



BOARD OF APPEALS BUILDING/HOUSING AGENDA:

May 3, 2023
Oxford Courthouse
118 West High Street
Oxford, Ohio
5:30 pm

Members: Dan Haizman, Paul Allen, Randy Eaton, David DeWitt, Timothy Meloy

Staff: Sam Perry, Rebecca Kolb, Derick Snodderly

Alternates: John Detherage, Fire Chief, Scott Otto, City Engineer

Approval of Agenda

Approval of Minutes from February 22, 2023 1

Old Business

New Business

Appeal of Code Enforcement Officer Decision, 204 North Main, 204 N Main 3
LLC, Jeff Savage, Owner

Adjournment

BUILDING/HOUSING BOARD OF APPEALS (BBOA)
MEETING MINUTES
WEDNESDAY, February 22, 2023
6:30 P.M.

I: Call to Order

The meeting was called to order by Dan Haizman, Chair at 6:30 pm.

Those members present: Paul Allen, David DeWitt, Randy Eaton, Dan Haizman, John Detherage and Scott Otto

Those members excused: Timothy Meloy

Staff members present: Sam Perry, Derick Snodderly, Ben Mazar and Rebecca Kolb

II: Approval of Agenda

Mr. Allen made a motion to approve the agenda as presented. Mr. DeWitt seconded the motion. All were in favor.

III: Approval of Minutes

Motion was made by Mr. Allen to approve the minutes of the February 8, 2012 meeting as written. The motion was seconded by Mr. DeWitt. All were in favor.

Mr. Allen made a motion to approve the minutes of the April 5, 2022 work session as written. Mr. Eaton seconded this motion. All were in favor.

Mr. Allen made a motion to approve the minutes of the April 20, 2022 meeting as written. The motion was seconded by Mr. DeWitt. All were in favor.

IV: Old Business

There was none.

V. New Business – 5252 College Corner Pike, Unit 1, Appeal

Mr. Perry was sworn in by Mr. Haizman and provided a brief permit history and overview of the property with a slide presentation. PMC 404.4.2 under appeal, deals with privacy of the occupants as well as safety. Staff believes that the privacy concerns have been met, but that the fire safety of the occupants is compromised. Mr. Perry answered questions from board members.

Ms. Donna Gross of Oxford Real Estate, Agent for JRJ Co. was sworn in by Mr. Haizman and provided an overview of the property from the owner and agent records. She indicated that Mr. Snodderly had provided four remedies to the current problem. The owner finds all of the remedies to be disruptive and burdensome for the current tenant. She stated that the room in question has always been used as a bedroom. Ms. Gross answered questions from the board members.

Mr. Haizman asked for Chief Detherage to join the discussion. After being sworn in, he indicated that he had been in the unit under discussion on several occasions. He indicated that fire department personnel are trained in the dark and smoke. It would be unexpected to encounter this room configuration, which would complicate a fire response. The size of the windows would not accommodate most fire department personnel with air packs to enter or exit the windows, but would most likely not hinder an occupant from exiting.

Ms. Gross returned to the podium to restate the position of the owner and to ask for a temporary solution to accommodate the current long tenured tenant. She answered additional questions from board members.

Mr. Snodderly was sworn in by Mr. Haizman and reviewed the configuration of the unit. Mr. Allen asked what Mr. Snodderly would do to remedy the situation. He referred to his violation letter dated January 18, 2023 and restated options 1, 2 and 3. He clarified that this is the only unit that has this floorplan configuration.

Ms. Gross asked if the owner relabels the bedroom as an office or study for this tenant and this tenant vacates the unit and the owner alters the unit to bring it into compliance, do the windows need to be brought into compliance as well. Mr. Perry responded that the existing windows would be acceptable.

Mr. DeWitt asked Mr. Snodderly what an acceptable time line for compliance would be. Mr. Snodderly responded that if the floor plan is relabeled as a non-bedroom, if at the time of the next inspection in approximately a year and a half it is found that the room is being used as a bedroom, immediate compliance will be needed.

Ms. Gross restated the financial difficulties and disruption a denial would potentially cause the current tenant.

Mr. DeWitt made a motion to close discussion. Motion was seconded by Mr. Allen. All were in favor.

