

City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-2019-11

November 20, 2019

APPLICATION

Appellant:	Brinley D. Varchol
Address:	109 Oberlin Court
Subject Property Address:	102 Oberlin Court
Action Request:	Administrative Appeal on Section 1143.03(c)(9)(C)
Current Use:	Single-Family Dwelling
Zoning:	R-1MS Single-Family Residential Mile-Square District
Surrounding Land Uses:	Single-Family Dwellings

DESCRIPTION

Mr. Brinley Varchol has filed an appeal on Planner Zachary Moore's decision (in his capacity as Zoning Administrator) to approve a fence permit for 102 Oberlin Court. The decision had been made in consultation with Director Sam Perry after discussing the project with the applicant, Mr. Nick Fears. The appellant believes that the fence design approved and constructed on this property does not conform to, and is in violation of, the standards stated in 1143.03(c)(9)(C) specific to fences in the R-1MS district.

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.

BACKGROUND

Oxford Zoning Code Section 1129.11 provides that the *Board of Zoning Appeals shall have the power to hear and decide appeals where it is alleged there is an error in any order, requirements, decision or determination made by an administrative official in the enforcement of the Zoning Ordinance.* The BZA has the ability to either reverse or affirm, wholly or partly, the Zoning Administrator's prior interpretation. To this end, the BZA has all the same powers of the office of the Zoning Administrator in making a determination. The BZA's decision should be based upon the information provided by the appellant in his application, the information/analysis in this staff report, and any other evidence or testimony presented. If the decision of staff is affirmed, the BZA's decision could be appealed to Common Pleas Court.

Section 1143.03(c)(9)(C) provides that *fencing shall only be constructed of wood, wrought iron, decorative metal fencing, or fencing material that resembles wood materials.* The fence in question, located to the rear of the home and most noticeable from South Main Street, was found to be in compliance with this section and all other applicable code provisions and was subsequently approved by the Zoning Administrator for construction on 7/24/2019. The Building and Zoning Permit was issued to the applicant on 7/26/2019, and upon completion the fence passed final zoning inspection on 8/14/2019.

ANALYSIS

The applicant characterizes the design of the installed fence as "turkey wire," stating in his application that it "is clearly not wood, nor is it wrought iron, nor is it decorative metal (...)." Staff however identifies the

primary material to be a multi-purpose "heavy-weight wire panel." The fence is composed of a rigid wire grid mounted to treated wood posts with cedar trim boards. Staff is of the opinion that had a wire grid been mounted to something less aesthetically pleasing (such as metal posts or rods), the chance of zoning approval would have been less likely, as this would potentially result in a fence more reminiscent of a chain-link style which is expressly prohibited by the Code. By combining the wire grid with the wooden posts and cedar boards, staff believes this in essence resulted in a "decorative" design that was found acceptable and in compliance with the spirit of the Code.

The Zoning Code does not specify or depict specific fence designs, therefore staff is in the position of reacting to proposals, based upon the code as written. If the staff's decision is overturned, the City will not force the owner to remove the fence because of the approved permit. However, the decision will stand as a guide for future proposals and as a potential code amendment clarification to Planning Commission and City Council.

SUBMITTED BY:



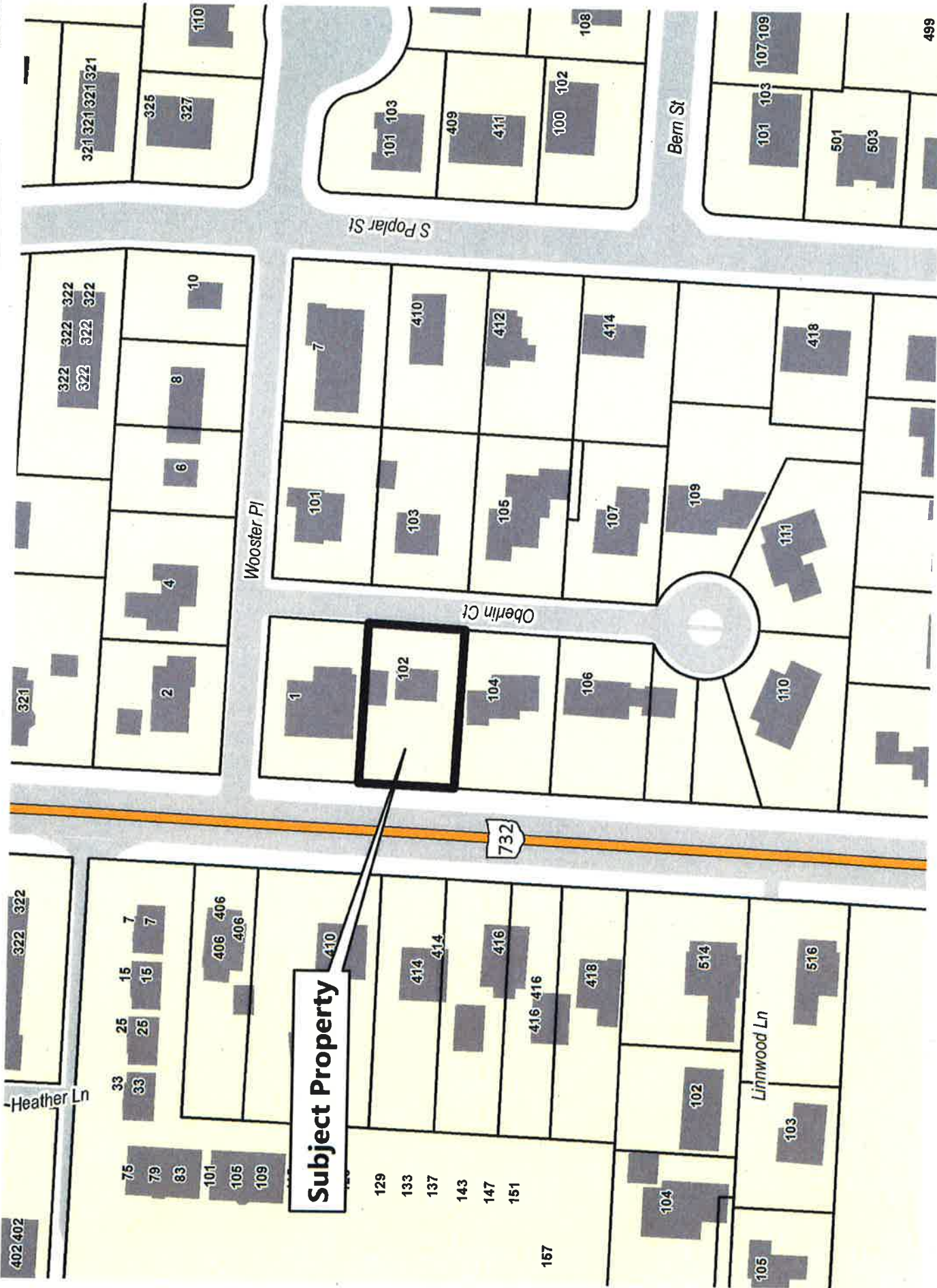
Zachary Moore, AICP
Planner, Community Development Department

DATE: October 25, 2019

Location Map

 Site Parcel(s)

0 50 100 200 Feet



Location Map

 Site Parcel(s)

0 50 100 200 Feet



Location Map

Site Parcel(s)

0 50 100 200 Feet





BZA-2019-11

Surrounding Property Owners Map

Legend

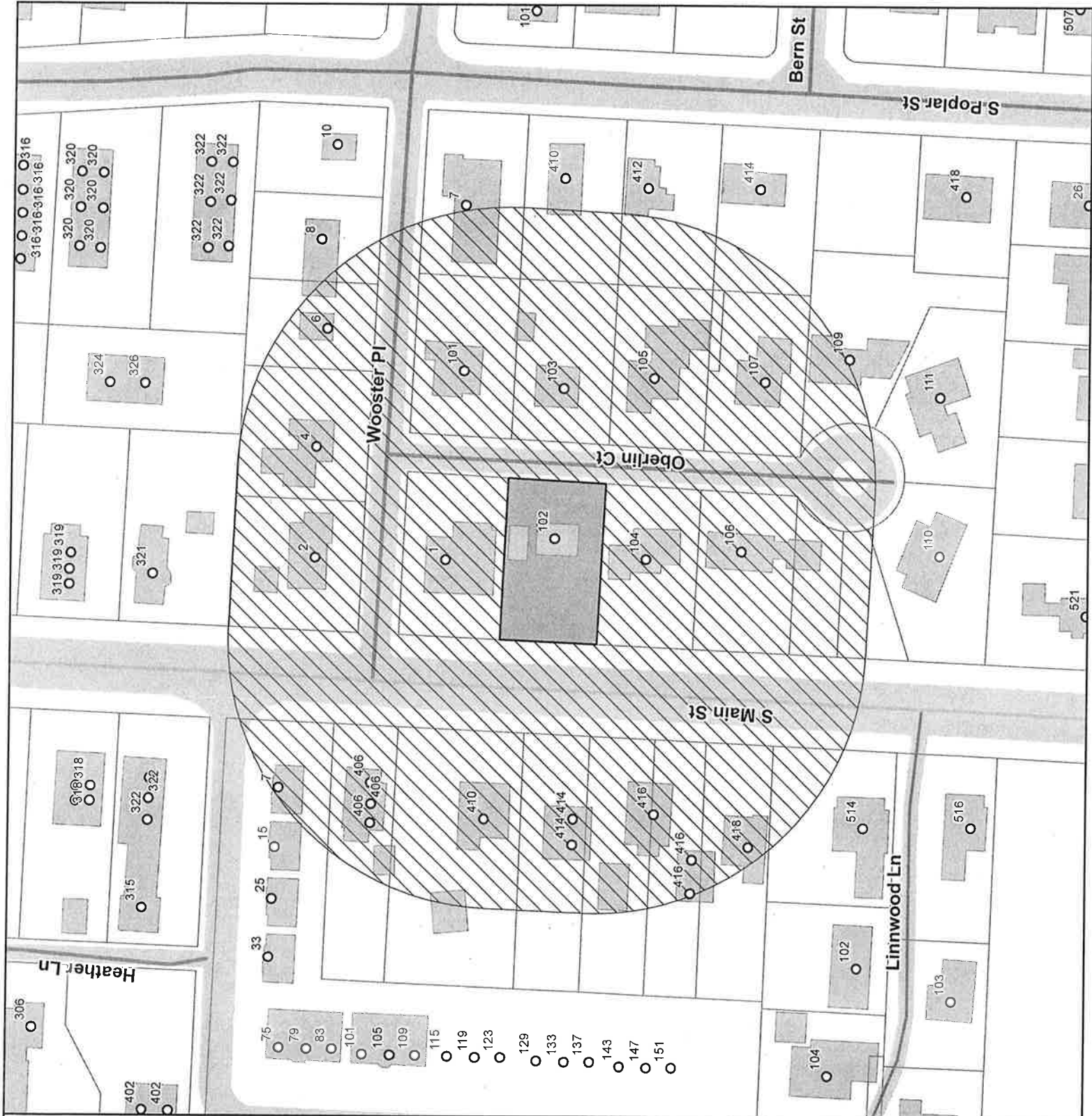
- Subject Parcel
- 200 Ft. Buffer
- Oxford Corporation Limit
- Parcel
- Vacated Right-of-Way
- Building Footprint
- Paved Roadway



1 inch = 100 feet

Prepared on Monday, November 4, 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.



