

City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-2019-10

October 16, 2019

APPLICATION

Applicant:	Kellems Construction (c/o David Kellems)
Location:	212 Bishop Street
Owner:	Smellek LLC
 Action Request:	 Variances to Section 1141.03(c)(3)(B) front yard setback
 Current Use:	 Single-Family Dwelling
Zoning:	R-2MS Single- and Two-Family Mile-Square Residential District
Surrounding Land Uses:	Single-Family & Two-Family Residential; Fraternity Houses

DESCRIPTION

The applicant/owner is requesting relief from the required 20 foot front yard setback in the R-2MS zoning district. Staff has already administratively determined that the applicable setback is 16.5 feet, in observing the structures already developed within the block face pursuant to Section 1141.03(c)(3)(B). The property in question is a corner lot which currently supports an existing single-family house, which up until very recently had been owned by Miami University. The existing house itself is set back approximately 20 feet from the front right-of-way line along Vine Street to the north, and 9.6 feet from the front right-of-way line along Bishop Street to the east. The owner would like to construct a 344 square foot addition on the north side of the house to be set back 15.4 feet from Bishop and 15.6 feet from Vine, as well as a new 48 square foot front porch to be set back 3.7 feet from Bishop. The submission of this variance request is preemptive, in that a Building/Zoning Permit application to actually construct the addition and porch has yet to be submitted. Nevertheless, preliminary sketches of the intended porch design were submitted as part of this request.

BACKGROUND

Oxford Zoning Code Section 1143.05(c) requires a minimum front yard depth of 20 feet for all properties within the R-2MS zoning district. However, Section 1141.03(c)(3)(B) also provides that *an average front yard setback may be established when more than 50% of the lots have been developed within that block face. The average front yard setback required shall, in no circumstances, be less than 16.5 feet.* Based on a cursory review of the locations of front facades within the same block (along East Vine Street to the west and along Bishop Street to the south), staff determined in a prior preliminary zoning review (dated 8/22, attached) that the applicable front yard setback could be adjusted administratively from 20 feet to 16.5 feet. However, the applicant's proposed scope of work encroaches past the 16.5-foot line, and can be summarized as the following:

- **Proposed Building Addition – 15.4 foot setback** (proposed reduction of 1.1 feet)
- **Proposed Front Porch – 3.7 foot setback** (proposed reduction of 12.8 feet; approx. 1 foot closer to front line than the existing ramp)

STAFF RECOMMENDATION

If the BZA determines that difficulties exist which are sufficient to warrant the variance, the staff recommends that the BZA cite any new or different specific evidence not yet identified and approve the variance request. At the time of this report, **staff believes there is substantial evidence to support the variance request** to allow for a reduced front yard setback in both the case of the Building Addition and the Front Porch.

If the BZA does approve the variance it can make separate findings and attach any appropriate conditions it deems necessary as permitted by Section 1139.02(d)(2).

COMMENT FORMS

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

AGENCY REVIEW

The variance request has been reviewed by City departments:

Fire	Returned without comments
Police	Returned without comments
Engineering	Returned without comments
Economic Development	Returned without comments

BZA SITE HISTORY

There is no prior BZA case history available in city records for this property.

ANALYSIS

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

Regarding **Criterion A, whether the property in question will yield reasonable return or whether there can be any beneficial use of the property without the variance:** The property is currently developed as a single-family home, which is sufficient evidence to demonstrate that beneficial use exists without the variance.

Regarding **Criterion B, whether the variance is substantial:** Depending on how the variance is observed, the applicant is asking for either a 6.7% reduction in bringing the setback down to 15.4 feet (as applied to the Building Addition), or a 77.6% reduction in bringing the setback down to 3.7 feet (as applied to the Front Porch). In either case, staff does not believe the variance request is substantial. The large percentage reduction for the Front Porch, although on the surface appears to be substantial, actually represents a slight adjustment (by approx. 1 foot) from what already exists as a railed concrete ramp leading up to the front door of the house. The issue at play is that an existing nonconforming feature cannot be changed in any way that would increase its nonconformity with the Code.