Mr. Mazar advised the board of the correct wording for a motion and to include specificity for the fire safety and egress, regardless of the appeal being approved or denied.

Mr. Allen made a motion to deny the appeal due to fire and safety considerations and tasked the code enforcement officer to work with the owner and/or agent to find a solution acceptable to all parties. Mr. DeWitt seconded the motion. All members voted in favor.

VI: Adjournment

There being no other business before the Board, Mr. DeWitt made a motion to adjourn the meeting. Motion was seconded made Mr. Allen. All were in favor. The meeting adjourned at 7:25 pm.



MEMORANDUM
Community Development Department
513-524-5204

TO: Building/Housing Board of Appeals

FROM: Sam Perry, AICP
Director

DATE: April 28, 2023

MEETING DATE: May 3, 2023

RE: **Appeal Hearing Recommendation, 204 North Main Street**

Background

Property owner Jeff Savage represents himself (204 North Main LLC) in this appeal request, submitted by letter and payment on April 13, 2023. Updated floor plan, previous rental certificate and interior photographs were submitted on April 26, 2023. Plum Tree Realty (Red Brick Property Management) is the local property manager that handles the tenant leases. As noted in the letter dated April 12, 2023, Mr. Savage appeals the decision of Code Enforcement Officer Derick Snodderly regarding a code violation in a letter dated March 23, 2023. The code violation being appealed is the ceiling height requirement associated with the basement being used as a sleeping area on the day of the inspection. Mr. Savage does not appeal the other code violations listed in the March 23 letter.

History

204 North Main Street is a 1.5 story, framed bungalow with a basement. The house was built in 1929 according to the Butler County Auditor. The City has records of residential rental usage starting in 1996. In 2001 a housing agreement between the City and Ned Hoelzer was signed and recorded in Butler County Book 6609, Page 418. In 2020 the property transferred from Tres Walnut LLC (Hoelzer/Park Place Real Estate) to the current owner.

Narrative

As part of a routine biennial inspection on March 21, 2023, Mr. Snodderly noted code violations existing on the property. The attached letter dated March 23, 2023 listed the code violations. The

previous inspection on January 5, 2021 was conducted by Doug Paulick, an employee of National Inspection Corporation, the City's contracted agency at the time.

One of the items noted in the March 23 letter, was the code requirement for minimum ceiling height of seven (7) feet. Per 404.3, habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a minimum clear ceiling height of 7 feet. It was noted that sleeping was occurring in the basement, which is prohibited due to inadequate ceiling height. The corrective action ordered in the letter was "no sleeping in the basement."

In response to Mr. Savage's five bullet points, City staff offer the following responses:

1. **Potential alterations.** City staff appreciates Mr. Savage's effort to investigate all available options to make the basement a code-compliant sleeping area, including but not limited to, increasing the ceiling height. The effort reveals that increasing the ceiling height is not achievable by adjusting the ceiling surface material.
2. **Minimal height difference.** PMC 102.6 is intended to align with Ohio Building Code exemptions for historic building modifications that are part of a building alteration permit. No such permit was applied for in this case, therefore, this statement is not applicable. As noted by Mr. Savage, it is an important fact that the building does include safety features such as alarms and egress windows.
3. **Previous Rental Certificates/Licenses/Permits.** It is true that the City previously issued rental certificates for this property. However, those certificates were based on inspections. There is no documentation that sleeping in the basement was approved. In fact, as noted in the public record, the 2001 Housing Agreement states the opposite: "no sleeping in the basement." The estoppel statement regarding the Day court case is invalid and not applicable because the Day case was based on zoning/land uses of previous approvals. The issue of appeal for this case is Property Maintenance Code, not Zoning Code.
4. **Nonconforming structures.** Code 1137.06 refers to Oxford Zoning Code requirements such as exterior conditions of buildings built before Zoning Codes, such as: setback, height and lot coverage. Therefore, this code is not applicable to interior Property Maintenance Code requirements such as interior ceiling height.
5. **Updated floor plan.** The section of the building that is being discussed is the basement. Other than the room labels, the floor plan on file with the City shows the same basement layout as the updated floor plan that has been submitted. The updated floor plan is computer generated and easier to read, which the City appreciates. The updated floor plan with basement rooms labeled as bedrooms cannot be approved and made part of the City record for this rental certificate, because the ceiling height is non-compliant.