Nov mtg



Internal Use Only:	
Case No.	BZA-2019-11
Date Filed	10/21/19

Application for Appeal of Administrator's Decision

Appellant Information

Name *	Brinley D. Varchol
Mailing Address *	109 Oberlin Ct
City, State & Zip Code *	Oxford, OH 45056
Telephone Number(s) *	513-524-5884
Email Address	brinvar@gmail.com

Required Documentation

From Chapter 1129.11(a)¹.

1. Cite specific provisions of this Zoning Ordinance that are alleged to have been interpreted in error of the specific decisions or action being appealed and the grounds on which the appeal is being made;
2. Include any required application fee in an amount set by the City;
3. Include such other information as the City or the Board may reasonably require; and
4. Include a statement as to why the appellant has standing to pursue the appeal from the administrative action by a statement of the way in which the administrative action adversely affects the appellant.

Attach additional pages if needed.

This appeal is based on a decision by the Planning Director to allow the construction of a fence at 102 Oberlin Court, which the applicant believes is in violation of the Code of Ordinances Chapter 1143.03, Section (9) Fences & Gates, Part C. which clearly states that "Fencing shall only be constructed of wood, wrought iron, decorative metal fencing, or fencing material that resembles wood material." (See attached Ordinance 1143.03)

Contrary to that requirement, the Planning Director permitted the owner of the property to install a turkey wire fence stapled on wooden posts. This fence is not wood, wrought iron, or decorative metal fencing and should have been rejected by the Planning Director. The applicant has standing to pursue this appeal and is adversely affected since the applicant lives a few houses down from the property in question and constructed a fence on his own property at 109 Oberlin Ct a few years ago. At that time, he was clearly told that he could not install a wire fence since it did not meet the Oxford Code. As a result, the applicant spent a significant amount of money installing a stained wooden picket fence, which meets the Code, only now to see a much cheaper, non-compliant fence installed 3 houses down from his property. Not only does the fence at 102 Oberlin Ct violate the City Code, it's an eyesore to the neighborhood and will deteriorate much faster than the fence material required by the ordinance. (also, see page 3 for further discourse)

(See attached pictures of the fence at 102 Oberlin Ct, and pictures of the fence installed at the applicant's property)

Fees & Receipt

The fee is \$50.00.

Sign and Date

Appellant Signature *

Date *

Brinley D. Vorchel
10/21/19

Submit Application, Documentation, and Fees

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

Send or drop off this application with required documentation as attachments and a check for the fee 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.

For Staff Use Only

Fee Paid Date *

10/21/19

Receipt Number *

278701

¹ City of Oxford Codified Ordinances: <http://www.cityofoxford.org/fees-ordinances-and-charter>

Brinley D. Varchol - Applicant

Page 3

The applicant believes that the decision of the Planning Director to allow the fence to be installed at 102 Oberlin Ct. was an **interpretation error** of the existing Ordinance. As stated before and as evident from the pictures provided, the installed fence is clearly not **wood**, nor is it **wrought iron**, nor is it **decorative metal** (see pictures below). The applicant further believes that this error creates a noncompliant condition that could readily be used by other neighbors on this street to build similar fences in their front or back yard thus increasing the noncompliance and reducing the value of his property and reducing the quality of the neighborhood. Neighbors tend to follow what their adjoining neighbors do when a visible structure, such as a fence is installed. For example, when the applicant built his wood picket fence, two neighbors to the left of his property decided to build their own fences and they matched the wood fence built by the applicant. Oberlin Court is one of the few streets left in the Mile Square that continues to have owner occupied houses and full compliance with the existing Oxford Ordinances should be strictly enforced.

Although he is reluctant to pursue this recourse, the applicant requests that the turkey wire be removed from the existing fence and that a fence compliant with the existing code be installed or that the fence be removed. Failure to correct this noncompliant condition has the potential to increase the noncompliance by other landowners in the area and throughout the Miles Square, thus further diminishing the beauty and quality of the properties in Oxford. This is in direct conflict with the purpose and scope of the City Ordinance and the Comprehensive Plan. How can the Planning Director, in the future, reject an application to build a turkey wire fence anywhere in Oxford once they have approved such a fence on Oberlin Ct. Therefore, the applicant requests that the BZA rejects and reverses the Planning Directors decision and require the property owner to remove the noncompliant fence or install a fence that is in compliance with the existing Ordinance?

Pictures of a decorative metal fence:



www.fencingdirect.co.uk • 0800 585 100



www.fencingdirect.co.uk • 0800 585 100



intermet.com

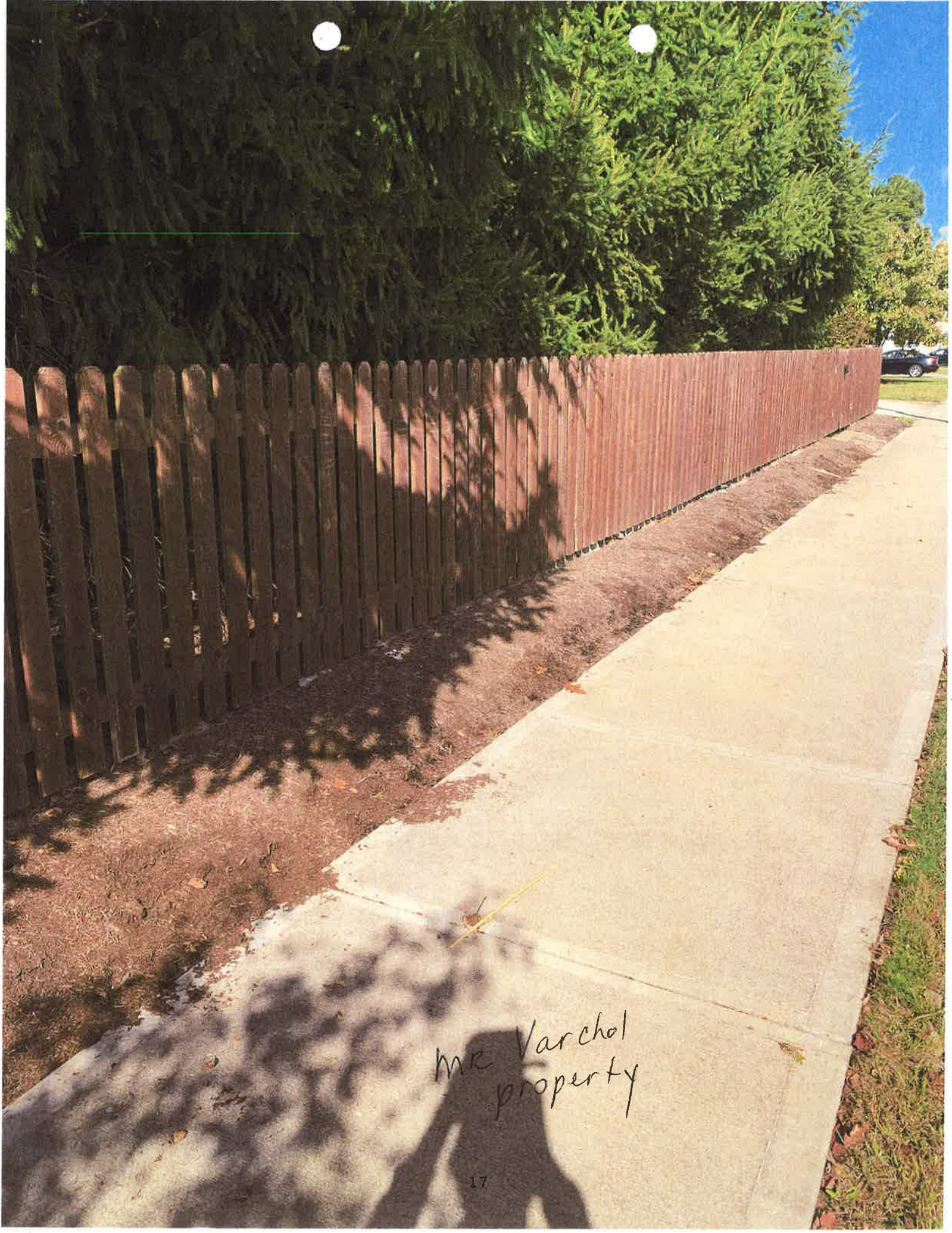




MR
Varchok
property







Mr Varchol
property

CITY OF OXFORD, OHIO

BUILDING AND ZONING PERMIT

R

Building, Planning, and Zoning Departments, Municipal
Building, 15 South College Avenue Oxford, Ohio 45056
Telephone: (513) 524-5205

MR Fears Approval

This Permit Must Be Kept on Premises.

Void Unless Work is Started Within
Six (6) Months of Approval.

Acceptance of permit constitutes an agreement to build in accordance with all applicable regulations and approved plans and specifications.

