the meeting shall be to consider only specific and enumerated matters, and in which action will not be taken on matters unrelated to the matter, or matters, for which such a meeting is held. No special meeting, as defined herein, shall be held unless the Zoning Administrator shall have given at least 24 hours advanced notice of the date, time and place and purpose of such meeting, to those news media that have requested notification except in the event of an emergency. An emergency exists when immediate official action is necessary and in that event the member, or members, calling such a meeting shall immediately notify such news media as have requested notification of the date, time, place and purpose of such meeting.

- (3) Any person may determine the date, time and place of regularly scheduled meetings by phoning or contacting the Zoning Administrator at the City Building.
- (4) Any person may determine the date, time, place and purpose of special meeting, as defined herein, by making such a request, in writing, to the Zoning Administrator and sending forth their name, address and telephone number. The Zoning Administrator shall notify such person of the date, time, place and purpose of special meetings, either by mail or telephone and will in any case endeavor, with all reasonable effort and dispatch, to make such notification immediately.

When time permits reasonable anticipation of timely mail delivery, the Zoning Administrator may notify such person by mail. When, in the judgment of the Zoning Administrator, it seems reasonable to believe mail notification will not be timely, the Zoning Administrator will make all reasonable efforts to contact such person by telephone. Long distance calls will only be placed collect.

SECTION 4: Any person desiring information as to any specific business to be discussed at a meeting, may obtain advance notification of the proposed discussion by securing a copy of the meeting agenda by any or all of the following methods:

- (1) Agendas for regularly scheduled meetings will be available, without charge, at the Police Department Dispatcher's office on the Saturday, Sunday, Monday or Tuesday preceding the regularly scheduled meeting.
- (2) Agendas for special meetings will be available immediately upon their preparation at the Police Department Dispatcher's office, without charge.
- (3) Persons paying an annual fee of \$10.00 to the Zoning Administrator, and providing said Zoning Administrator with self-addressed business-size envelopes (approximately 9" x 4"), with sufficient first class postage affixed thereto, will be mailed all Board agendas upon their preparation, for so long as the Zoning Administrator has a supply of the required envelopes. It shall be the sole obligation of the person requesting such mailings, to determine that the Zoning Administrator has sufficient envelopes to continue mailing agendas for so long as such person desires to receive agendas. The fee required hereunder shall be a calendar year fee and shall be due once each calendar year regardless of the date upon which the request for such mailings is filed.

SECTION 5: This Resolution promulgating the foregoing Rules of Procedure shall be effective immediately.