Oxford PMC Section 111 allows appeals to be heard and decided, as a means of due process. Section 111 states that:

“the application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.”

If the Board decides to grant the appeal, it will need to cite for the record which, if any, of the three in Section 111, are applicable. Mr. Savage states that all three apply, but focuses on the third in his narrative.

- 1.) Incorrect interpretation
- 2.) Provisions of this code do not fully apply
- 3.) Requirements of this code are adequately satisfied by other means

If the Board does not grant the appeal, the owner/agent can appeal the decision to a court or if willing to comply with orders, will be provided a reasonable time by staff to bring the property into compliance. Staff anticipates that re-labeling the newly submitted floor plan, as “storage” for the basement rooms, will be sufficient to resolve the issue. A stipulation of “no sleeping in basement” will be added to the rental certificate by staff. Mr. Savage has already submitted a building permit application for the unpermitted alterations on the main floor, which are not subject of the appeal before this board.



Community Development Department
Property Maintenance and Zoning
Violations

March 23, 2023

Sent via email to: matt@redbrickproperty.com

Plum Tree Realty
21 N. Poplar St
Oxford, OH 45056

RE: 204 N. MAIN ST. UNITS A & B RENTAL INSPECTION

Dear Mr. Rodbro:

This letter is in regards to the rental inspection conducted at 204 N. Main St Units A & B. Listed below are the outstanding violations for each unit per the City of Oxford Property Maintenance Code:

- **Per 310.2.1, changes have been made to the floor plan without record of approval or permits.** Below are the changes noted, which will require permit records to be submitted for review; or, if there were no permits, a new permit application submitted for review and processing, is required.
 - o Approval required for first floor bedroom that was previously the covered porch at the rear of the dwelling
 - o Approval required for second floor bedroom that was previously the kitchen.**Corrective Action:** A building permit application is required to be submitted for review and processing of the changes to the floor plan not previously approved. An updated floorplan showing the changes will also need submitted to keep on file in the Community Development Department.
- **PMC 404.3 Minimum ceiling heights.** Habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a minimum clear ceiling height of 7 feet.
Corrective action: The floor plan currently on file does not show approved sleeping areas in the basement. Since the ceiling height in the basement does not meet the required minimum of 7 feet, there is to be no sleeping in the basement.
- **Parking and Site Access**
 - o Chapter 1149.03 and 1149.04 of the Oxford Zoning Code outlines the surface material and dimensional area requirements for off-street parking spaces. The front yard of this property is being used as a parking area with no record of prior

City approval. Per Chapter 1129, a new parking area requires review and approval by the City before being used.

Corrective Action: The area to the left of the front entrance that tenants are using for single car parking is not a previously approved parking area. Since it does not meet the requirements in Section 1149 of the Oxford Zoning Code, this area cannot be used for parking. To prohibit parking in this area, please remove the curb cut and replace with standard curb and tree lawn.

For any of the determinations of the Oxford Property Maintenance Code, please provide a written application for appeal within 20 days after the day the decision, notice, or order was served. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means.

Any of the determinations of the Oxford Zoning Code violations in the above letter may be appealed to the Oxford Board of Zoning Appeals per Chapter 1129.11 of the Oxford Zoning Code.