PERMIT #: 19-210

APPLICANT

Nick Fears

ISSUED: 7/26/19

SIGNATURE

[Signature]

CONSTRUCTION LOCATION/DESCRIPTION

PARCEL #

#4100103000047

STREET #:

102 Oberlin

LOT #:

DESCRIPTION:

fence

ZONE:

HAPC: YES NO

OWNER INFORMATION

OWNER:

ADDRESS:

PHONE:

Architect or Engineer

Contractor

Note: Plumbing Permits must be obtained from
Butler County Health District, Plumbing Department

FEES

BUILDING:

ELECTRICAL:

MECHANICAL:

SPRINKLER:

OBBC/OBOA:

WATER MTR.:

SEWER:

OTHER:

ZONING: 50-

TOTAL: 50-

PAID: 7/26/19

Is granted this permit for and to be used as follows:

- | | |
|---|---|
| ☐ New Building | ☐ Multi-Family |
| ☐ Commercial Bldg. | ☐ Accessory Building |
| ☐ One-Family | ☐ Addition - Type |
| ☐ Two-Family | ☐ Alteration/Remodel } |
| ☐ Three-Family | ☐ Demolition |

Variance, Special or Additional Use Permit, Certificate of
Appropriateness, or PUD (Indicate Case# and Effective Date
of Action, List Below)

All work must be done in compliance with ordinances, plans and specifications as approved by the
Building, Planning and Zoning Departments

DATE

7/24/2019 PLANNING DIRECTOR

[Signature]

CHIEF BUILDING OFFICIAL

DATE

Building permit application

102 Oberlin Ct.

Site PLAN

Lot: 643 ENT

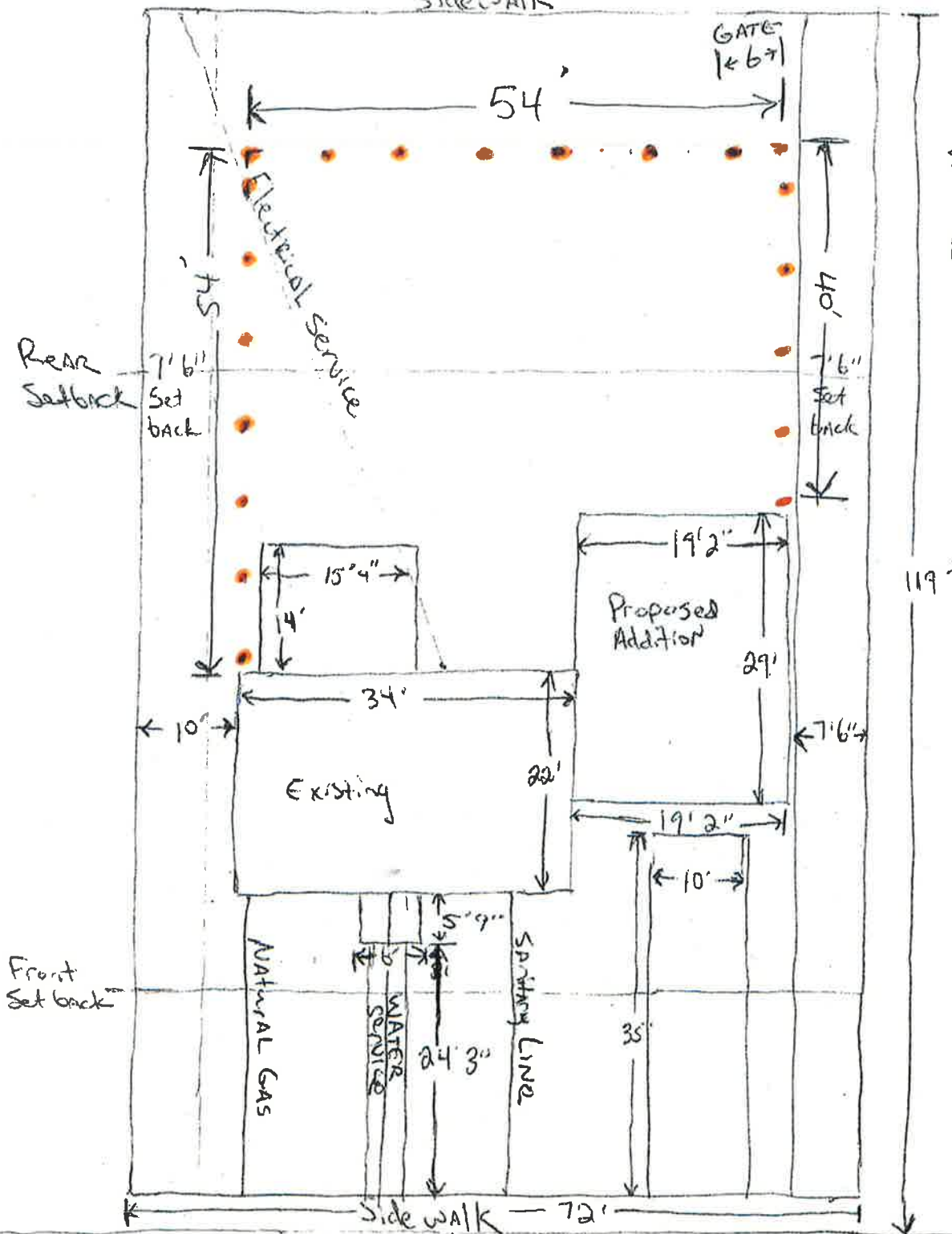
□ = 3 ft

● = Fence Post



MAIN St

Side walk



Information from
Charles E
HEINTZELMAN
Subdivision
Plat book 962
Page 20
Recorded June 18, 1914

19-210

Oberlin Ct.

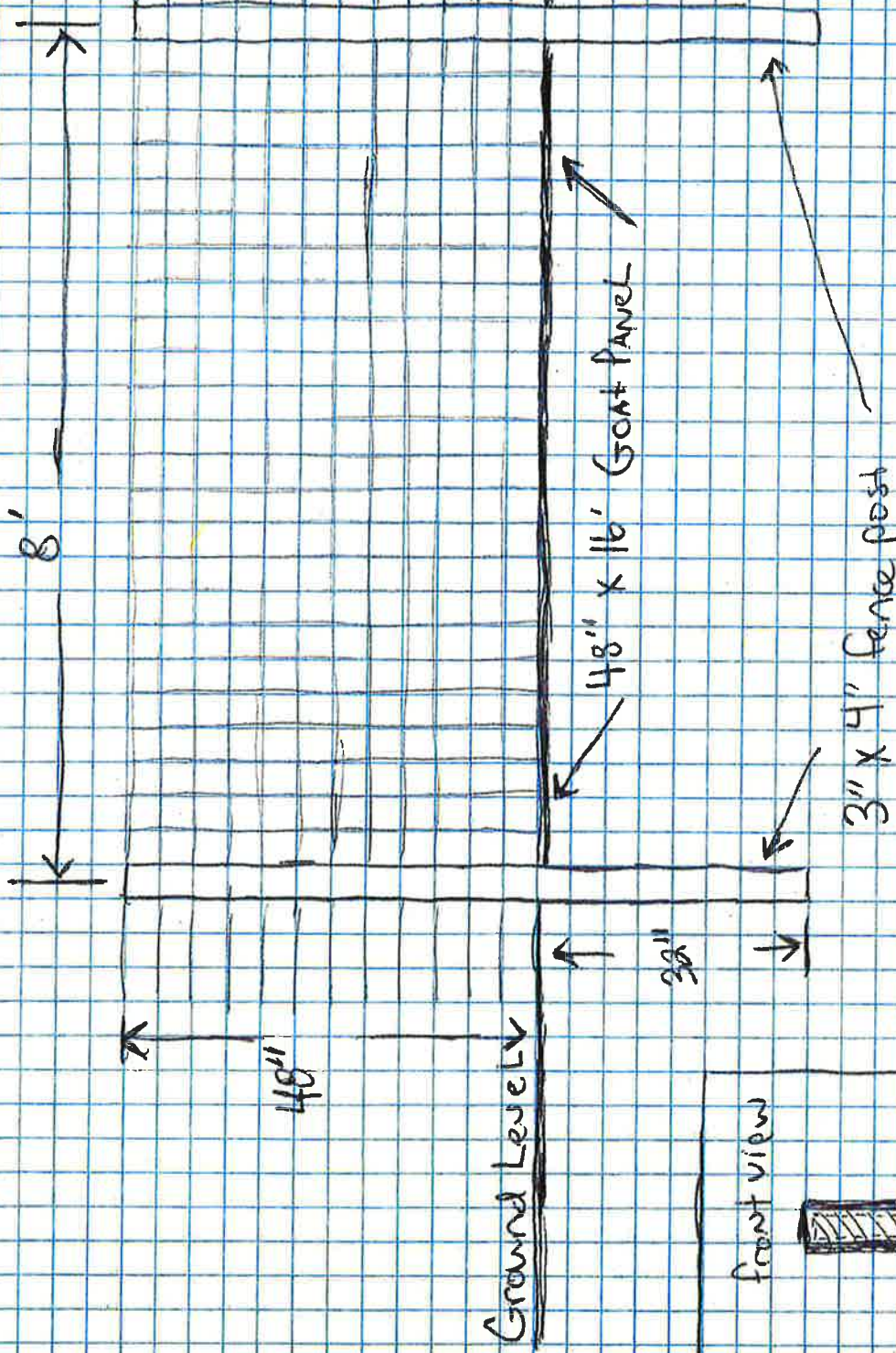
19

RECEIVED JUL 18 2019

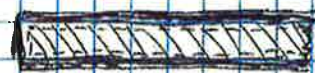
Building permit application

$\square = 4"$

102 Oberlin Ct

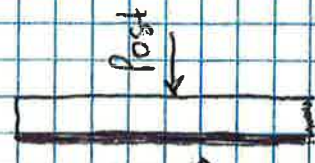


front view



1" overlapping each side

Side View



post

1" x 6" x 48" trim

FICE COPY

RECEIVED 2011 11 18 2009

City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-2019-13

November 20, 2019

APPLICATION

Applicant:	Scott Webb, Architect
Location:	802 South Beech Street
Owner:	Zach & John Shane
 Action Request:	 Variances to Section 1143.03(c) – front, rear and side yard setbacks
 Current Use:	 Single-Family Dwelling
Zoning:	R-1MS Single-Family Residential Mile-Square District
Surrounding Land Uses:	Single-Family Dwellings & Storage Facility

DESCRIPTION

The applicant/owner is requesting relief from the required setbacks of the R-1MS zoning district in order to reconstruct a single-family dwelling on top of an existing foundation at 802 South Beech Street. The request for variances arose from a number of different events. In April of this year, a stop work order was issued when staff discovered that the property owner had begun demolition work on the property without first obtaining a permit. The reason for the partial demolition was to install a new section of foundation, as part of an overall renovation project. Following issuance of a Building/Zoning Permit in August, continued work on the property revealed an amount of water damage significant enough to trigger the submission of a revision to the approved plans calling for the structure's remaining walls to be torn down with a new wood frame home constructed on top of the foundation. Staff determined the scope of demolition work was enough to require reconstruction in accordance with district setbacks, per Zoning Code Chapter 1137 (Nonconformities). Thus, variances to all three setback regulations (front, rear and side) are necessary in order to rebuild on the existing foundation.

BACKGROUND

Oxford Zoning Code Section 1143.03(c) requires for all properties within the R-1MS district to have a minimum front yard depth of 20 feet, a minimum rear yard depth of 35 feet, and a minimum side yard depth of 7.5 feet. The applicant's proposed setbacks, which follow the footprint of the existing foundation, are as follows:

- **Front Yard Setback – 0.75 feet** (proposed reduction of 19.25 feet)
- **Rear Yard Setback – 21.4 feet** (proposed reduction of 13.6 feet)
- **Side Yard Setback – 0 feet** (proposed reduction of 7.5 feet)

Section 1137.06(f) provides that *reconstruction of damaged and demolished nonconforming structures may be permitted provided that the reconstructed portion satisfies the site development regulations of the District*. Following the discovery of partial demolition work without a permit and the issuance of a stop work order on April 26, 2019, Community Development staff met with the applicant and property owner on April 29 to discuss the situation. At the time, less than a fourth of the walls had been torn down, so staff agreed to let construction continue without requiring variances to the setbacks so long as no additional walls were torn down. A new roof structure was also required to adhere to a minimum 6/12 roof pitch to conform

to the Mile Square design standards. A Building/Zoning Permit allowing rehabilitation work to continue was issued on August 16. However, as the applicant indicates in their letter, the discovery of water damage since that time has rendered the remaining walls unsalvageable thus necessitating a near-complete reconstruction of the dwelling. Should the requested variances be approved, a plan revision will be required in order to document how the structure is to be reconstructed, including details on windows, doors, siding, etc.