Regarding **Criterion C, whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance:** Staff does not believe the essential character of the neighborhood will be negatively affected. Most of the residential buildings located along the same Vine Street block are situated closer to the right-of-way than 16.5 feet. On the Bishop Street side, a portion of the existing building is proposed to remain situated at a 9.6-foot setback, which is recognized as legally non-conforming. The proposed Building Addition is proposed to be recessed from that facade at a 15.4 feet setback distance, thus its presence would

not be much more substantial than what already exists on the property. Staff finds the intended architectural styling for the Front Porch to be complementary to the rest of the structure and could positively contribute to the neighborhood aesthetic.

Regarding **Criterion D, whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage)**: Staff does not believe governmental services will be adversely impacted. All City Departments returned the application with no comments; had any comments been received, these might have contributed to this criterion.

Regarding **Criterion E, whether the property owner purchased the property with knowledge of the zoning restriction**: The applicant indicates in his application that he was aware of the setback restrictions in effect for the property.

Regarding **Criterion F, whether the property owners' predicament feasibly can be obviated through some method other than a variance**: The owner could choose to construct the addition to be set back no greater than 16.5 feet from the right-of-way line, which would result in an offset of 1.1 feet from the existing east-facing façade along Bishop. The existing nonconforming ramp leading up to the front door is recognized as a grandfathered feature, therefore no improvements could be made other than those that would decrease the nonconformity.

Regarding **Criterion G, whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance**: The Oxford Zoning Code does not specifically provide a general purpose for setback regulations, though a purpose is hinted at in Section 1152.08(f)(6)(D) when describing review criteria for a Certificate of Appropriateness by mentioning the *visual compatibility with surrounding properties, including proportion of the properties façade, roof shape, and the rhythm of spacing of properties on streets, including setback (...)*. This statement appears to indicate the importance of consistent spacing between buildings, as well as between buildings and other features such as right-of-way and property lines, for visual harmony. In practice, other general purposes for setback regulations include the adequate provision of light and air by preventing the placing of buildings too close to one another, as well as to ensure safety by requiring buildings to be set back a comfortable distance from traffic on public thoroughfares.

Regarding **Criterion H, any other relevant factor**: The applicant notes that as a result of the proposed building improvements, an additional non-conformity of a flat roof will be eliminated in favor of a roof meeting the Code's steeper roof pitch requirements.

SUBMITTED BY:



Zachary Moore, AICP
Planner, Community Development Department

DATE: October 7, 2019

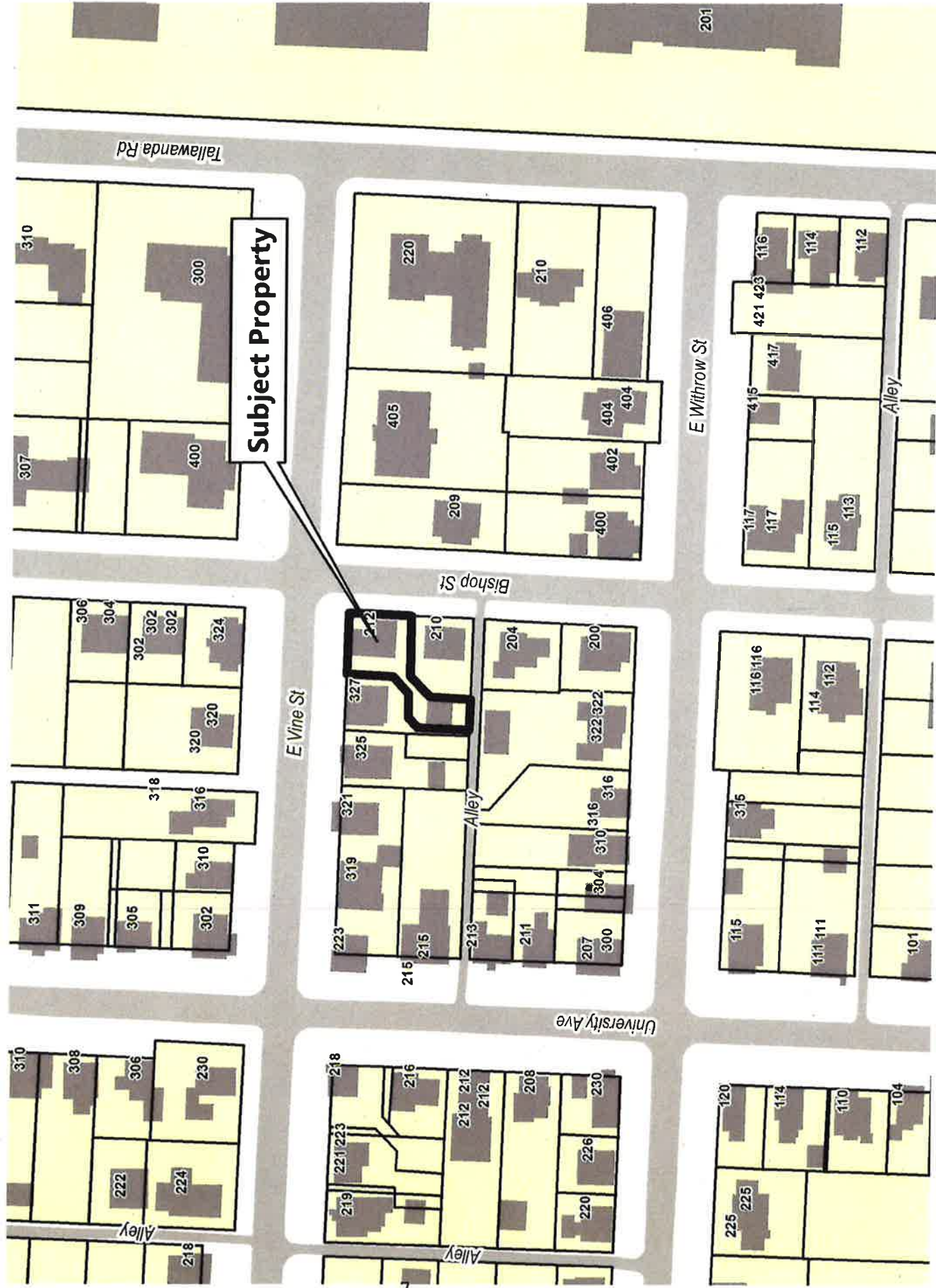
Location Map

 Site Parcel(s)

0 50 100 200 Feet



Site Parcel(s)



Location Map



Site Parcel(s)



City of Oxford
Inter-Office Review Transmittal Sheet



Date: September 20 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

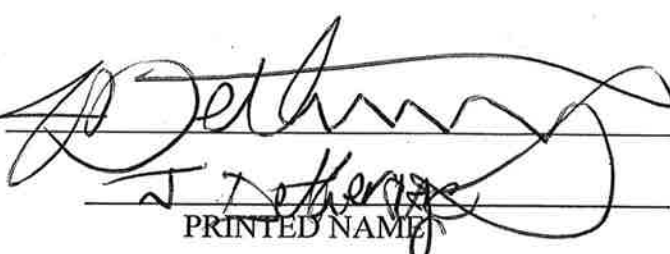
BZA-2019-10, 212 Bishop Street, Variance 1141.03(c)(3)(B) front yard setbacks for an addition facing Vine Street and a porch addition facing Bishop Street, Kellems Construction, Appellant

 X Review Revisions Other

Please return no later than: **October 4, 2019** Note: If no comments are received, we will assume the project meets your department's standards.