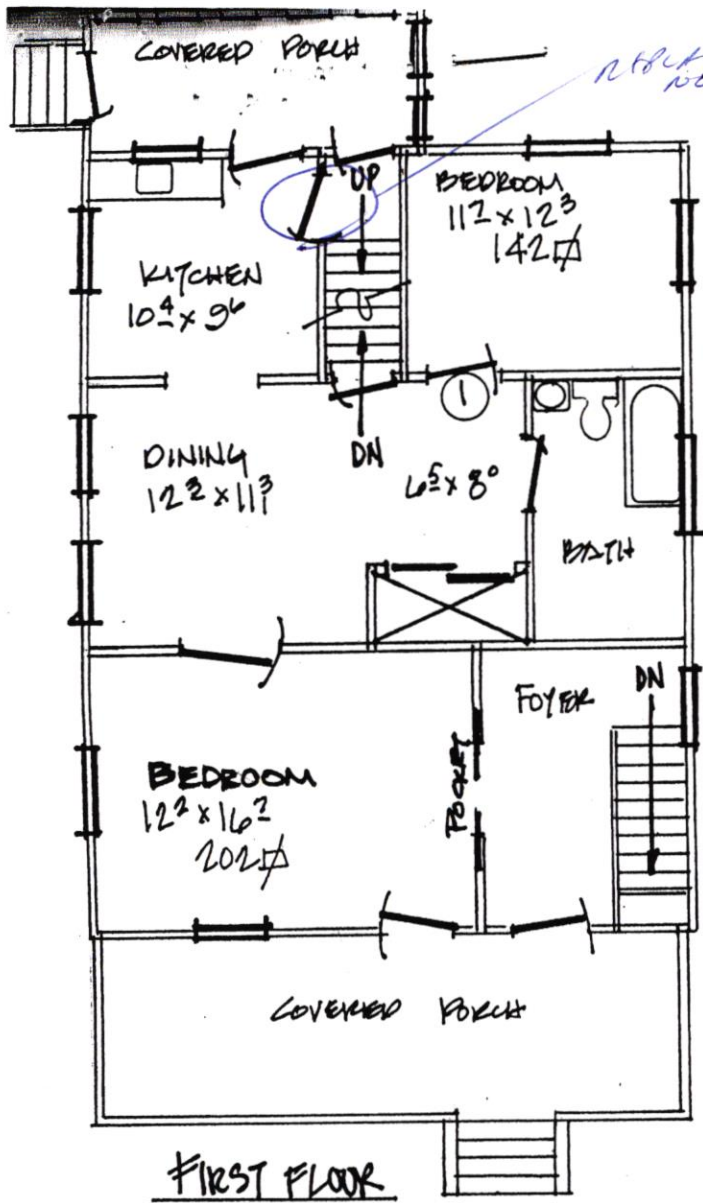
Please contact me if you have any questions or concerns.

Respectfully,

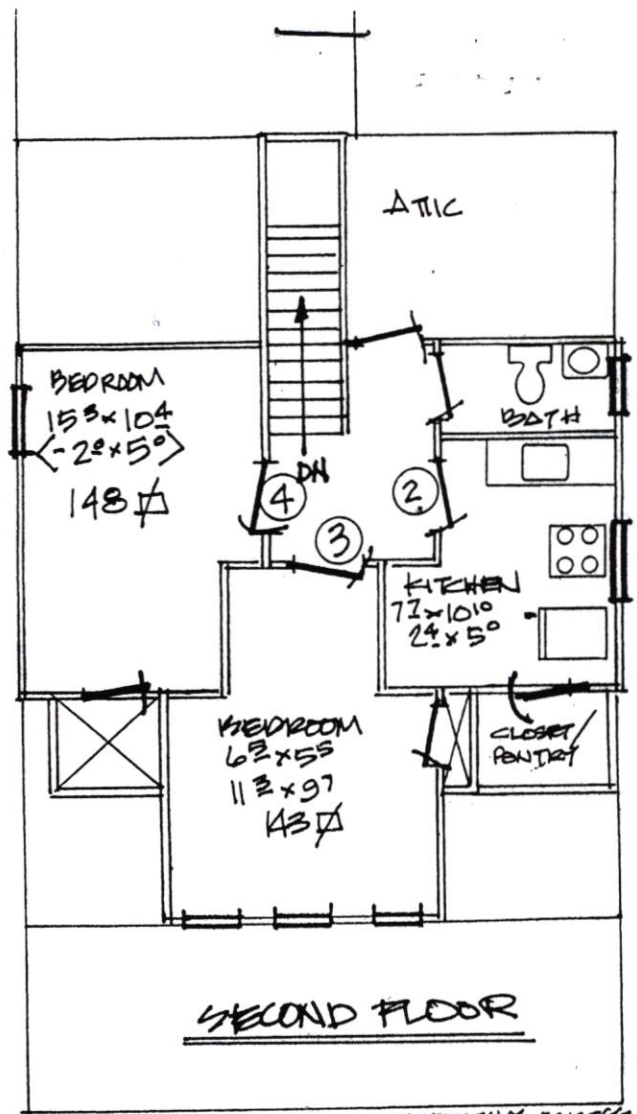


Derick Snodderly, CCEO

Code Enforcement Officer
dsnodderly@cityofoxford.org
513-524-5209



FIRST FLOOR





009

AGREEMENT

This Agreement made and concluded this 9th day of March, 2001, by and between the City of Oxford, Ohio, hereinafter referred to as "OXFORD", and Ned C. Hoelzer and Vickie Anda Hoelzer, hereinafter referred to as "OWNERS".