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 reduced front, rear and side yard setbacks for this property.

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	Not returned
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. Webb. 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 has yielded reasonable return in the past, in use as a single-family dwelling. At the present time, the dwelling as exists is uninhabitable, thus it cannot yield a reasonable return or be of any beneficial use until the dwelling is reconstructed. As the applicant expresses in his letter, applying the district setbacks to the existing dimensions of the lot results in a very limited buildable area with a width of 67 feet and a depth of just under 14 feet.

Regarding **Criterion B**, **whether the variance is substantial:** The variances requested are substantial mathematical reductions. The applicant is asking for a **96.3%** reduction in bringing the front yard setback down to 0.75 feet, a **38.9%** reduction in bringing the rear setback down to 21.4 feet, and a **100%** reduction of the side yard setback. However, given that this project seeks to reconstruct a dwelling that was previously in existence, and will not be expanding the previous footprint, staff does not believe the variance request is substantial.

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, again since the project aims to reconstruct a dwelling in roughly the same size and shape as previously existed.

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 that returned the application did so 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: Had the property owner been aware of the proper procedure to first obtain a Building/Zoning Permit before beginning work, it is likely many of the issues experienced leading up to this variance request could have been avoided. It is clear though the property owner simply desires to improve the living conditions of the existing home to make it a viable property for habitation, which is something the City would encourage in any area of town.

Regarding **Criterion F**, whether the property owners' predicament feasibly can be obviated through some method other than a variance: Given the unsalvageable condition of the existing dwelling's concrete block walls, the only logical option left is to reconstruct. Should the BZA deny the variance requests, this would force the property owner to demolish the rest of the building (inclusive of the foundation) and reconstruct in a manner that would conform to required zoning setbacks, resulting in an oddly-shaped structure that would not be reminiscent of the rest of the neighborhood.

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. Normally, a sufficient setback from a public right-of-way would be advisable, including in the case of alley right-of-way. However, given the unimproved condition of the existing public alley to the south of the property and the limited number of properties it currently serves (there is one accessory building at 103 West Central which accesses the alley), its safety implications are much more limited.

Regarding **Criterion H**, any other relevant factor: The BZA may consider other relevant factors expressed by the applicant in his letter to the Board.

SUBMITTED BY:



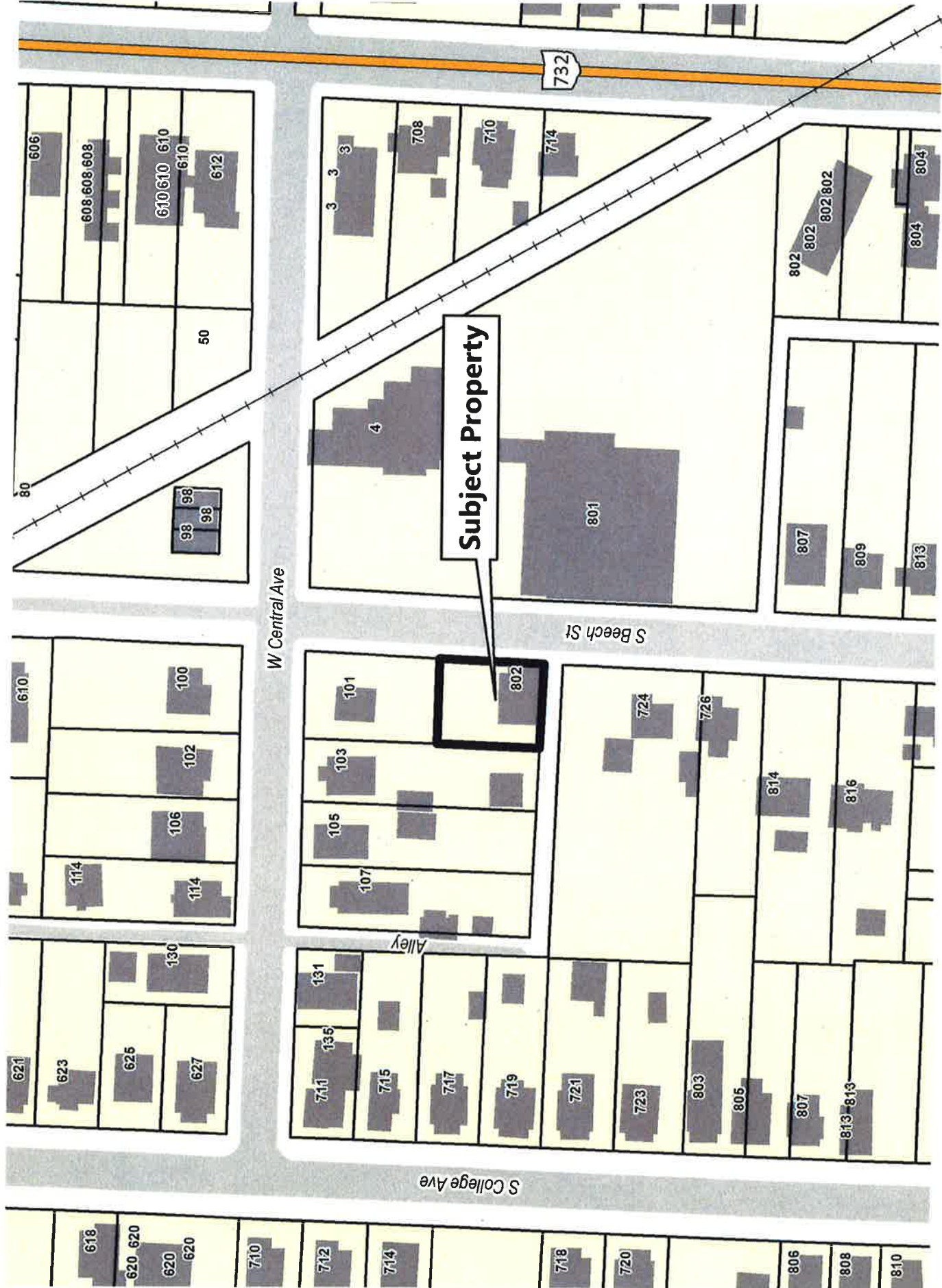
Zachary Moore, AICP
Planner, Community Development Department

DATE: November 1, 2019

Location Map

 Site Parcel(s)