.....
Drawings are returned: w/comments without/comments

Drawings reviewed by:


PRINTED NAME

Date: 9.25.19

City of Oxford
Inter-Office Review Transmittal Sheet

Date: September 20 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-10, 212 Bishop Street, Variance 1141.03(c)(3)(B) front yard setbacks for an addition facing Vine Street and a porch addition facing Bishop Street, Kellems Construction, Appellant

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.....
Drawings are returned: w/comments without/comments

Drawings reviewed by:

Scott Otto

Date: 9/30/19

Scott Otto

PRINTED NAME

City of Oxford
Inter-Office Review Transmittal Sheet

Date: September 20 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-10, 212 Bishop Street, Variance 1141.03(c)(3)(B) front yard setbacks for an addition facing Vine Street and a porch addition facing Bishop Street, Kellems Construction, Appellant

 X Review Revisions Other

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.....

Drawings are returned: w/comments without/comments

Drawings reviewed by: _____



John A. Jones

PRINTED NAME

Date: _____

9/23/19

City of Oxford
Inter-Office Review Transmittal Sheet

Date: September 20 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-10, 212 Bishop Street, Variance 1141.03(c)(3)(B) front yard setbacks for an addition facing Vine Street and a porch addition facing Bishop Street, Kellems Construction, Appellant

 X Review Revisions Other

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.....
Drawings are returned: w/comments without/comments

Drawings reviewed by: 