For and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Owners represent that they own the property located at 204 North Main Street A/B, Oxford, Ohio, 45056, hereinafter referred to as "PROPERTY" (and more particularly described in Exhibit "A" attached hereto).
2. The Property is zoned R-4B.
3. The Owners represent that the use of the Property as of the date of this Agreement is a Two-Family residence with an occupancy of no more than 4 persons per unit for a total of 8 persons.
4. Owners agree to reclassification of the Property as a Two-Family residence with a maximum occupancy of 4 persons per unit for a total of 8 persons, with pre-existing common interior access for shared usage - i.e.: no fire separation and no sleeping in the basement. This Agreement is alienable as such by Owners and their successors in interest. It is further understood and agreed that in the event of catastrophic loss or destruction, said Property may be rebuilt in accordance with §1133.05 of the Oxford Zoning Code.
5. The Owners and City agree to this classification to resolve a disputed claim. Both parties further acknowledge that this Agreement shall not be used against the other in this legal proceeding as neither party admits any of the allegations raised, but specifically denies the same, Oxford agrees to dismiss Owners from the suit.
6. Owners shall permit Oxford's Housing Inspector, during regular business hours and with reasonable notice to the Owners, to inspect the Property. If a citation is issued for violation of any Housing Regulations, Owners shall correct such violations within thirty (30) days after date of Owners' receipt of such citation.
7. Owners agree to comply with all local, state and federal regulations concerning the use of the Property.
8. Owners hereby release Oxford from any action or cause of action related to the use of the Property or related to the enforcement of any codes regulating the Property, and from any derivative claims arising from any cause of action (including those for attorneys' fees or costs). Owners further agree to hold Oxford harmless from any damage resulting from such use and hereby waive any right to appeal to the Board of Zoning Appeals, Common Pleas Court and Federal Court with respect to the zoning classification and maximum occupancy agreed upon by the terms of this Agreement.

TRANSFER NOT NECESSARY

KAY ROGERS

BY THAN 05/22/01 DEPT:

AUDITOR, BUTLER CO., OHIO

9. This Agreement shall not be changed, modified or amended except in writing upon agreement of the parties.
10. The Owners shall notify any immediate successor entitled to the Property of the terms and conditions of this Agreement and, notify the occupants of the Property of the maximum number of persons that are permitted to reside in the Property. This Agreement is to be filed with the Butler County Recorder.
11. This Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the parties and shall continue in full force and effect as long as the Property is used and occupied as contemplated herein.

Prior Deed Reference: Vol. 1583, Page 742 of the Deed Records of Butler County, Ohio.

IN WITNESS WHEREOF, the parties hereto have set their hands on the date and year first written above.

WITNESSES:

CITY OF OXFORD, OHIO

Krista Powell
Kimberly C. Nutter

By: Jane Howington
Jane Howington, Acting City Manager

NED C. HOELZER AND VICKIE ANDA HOELZER, OWNERS

Kelly McClure
Traci Solari

Ned C. Hoelzer Owner
By: Ned C. Hoelzer, Owner

Kelly McClure
Traci Solari

Vickie Anda Hoelzer Owner
By: Vickie Anda Hoelzer, Owner Ned C. Hoelzer

STATE OF OHIO

:
SS:

COUNTY OF BUTLER

:

Before me, a Notary Public, this 28 day of June, 2000, personally appeared Jane Howington, Acting City Manager of the City of Oxford, Ohio, and acknowledged the signing thereof to be her voluntary act and deed on behalf of the City of Oxford in her official capacity.