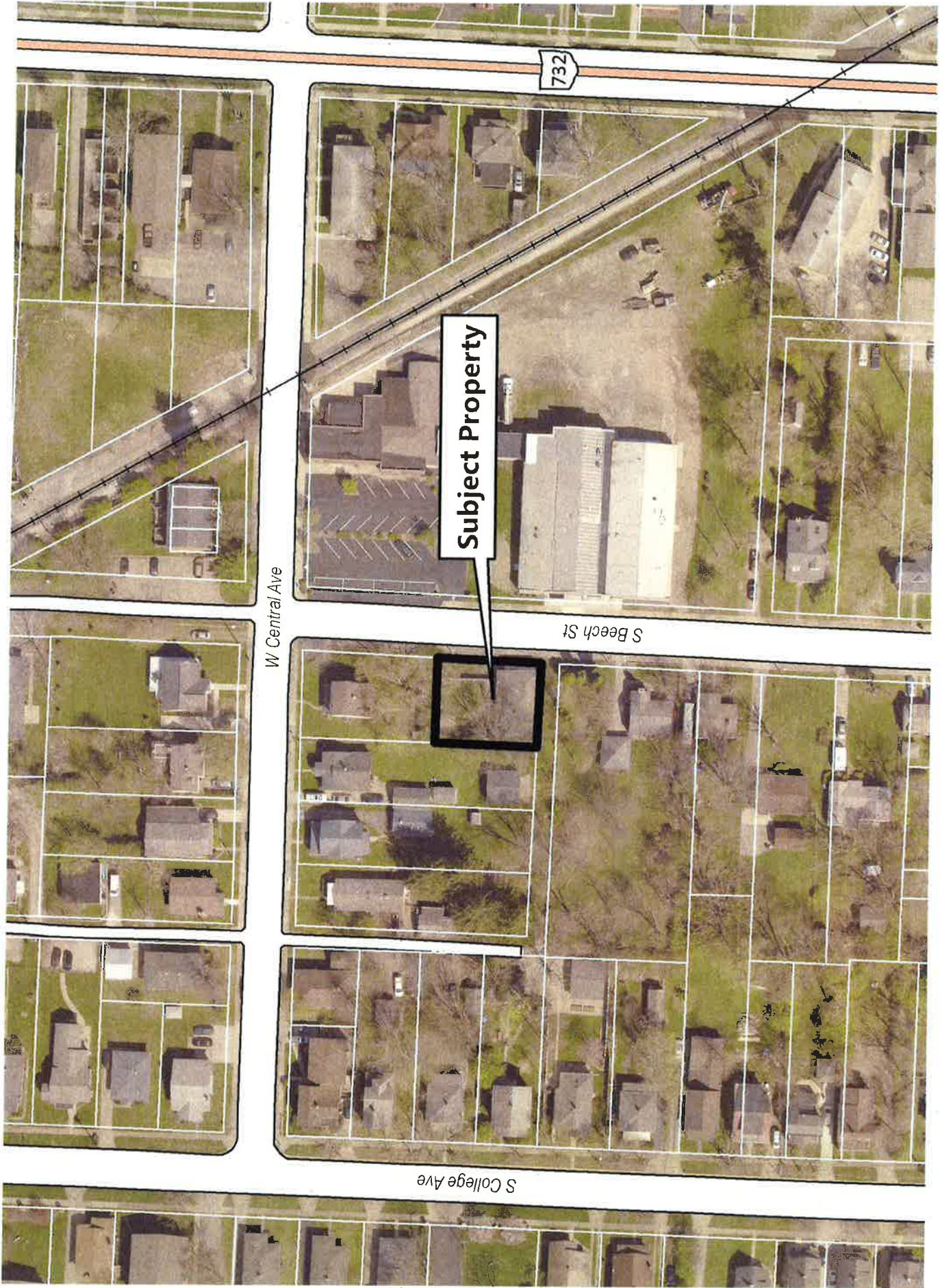
0 50 100 200 Feet



Location Map



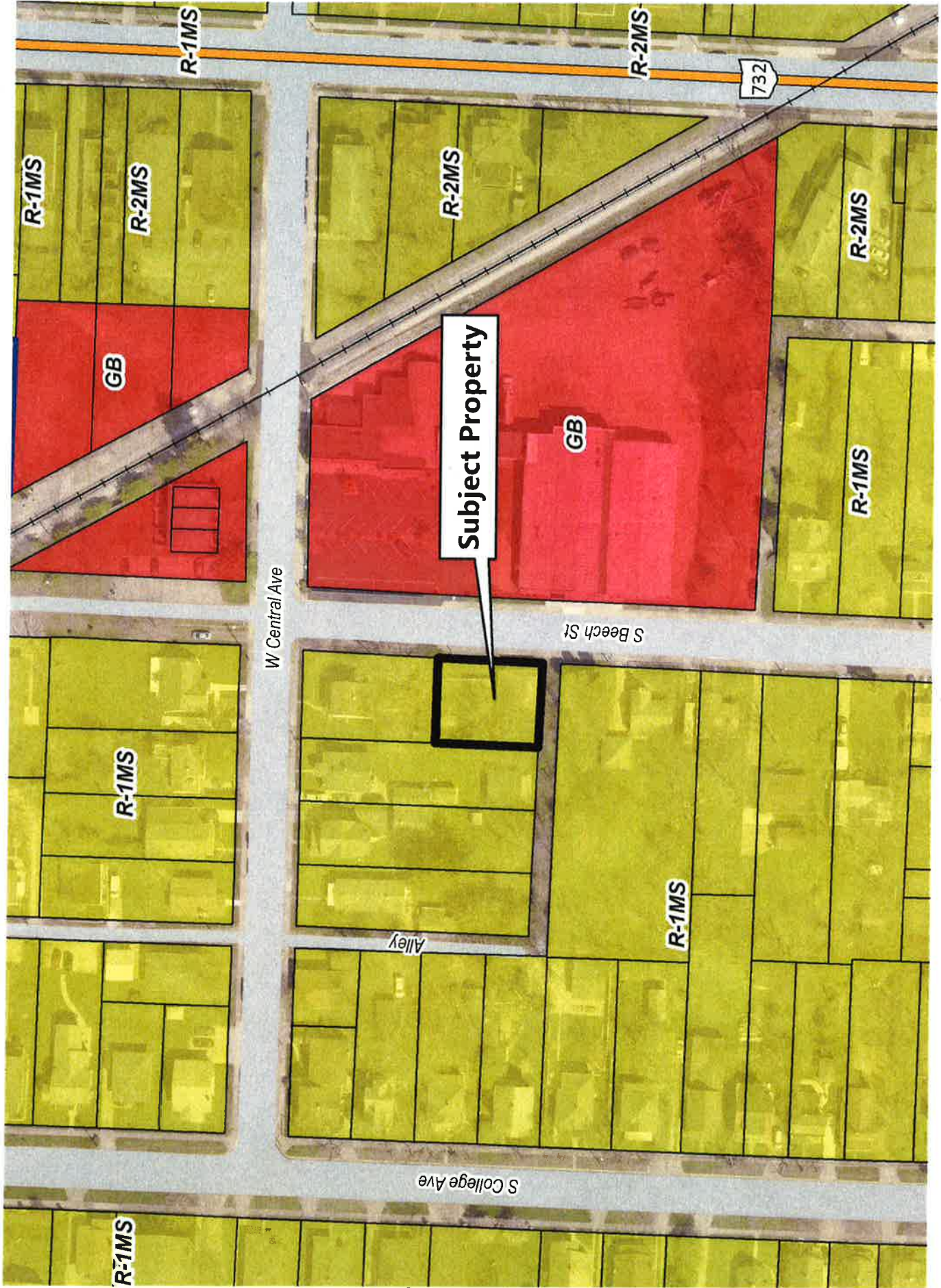
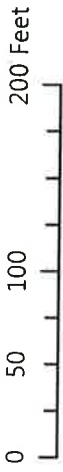
Site Parcel(s)



Location Map



Site Parcel(s)



✓

City of Oxford
Inter-Office Review Transmittal Sheet

Date: October 29, 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-13, 802 S Beech Street, Variance to Section 1143.03(c) front, side and rear setbacks requirements for the reconstruction of an existing single family structure in the R1MS District, **Scott Webb, Appellant**

 X Review Revisions Other

Please return no later than: **November 6, 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:


John Detken
PRINTED NAME

Date: 10-31-19

City of Oxford
Inter-Office Review Transmittal Sheet

Date: October 29, 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-13, 802 S Beech Street, Variance to Section 1143.03(c) front, side and rear setbacks requirements for the reconstruction of an existing single family structure in the R1MS District, Scott Webb, Appellant

 X Review Revisions Other

Please return no later than: **November 6, 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: Scott Otto Date: 11/1/19

Scott Otto
PRINTED NAME

City of Oxford
Inter-Office Review Transmittal Sheet

Date: October 29, 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-13, 802 S Beech Street, Variance to Section 1143.03(c) front, side and rear setbacks requirements for the reconstruction of an existing single family structure in the R1MS District, **Scott Webb, Appellant**

 X Review Revisions Other

Please return no later than: **November 6, 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: _____

Date: 10-29-2019

G. Allen Wilson
PRINTED NAME

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.

LETTER OF AGENCY

To Whom It May Concern:

Please be advised that Scott Webb, Architect has permission to represent our interest with the City of Oxford's Board of Zoning Appeals regarding the proposed reconstruction of property at 802 South Beech Street.

Thank you,

Signed:
Zach Shane



10/21/19
Date:



Internal Use Only:

Case No.

BZA-2019-13

Date Filed

10/21/19

Petition for Zoning Variance

Petitioner Information

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

Name *

Scott Webb, Architect

Mailing Address *

103 West Walnut Street

City, State & Zip Code *

Oxford, Ohio 45056

Telephone Number(s) *

523-3838

Email Address

scott@scottwebbarchitect.com

Owner Information

Name *

Zach & John Shane

Mailing Address *

851 Foster Ave.

City, State & Zip Code *

Hamilton, Ohio 45015

Telephone Number(s) *

740-644-2139

Email Address

shaneza@miamioh.edu

Variance and Lot Information

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

1143.03(c) variance to Front, Side, & Rear Yard Setback requirements for the reconstruction of an existing single family structure in the R-1MS district

Location of Requested Variance *

802 South Beech Street

Name of Building

Legal Description *

H4100105000074

Zoning District *

R-1MS

Total Acreage *

.125

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.

Single family

- 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.

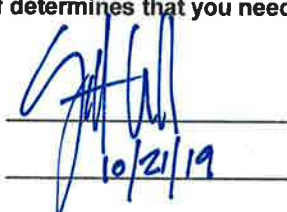
Fees & Receipt

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>

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 Minimum Rear Yard Setback
Proposed Addition & Remodeling
802 South Beech Street

October 21, 2019

Board Members

Please accept this letter as a formal petition for a Board of Zoning Appeals review hearing for a variance to the Site Development Regulations describing setback requirements in the R-1MS Zoning District.

The proposal at hand is to allow the reconstruction of an existing home on the existing foundation.

Construction began as an interior remodel in the existing residence after it was purchased by my clients. Stripping the interior plaster/gyp it was determined that the roof had suffered extensive water damage and needed to be replaced. At the time, a compromise was reached with Zach Moore, City Planner to allow construction to continue, but if the roof were to be replaced entirely, the new construction should comply with the Mile Square design guidelines regarding roof pitch. Drawings were modified accordingly and construction continued.

Further removal of damaged plaster and gypsum revealed more damage. The original house was constructed of unreinforced concrete block, which once uncovered, revealed extensive water damage and decay. The owner's decision to replace these existing failing exterior walls has pushed the project beyond the limits of remodeling and repair in the eyes of the Planning Department, now considering it a tear down and reconstruction. As such, current Zoning Regulations would apply to the reconstruction.

1143.03(c) Requires a minimum 20' Front Yard Setback for a Single- Family dwelling

The proposal at hand provides for the reconstruction of the home on the existing foundation, approximately 9" from the front property line.

Requires a minimum 35' Rear Yard Setback for a Single- Family dwelling

The proposal at hand provides for the reconstruction of the home on the existing foundation, approximately 21'-5" from the rear property line.

Requires a minimum 7'-6" Side Yard Setback for a Single- Family dwelling

The proposal at hand provides for the reconstruction of the home on the existing foundation, with no setback from the south property line with 49'-6" from the north property line.

The practical difficulty presented in this application was created by the owner's attempt to remodel and improve their recently purchased property as described above. They were within their rights as property owners to remodel the home in its current location. It was not until after the construction began that the extent of damage was realized and needed to be corrected.

All other site development regulations are met or exceeded including side yard setbacks and overall lot coverage restrictions.

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;*

It was discovered through the construction that the existing single family home had substantially more structural damage than was anticipated, leaving the home uninhabitable without more drastic reconstruction. The existing foundation will remain.

The shape and size of the lot predates the zoning code, and is severely limited in its buildable area within existing setback requirements.

- b) *Whether the variance is substantial;*

The variances are mathematically substantial. However, were structural problems not encountered, the structure may have remained in its current location indefinitely.

- c) *Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance*

The essential character of the neighborhood would not be substantially altered, as the request at hand is to simply rebuild an existing single family home.

- 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 property was purchased with the intent of remodeling it in its current location. Damage discovered during construction resulted in the need for zoning variances..

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

The owner has suffered the burden of finding more work to be done than anticipated. Throughout this process he has paid for drawings, permits, and revisions as more damage was discovered and more components needing replaced. At his point, the owner would like to at least build the house back on its current foundation.

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

The spirit of the Zoning Code is observed, allowing improvements and reinvestment in the neighborhood. Variances were required only after the extent of the damage was discovered.

h) Any other relevant factor;

The Zoning Code should allow flexibility in a situation such as this one, where changes are discovered after permits are issued and more extensive reconstruction is required once discovered. In his attempt to repair this existing home, my client has suffered not only the discovery of additional required structural work, but also a halt to construction and the possibility that his remodeling project may now be completely denied by his attempt to do a better job on the remodeling..

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

Respectfully,

A handwritten signature in black ink, appearing to read 'Scott Webb', written in a cursive style.

Scott Webb, Architect

**LARGE PRINTS ARE AVAILABLE FOR REVIEW IN THE COMMUNITY
DEVELOPMENT DEPARTMENT DURING NORMAL BUSINESS HOURS**

SCOPE OF WORK

RECONSTRUCTION OF AN EXISTING SINGLE FAMILY RESIDENCE. BEGIN AS A REMODELING; EXTENSIVE UNFORESEEN DAMAGE WAS DISCOVERED REQUIRING MORE RECONSTRUCTION THAN WAS ANTICIPATED.