Date: 9-23-2019

G. Alan Ryan

PRINTED NAME



BZA-2019-10 Surrounding Property Owners Map

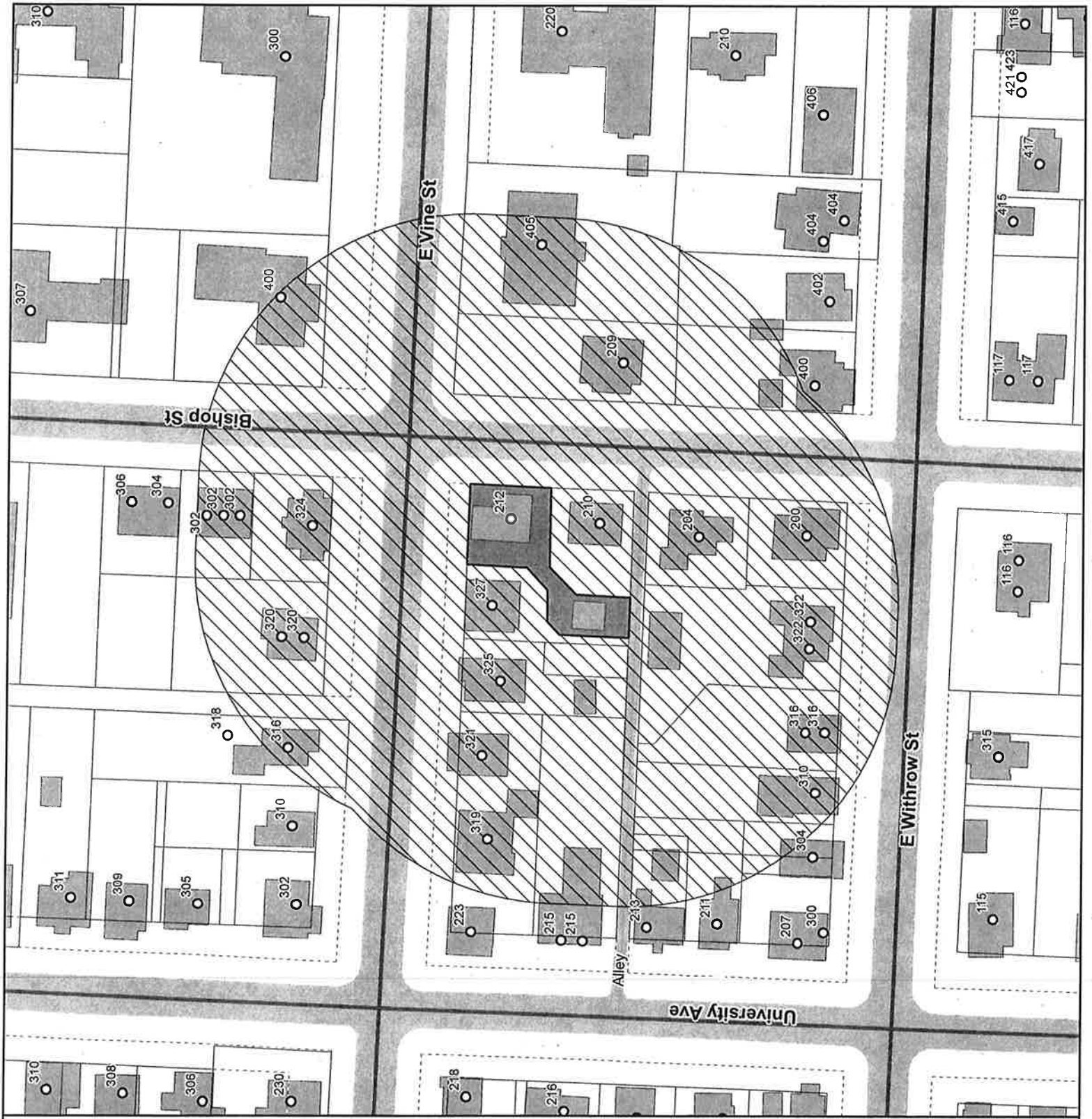
Legend

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



1 inch = 100 feet

Prepared on Monday, September 30, 2019
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.





Internal Use Only:

Case No.

PC-2019-10

Date Filed

9-19-19

Petition for Zoning Variance**Petitioner Information**

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

Name *

Kellems Const

Mailing Address *

8747 Mt. Hope rd

City, State & Zip Code *

Harrison Ohio 45030

Telephone Number(s) *

513-367-6039

Email Address

hogan.knowsbest@gmail.com

Owner Information

Name *

Smellek LLC

Mailing Address *

8747 Mt. Hope rd

City, State & Zip Code *

Harrison, Ohio

Telephone Number(s) *

513-505-4918

Email Address

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

11 4.03 c(3) B - Front yard set back / addition Vine
11 4.03 c(3) B - Front yard set back / porch Bishop

Location of Requested Variance *

212 Bishop

Name of Building

Legal Description *

H000006000091

Zoning District *

R-2

Total Acreage *

0.149

Existing Use of Site *

single family

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.

please see cover letter

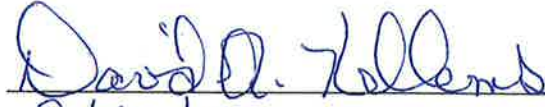
- D. Whether the variance would adversely affect the delivery of governmental services (i.e. water, sewer, garbage);
- E. Whether the property owner purchased the property with knowledge of the zoning restriction;
- F. Whether the property owners' predicament feasibly can be obviated through some method other than a variance;
- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
- H. Any other relevant factor.

Fees & Receipt

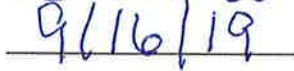
The variance fee is \$200.00, plus \$100.00 for each additional variance request up to a maximum of \$1,000.00, plus \$10.00 postage charge. **Fees may increase if staff determines that you need more variances.**

Sign and Date

Petitioner Signature *



Date *



Submit Application, Plans and Documentation, and Fees

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

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

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

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

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

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

212 Bishop Street

- a) The existing building has been owned by Miami University for a number of years and it could be beneficial as a single family rental (doubling up in small bedrooms).
- b) None of the variances are substantial; there is only a matter of twelve inches plus or minus.
- c) The character would not be substantially altered.
- d) No change in services.
- e) Owner was aware of zoning changes.
- f) Yes, I could adjust to a smaller change, but in doing so would affect the aesthetics of the house from a much more pleasing aesthetics, to an unattractive house.
- g) The spirit of the zoning code is observed. It reflects what I believe is desired by the spirit of the code considering that the length of Bishop Street is all non-conforming structures.
- h) I will be removing unusable concrete wheelchair ramp (hazard). I will be removing a flat roof sect 1143.05(4). Removing 422 sq. ft. of lot coverage.

Thank you for your consideration of this application.