ZONING

(RMS ZONING DISTRICT)

OVERALL LOT AREA: (6000 SF MIN) 5478 SF
OVERALL LOT WIDTH: (60' MIN) 83.0'

SETBACKS: VARIANCES REQUIRED

FRONT = MIN. 20'-0" (EXISTING 0'-9" - NO CHANGE)
REAR = MIN. 35'-0" (EXISTING 21'-5" - NO CHANGE)
SIDE = MIN. 7'-6" (EXISTING 0' - NO CHANGE)

MAX BUILDING HEIGHT: 35'-0" (3) STORIES

LOT COVERAGE

EXISTING RESIDENCE: 1212 SF
EXISTING & NEW SIDEWALKS: 65 SF
NEW DRIVEWAY: 362 SF
TOTAL: 1639 SF

ACTUAL LOT COVERAGE:

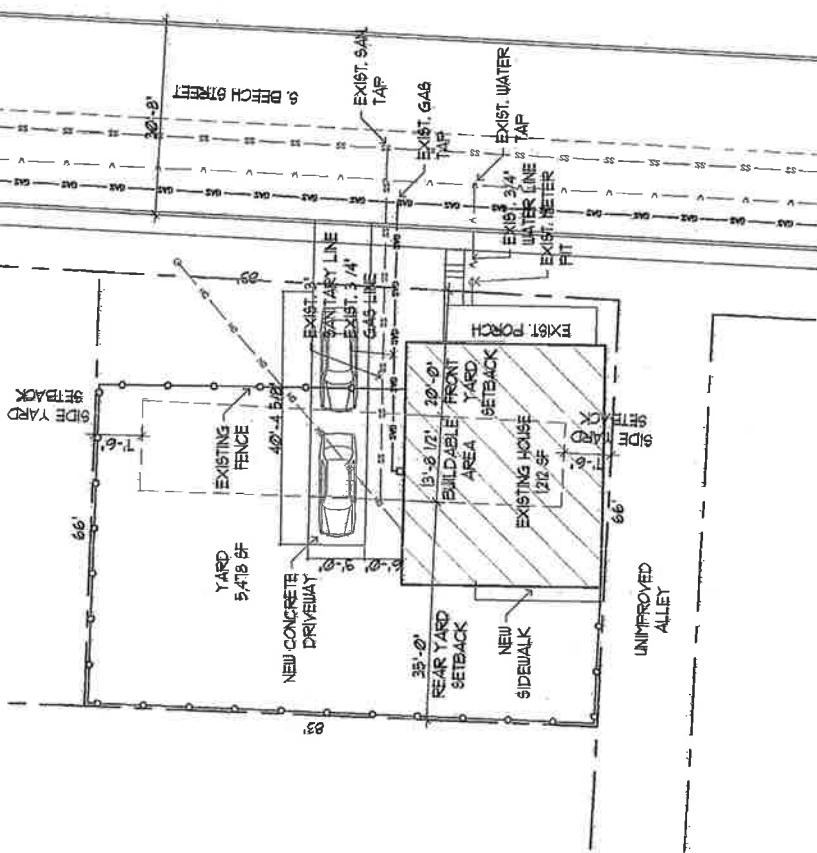
ALLOW. LOT COVERAGE: 1211 SF / 5478 SF = 23.9%

ACTUAL FRONT YARD:

ALLOW. FRONT YARD: 136 SF / 1660 SF = 44.3%

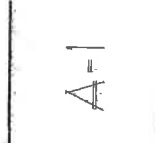
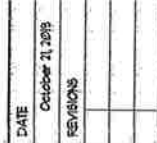
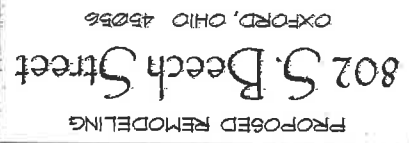
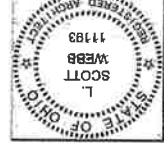
RMS = 45%

RMS = 30%



SITE PLAN

1" = 20'0"



City of Oxford
Community Development Department
STAFF REPORT

Board of Zoning Appeals

Case # BZA-2019-12

November 20, 2019

APPLICATION

Applicant:	Scott Webb, Architect
Location:	100 West Church Street
Owner:	Clawson & Clawson Rentals
 Action Request:	 Variance to Section 1137.04(b)(5)(A) – Occupancy Reduction
Current Use:	Four-Family Dwelling
Zoning:	RO Office Residential District
Surrounding Land Uses:	Utility Building; Office; Residential

DESCRIPTION

Serving as agent for the property owner, Architect Scott Webb is requesting relief from the occupancy reduction requirement of the Nonconformities Chapter (1137) of the Zoning Code. The existing four-family dwelling at 100 West Church Street is a grandfathered legal nonconforming use, since only one- and two-family dwellings are permitted by-right in the RO district. The owner would like to reconfigure the four units within the existing building to each have two single-occupancy bedrooms instead of one double-occupancy bedroom. Staff has determined the intended project constitutes a “reconfiguration” under Chapter 1137, thus triggering a required 30% reduction in total occupancy. The applicant requests a variance to eliminate this requirement, in order to retain the building’s current occupancy limit of 8 unrelated persons.

BACKGROUND

Oxford Zoning Code Section 1137.04(b) spells out the rules applicable to improving structures containing nonconforming uses. Section 1137.04(b)(5)(C) provides that in the case of reconfigurations, *any structure that has more occupancy than permitted in the underlying zoning district shall have its occupancy reduced by at least 30% from the approved rental occupancy, or the allowable occupancy permitted in the underlying zoning district, whichever is larger.* Section 1159.19(1) defines “reconfiguration” as *interior or exterior modification to change the layout of a building or to make substantial/structural repair or alteration.* The project in question constitutes a reconfiguration because the owner wishes to change the layout of each unit to provide for an extra bedroom.

Each of the building’s four units currently has a rental permit restriction of no more than 2 unrelated persons, thus resulting in a maximum total building occupancy of 8 unrelated persons. The Code requires *at least* a 30% reduction in occupancy (with fractions of 0.5 or more rounded up to the next whole number), thus without variance approval the owner would need to reduce the total occupancy from 8 to 6, which would defeat the purpose of the proposed improvement project. The proposal is to reconfigure walls within each unit to reserve a little more than half of the existing kitchen space and a smaller portion of the existing living room space as a new single-occupancy bedroom, while reducing the occupancy of the existing bedroom from 2 down to 1. If the variance is approved, the overall occupancy makeup within the structure would remain the same as it is today – max of 2 per unit, and max of 8 for the building.

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 an elimination of the occupancy reduction requirement for a reconfiguration.

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 with comments
Police	Not returned
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. Webb. 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 currently supports a four-family dwelling and could continue to exist as a legal grandfathered nonconforming use without undergoing the proposed reconfiguration. However, the applicant's argument concerning the shift in desire toward single bedrooms (rather than shared bedrooms) in the rental market is a noteworthy one.

Regarding **Criterion B, whether the variance is substantial**: The variance requested is not substantial, seeing as how the number of occupants that would result from granting the variance is the same as current conditions, and is also the same if occupancy were maximized as a two-family dwelling (2 units x 4 unrelated persons per unit = 8 persons).

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**: The external effects of the property, in use as a four-family dwelling, would be unchanged. The proposed work is confined to the interior of the structure.

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. Most City Departments that returned the application did so with no comments. The Fire Chief returned a comment that "the zoning code seems clear as it relates to this situation," which seems to suggest

supporting denial of the variance and letting the code provision stand, though in a separate email the Chief confirmed he did not see any issues related to health or safety.

Regarding **Criterion E**, **whether the property owner purchased the property with knowledge of the zoning restriction**: According to the Butler County Auditor, the property was transferred to the current owner in July 2005. The code section in question as currently written was adopted into the Zoning Code by City Council (by Ord. No. 3206) on March 19, 2013. A previous version of these provisions, adopted on October 16, 2007, had allowed reconstructions/restorations/repairs to be done to less than 25% of the total gross floor area of a nonconforming building without reducing occupancy, but those projects exceeding 25% were required to reduce occupancy by at least 20%.

Regarding **Criterion F**, **whether the property owners' predicament feasibly can be obviated through some method other than a variance**: As the applicant expresses in their application, the variance could be avoided by combining 2 dwelling units on each floor into 1 dwelling unit, thus converting a nonconforming four-family dwelling into a conforming two-family dwelling. This would result in duplicate utilities and kitchens for each unit, and the applicant argues that the resulting expense outweighs the return.

Regarding **Criterion G**, **whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance**: The section of the Zoning Code pertinent to this request was adopted in 2013 with the purpose of breaking down barriers to redevelopment of nonconforming buildings/uses. According to comments submitted at that time, the large-scale rezoning of the city in 2003 resulted in a number of conforming uses becoming nonconforming. The Code in between 2007 and 2013 significantly restricted the amount of renovations/improvements that could take place for nonconforming uses/buildings, so additional latitude was written into the Code to allow improvements without increasing use intensity (and in some cases, decreasing the intensity). Staff surmises that the discussion at the time of revising the language could have revolved around nonconforming uses comprising total occupancies above and beyond the maximum possible under permitted conditions (for example, lodging houses and multi-unit apartment buildings with larger occupancy figures, rather than a nonconforming use that just so happens to "conform" to the district's maximum possible occupancy of 8 persons). It is ironic that the changes proposed to this structure *would* have met the provisions of the previous language (by impacting approximately 15% of the total floor area, which is less than the previous 25% threshold), but do not meet the present provisions due to it being a "reconfiguration." For these reasons, staff believes the intended project meets the overall spirit and intent of the adopted code provisions relevant to this case, in allowing an existing nonconforming use to continue and make improvements in order to adapt to market conditions.

Regarding **Criterion H**, **any other relevant factor**: By granting the variance, this furthers the goal of preserving historic architecture within the Uptown Historic District by allowing a historic building to adapt to shifts in market preferences.

SUBMITTED BY:



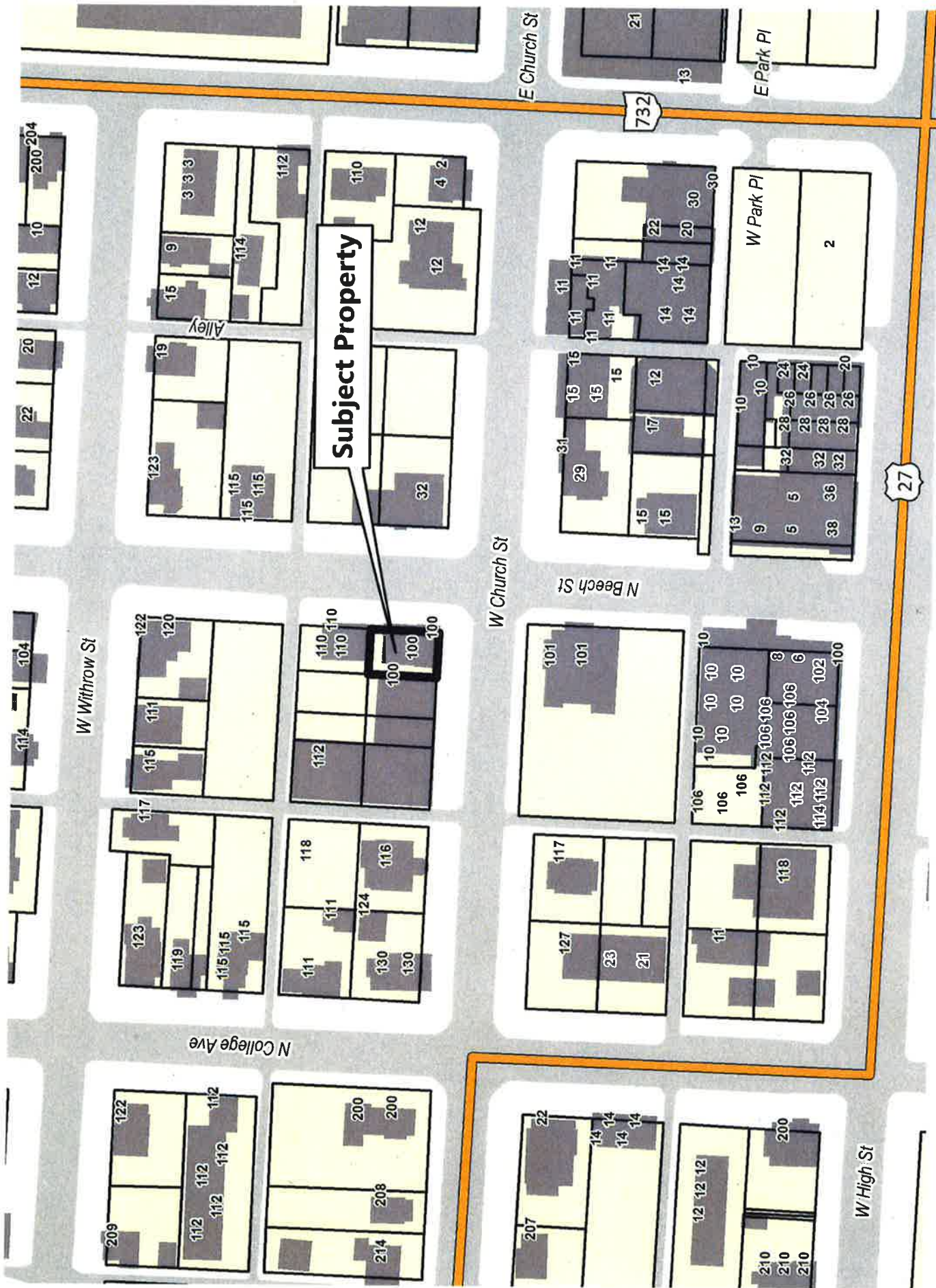
Zachary Moore, AICP
Planner, Community Development Department

DATE: November 6, 2019

Location Map

0 50 100 200 Feet

Site Parcel(s)



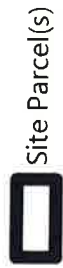
Location Map

 Site Parcel(s)

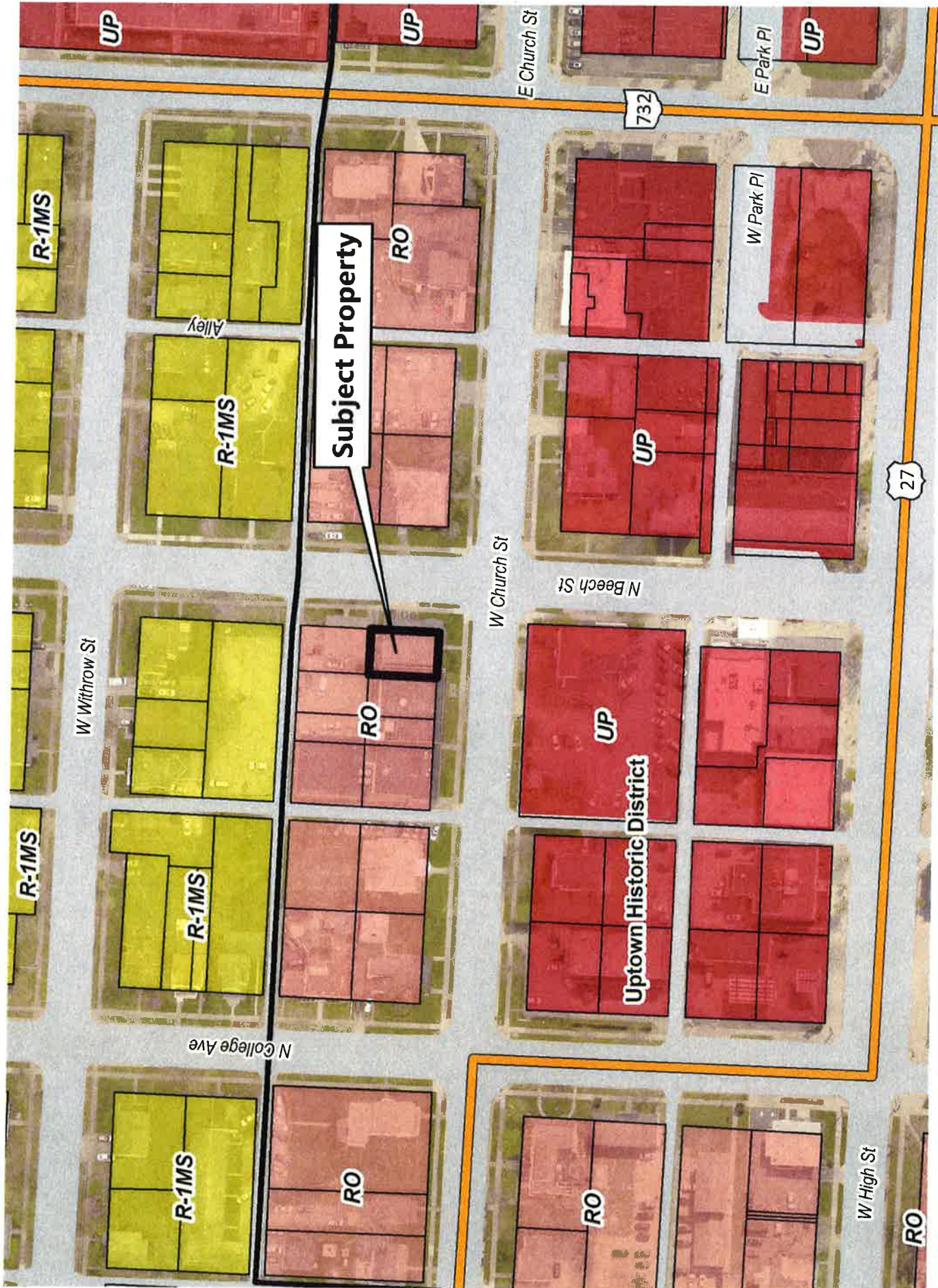
0 50 100 200 Feet



Location Map



0 50 100 200 Feet



City of Oxford
Inter-Office Review Transmittal Sheet

Date: October 29, 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-12, 100 W. Church Street, Variance to Section 1137.04(b)(5)A occupancy reduction requirement for alteration of an existing 4-family structure in the RO District, **Scott Webb, Appellant**

☒ Review ☐ Revisions ☐ Other

Please return no later than: **November 6, 2019** Note: If no comments are received, we will assume the project meets your department's standards.

Drawings are returned: w/comments without/comments

The zoning code seems clear as it relates to this situation.

Drawings reviewed by:

[Signature]
J. D. Therage
PRINTED NAME

Date: 10-30-19

City of Oxford
Inter-Office Review Transmittal Sheet

Date: October 29, 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-12, 100 W. Church Street, Variance to Section 1137.04(b)(5)A occupancy reduction requirement for alteration of an existing 4-family structure in the RO District, **Scott Webb, Appellant**

 X Review Revisions Other

Please return no later than: **November 6, 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: Scott Otto Date: 11/1/19

Scott Otto

PRINTED NAME

City of Oxford
Inter-Office Review Transmittal Sheet

Date: October 29, 2019

To: Fire Department Engineering Division Police Department Econ Dev Department

From: Community Development Department

BZA-2019-12, 100 W. Church Street, Variance to Section 1137.04(b)(5)A occupancy reduction requirement for alteration of an existing 4-family structure in the RO District, **Scott Webb, Appellant**

 X Review Revisions Other

Please return no later than: **November 6, 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: _____