Respectfully,

David A. Kellems

212 Bishop Street

Our proposal is to eliminate a non-conforming flat roof and to eliminate a garage that is not accessible. The non-accessible garage has water issues.

We would like to increase the footprint of the sunroom to include a full bath and stairs to the second floor for a fourth bedroom and another full bath.

1141.03 c(3) B requires a front yard setback of 16 feet 5 inches
Average Bishop setback is 10 feet 2 inches
Average E Vine setback is 13 feet 2 inches

We are requesting a setback of 15 feet 6 inches on the E Vine Street side and 15 feet 4 inches setback on the Bishop Street side.

1141.03 c(3) B

We are also requesting a set back on the front porch of 3 feet 7 inches that presently measures 4 feet 7 inches.

Presently 5' X 6' would like 6' X 8' for a more appealing architectural design.

Bishop Block Face

200 - 11 ft

204 - 13 ft

210 - 8 ft

212 - 6 ft

Total 41 = average 10.2 ft

Vine Block Face

319 - 11 ft

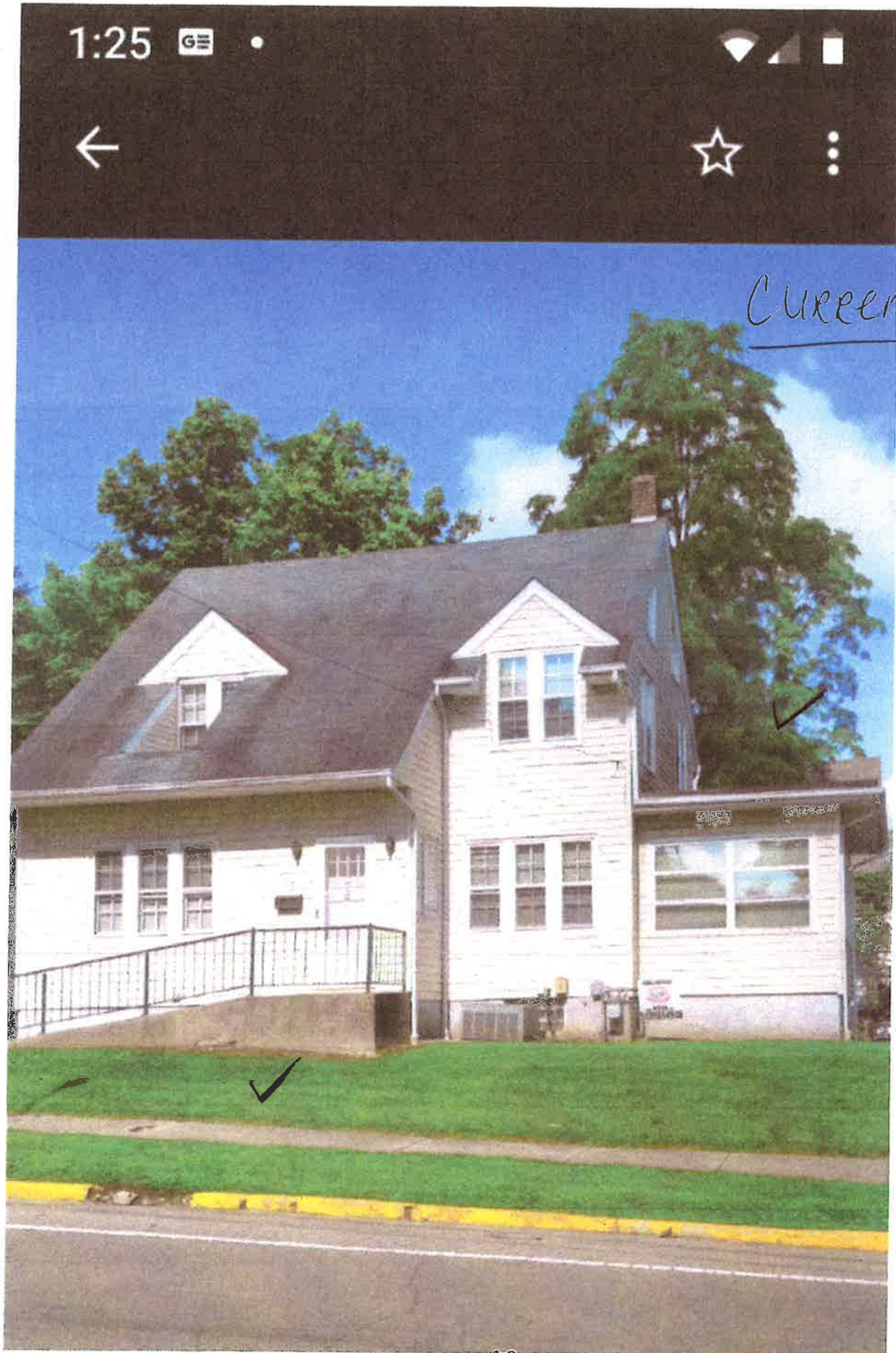
321 - 10 ft

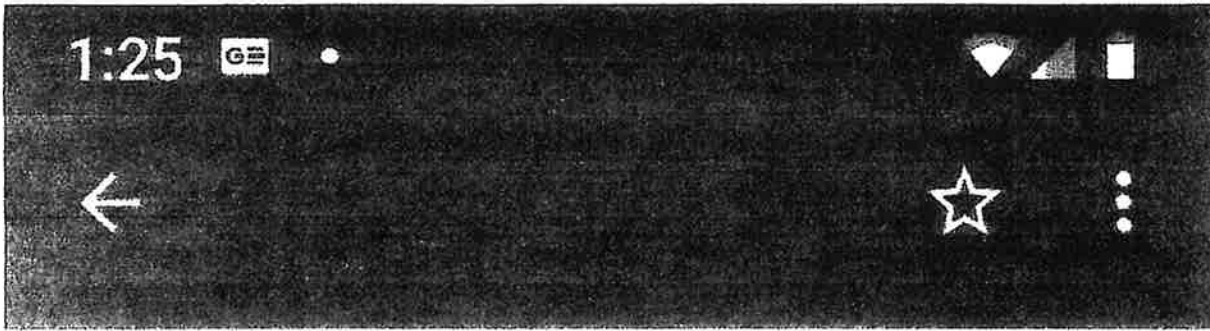
325 - 13 ft

327 - 13 ft

212 - 19 ft Bishop

Total 66 = average 13.2 ft



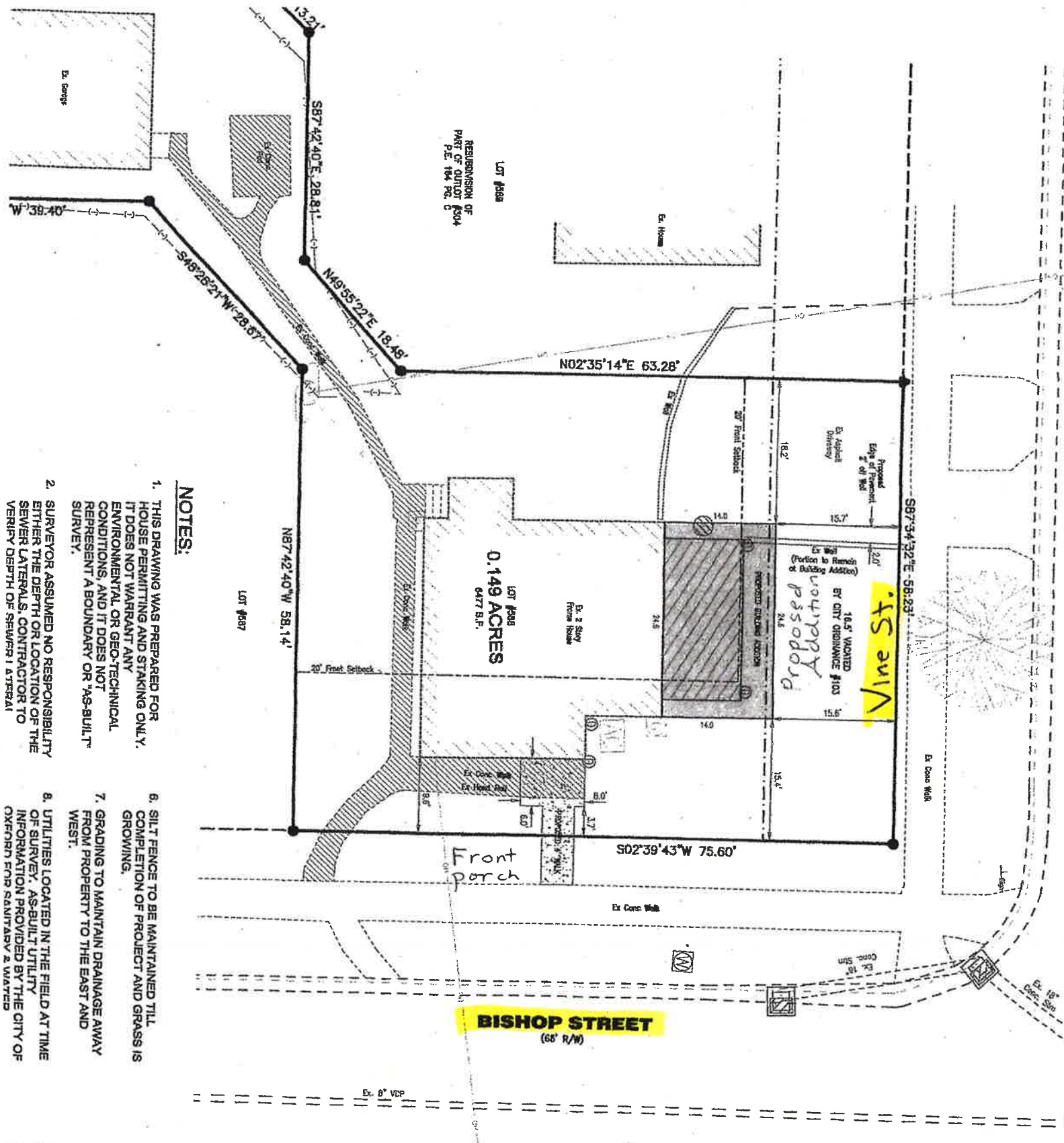


Proposed



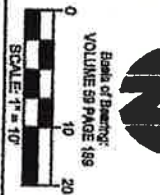


Side street view
of porch



LOT #588
212 BISHOP STREET
 CONGRESS LANDS WEST OF THE MIAMI RIVER
 CITY OF OXFORD
 BUTLER COUNTY OHIO

PLOT PLAN



N. R. JOHNSON
 HOMELAND SURVEYOR
 MENTAL SURVEYING
 ONE (613) 737-1511

- NOTES:**
1. THIS DRAWING WAS PREPARED FOR HOUSE PERMITTING AND STAKING ONLY. IT DOES NOT WARRANT ANY ENVIRONMENTAL OR GEO-TECHNICAL CONDITIONS, AND IT DOES NOT REPRESENT A BOUNDARY OR "AS-BUILT" SURVEY.
 2. SURVEYOR ASSUMED NO RESPONSIBILITY EITHER THE DEPTH OR LOCATION OF THE SEWER LATERALS. CONTRACTOR TO VERIFY DEPTH OF SEWERS 1' ATREAS1
 3. SILT FENCE TO BE MAINTAINED TILL COMPLETION OF PROJECT AND GRASS IS GROWING.
 4. GRADING TO MAINTAIN DRAINAGE AWAY FROM PROPERTY TO THE EAST AND WEST.
 5. UTILITIES LOCATED IN THE FIELD AT TIME OF SURVEY. AS-BUILT UTILITY INFORMATION PROVIDED BY THE CITY OF OXFORD FOR SANITARY 2' WATER