Date: 10-29-2019

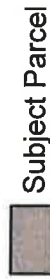
G. Allen Brown
PRINTED NAME



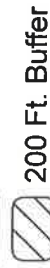
BZA-2019-12

Surrounding Property Owners Map

Legend



Subject Parcel



200 Ft. Buffer



Oxford Corporation Limit

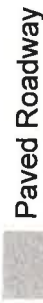


Parcel

Vacated Right-of-Way



Building Footprint



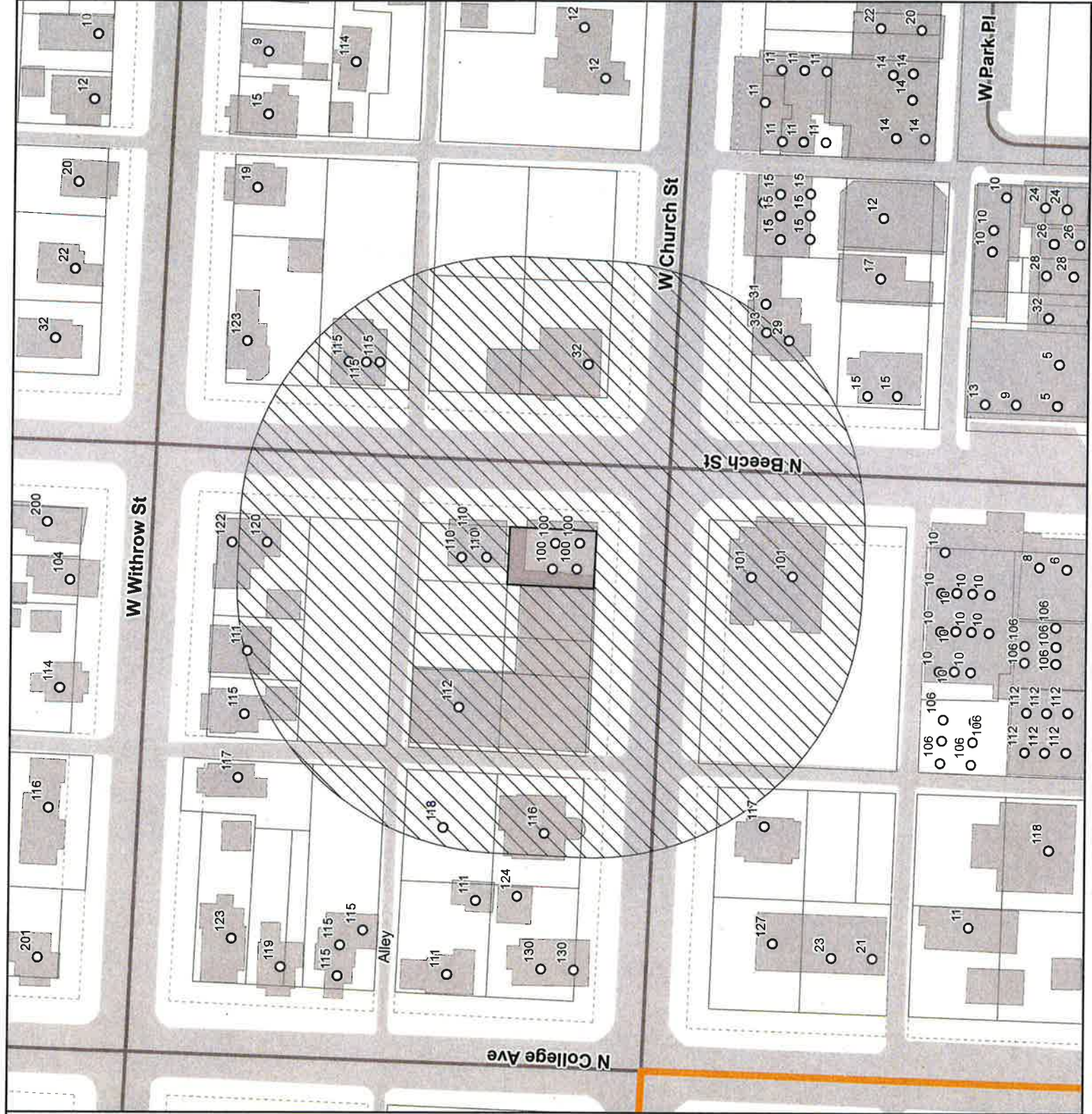
Paved Roadway



1 inch = 100 feet

Prepared on Monday, November 4, 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.



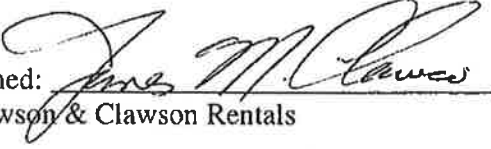
LETTER OF AGENCY

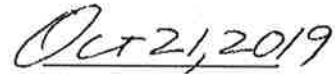
To Whom It May Concern:

Please be advised that Scott Webb, Architect has permission to represent our interest with the City of Oxford's Board of Zoning Appeals regarding the proposed interior alteration of our property at 100 West Church Street.

Thank you,

Signed:


Clawson & Clawson Rentals



Date:

**Internal Use Only:**

Case No.

BZA-2019-12

Date Filed

10/21/19

Petition for Zoning Variance

Petitioner Information

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

Name *

Scott Webb, Architect

Mailing Address *

103 West Walnut Street

City, State & Zip Code *

Oxford, Ohio 45056

Telephone Number(s) *

523-3838

Email Address

scott@scottwebbarchitect.com

Owner Information

Name *

Clawson & Clawson Rentals

Mailing Address *

125 West Spring Street

City, State & Zip Code *

Oxford, Ohio 45056

Telephone Number(s) *

524-9500

Email Address

jin@hoteldevelopment.net

Variance and Lot Information

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

1137.04(b)(5)A variance to the occupancy reduction requirement for an alteration/reconfiguration of an existing
4-family structure in the RO district

Location of Requested Variance *

100 West Church Street

Name of Building

Legal Description *

H4100008000241

Zoning District *

RO

Total Acreage *

.11

Existing Use of Site *

4-family Structure

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.

Remain a 4-family structure

- 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 *



10/21/19

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>

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: Occupancy Reduction
Existing Multi-Family Structure
100 West Church Street

October 21, 2019

Board Members

Please accept this letter as a formal petition for a Board of Zoning Appeals review hearing for a variance to the occupancy reduction requirement of 30% .

The existing historic 4-unit building is a legal nonconforming land use in the RO District. The proposal at hand is for a minor interior alteration to each apartment, adding a second bedroom to each 1-bedroom unit. No increase in occupancy is proposed and the interior alteration does not create any new nonconformity. Such improvement is however considered a reconfiguration and as such, requires a 30% reduction in occupancy or a reconfiguration of the building from a 4-unit to a 2-family structure.

1137.04(b)(5)A. Requires an occupancy reduction of 30% when a building is reconfigured or expanded.

This existing historic building has been a 4-unit building for decades. As shown on the attached drawings, the building has (4) nearly identical apartments accessed from a shared entry and is provided with (2) separate stairs for egress.

Each apartment has an occupancy of (2) persons for a total of (8) occupants. (8) occupants are allowed in a structure in the RO District, though only in a 2-family structure.

The following responses address 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 existing building has been a student rental for many years with an occupancy of (8). Changes in the rental market where students are no longer interested in sharing bedrooms, has resulted in a reduction of the return and beneficial use of the property as it was designed. The proposal at hand is based on an attempt to restore this property to its previous returns

b) *Whether the variance is substantial;*

The variance is not substantial, as no change in occupancy is included in this proposal.

c) *Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance*

The essential character of the neighborhood would be not be altered by maintaining this existing historic structure.

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

No change to the delivery of utilities & government services would be required.

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

The property was purchased many years ago, and has been made non-conforming based on changes in the Zoning Code over the years.

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

While it may be possible to combine the two apartments on each floor into single units, the resulting expense and duplicate kitchens and utilities far outweighs the return. The minor alteration required to improve and maintain this historic 4-family better respects the original structure.

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 with regard to non-conforming properties is to reduce overcrowded student rentals and lodging houses. The project at hand is neither. The intent of the RO district is to provide for a transition zone between the Uptown Zoning and the residential zoning of the Mile Square. The proposal at hand keeps the occupancy at a level that is allowed in this district.

h) *Any other relevant factor;*

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

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

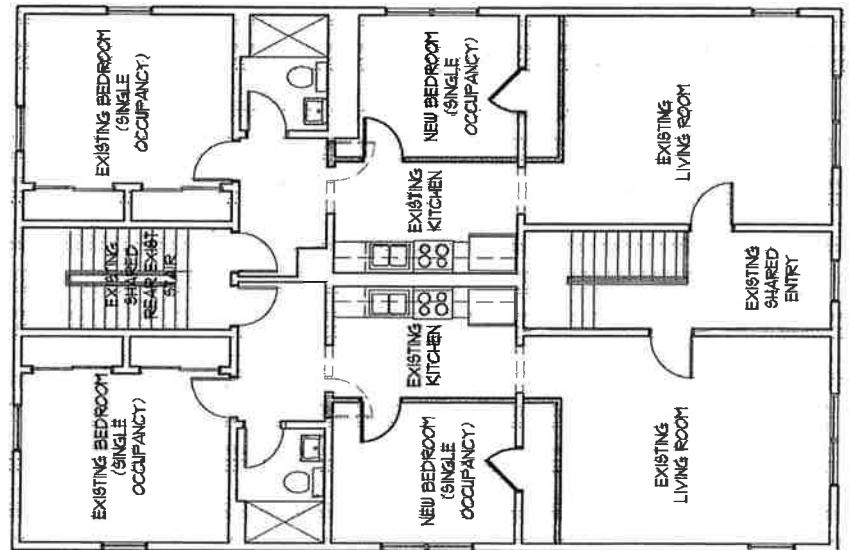
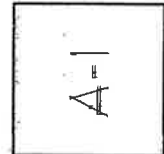
Respectfully,

A handwritten signature in black ink, appearing to read 'Scott Webb', written over a light blue horizontal line.

Scott Webb, Architect



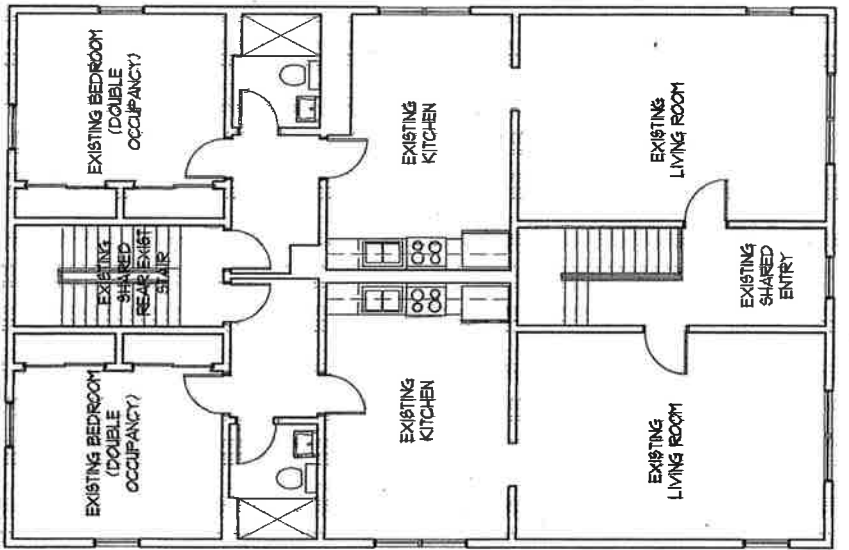
DATE	September 16, 2016
REVISIONS	



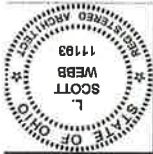
NEW FLOOR PLAN 1/8" = 1'-0"
SECOND FLOOR SHOWN (GROUND FLOOR IDENTICAL)

ZONING CODE REVIEW

RO ZONING DISTRICT
EXISTING HISTORIC 4-UNIT BUILDING WITH AN OCCUPANCY OF (8) IN SHARED BEDROOMS IS NON-CONFORMING BASED ON CURRENT ZONING.
PROPOSAL AT HAND IS TO CREATE (2) SINGLE OCCUPANCY BEDROOMS IN EACH APARTMENT - NO CHANGE IN OVERALL OCCUPANCY



EXISTING FLOOR PLAN 1/8" = 1'-0"
SECOND FLOOR SHOWN (GROUND FLOOR IDENTICAL)



SCOTT WEBB ARCHITECT
100 West Walnut Street
Oxford, Ohio 45056
P 513 325-5826
www.scottwebbarchitect.com

100 West Church
OXFORD, OHIO 45056
PROPOSED MINOR ALTERATION

DATE	September 16, 2013
REVISIONS	

A-2



SITE/LOCATION PLAN
ALL WORK INSIDE EXISTING BUILDING