Lora L. Isenhart
Notary Public

LORA L. ISENHART
Notary Public, State of Ohio
My Commission Expires Aug. 26, 2001

STATE OF OHIO

:

SS:

COUNTY OF BUTLER

:

Before me, a Notary Public, this 9 day of March, 2001, personally appeared Ned C. Hoelzer and Vickie Anda Hoelzer, and acknowledged the signing thereof to be their voluntary act and deed

Lynn Wood (Lynn Larkin)
Notary Public

This instrument prepared by:

Stephen M. McHugh - #0018788
ALTICK & CORWIN CO., L.P.A.
One Dayton Centre, Suite 1700
One South Main Street
Dayton, Ohio 45402-2016
(937) 223-1201
Law Director for City of Oxford, Ohio

LYNN LARKIN, Notary Public
State Of Ohio
My Commission Expires July 10, 2001

EXHIBIT "A"

Situate in the City of Oxford, County of Butler, State of Ohio, and being the north ½ of the east ½ of Inlot number Two Hundred Twenty-one (221) therein, the same being subject to the payment of an annual ground rent of \$ 1.50 due and payable to the Treasurer of Miami University on June 6th every year, said property herein conveyed is also subject to the easement of a driveway 5 feet wide extending along the south side thereof for the benefit of the adjacent lot owner provided said adjacent owner shall maintain a strip of equal width adjacent thereto for the same purpose and for the use of the owner of the above property.

April 12th, 2023

NOTICE OF APPEAL

City of Oxford
Oxford Board of Zoning Appeals
15 S. College Ave.
Oxford, OH 45056

RE: 204 N. Main St., Units A & B Rental Inspection

Dear Chair Haizman and Board Members,

204 N Main LLC hereby appeals a decision dated March 23, 2023 from Derick Snodderly, Code Enforcement Officer, finding several violations following a rental inspection of 204 N. Main Street, Units A & B. This appeal is pursuant to PMC 111.1.

During Officer Snodderly's inspection, it was noted at a minimum ceiling height requirement was not being met in the basement bedrooms. PMC 404.3 states that "habitable spaces, hallways, corridors, laundry areas, bathrooms, toilet rooms and habitable basement areas shall have a minimum clear ceiling height of 7 feet" with a number of exceptions.

204 N Main LLC appeals, because the true intent of the code or the rules adopted thereunder have been incorrectly interpreted, the provisions of the code do not fully comply, and the requirements of the code are adequately satisfied by other means.

The grounds for the appeal include, but are not limited to, the following:

- 204 N Main LLC asked a contractor to inspect the basement bedrooms to suggest possible remediation measures. It was found that the ceiling's drywall is mounted directly onto the overhead floor joists, making it impossible to raise the ceiling. If the carpeting were removed, a maximum ceiling height of 6'9" and 6'8" can be achieved in the front and back bedrooms. Thus, the height difference is minimal.
- 204 N Main LLC asks that the difference of only a few inches be excepted, because this minimal height difference does not create a safety issue. See PMC 102.6 (stating the provisions of the code shall not be mandatory for existing buildings when such buildings are safe and in the public interest of health, safety and welfare). In addition, other risk mitigation steps have been taken to ensure the safety of residents in the event of an emergency. The home has a wired fire alarm system, not commonly found in residential properties. In addition, each basement bedroom has an egress window meeting Ohio requirements, providing a second means of exit.

- We have attached the most recent rental permit from 2021-22 showing no evident concern regarding the existing layout of the property. In fact, the City of Oxford has conducted many inspections and issued many rental permits without raising the bedrooms in the basement and the minor height discrepancy as an issue. 204 N Main, LLC reasonably relied upon these approvals when deciding to purchase the property. Accordingly, the City is equitably estopped from denying a rental permit based upon the bedrooms in the basement. See City of Oxford v. Day (1998), 12th Dist. No. CA96-09-183.
- The bedrooms in the basement are a valid nonconforming structure. See Section 1137.06 of the Oxford Zoning Code.
- 204 N Main LLC has attached a floor plan representing 204 N. Main St. Units A & B as it has existed since we took possession of the property in 2020, and as it still exists today. The property is permitted for 8 tenants, and the purchase price and mortgage reflect the annual income that a full rent-roll creates. A reduction in bedrooms would make the property significantly more difficult to rent, thus affecting our ability to keep the property financially viable.

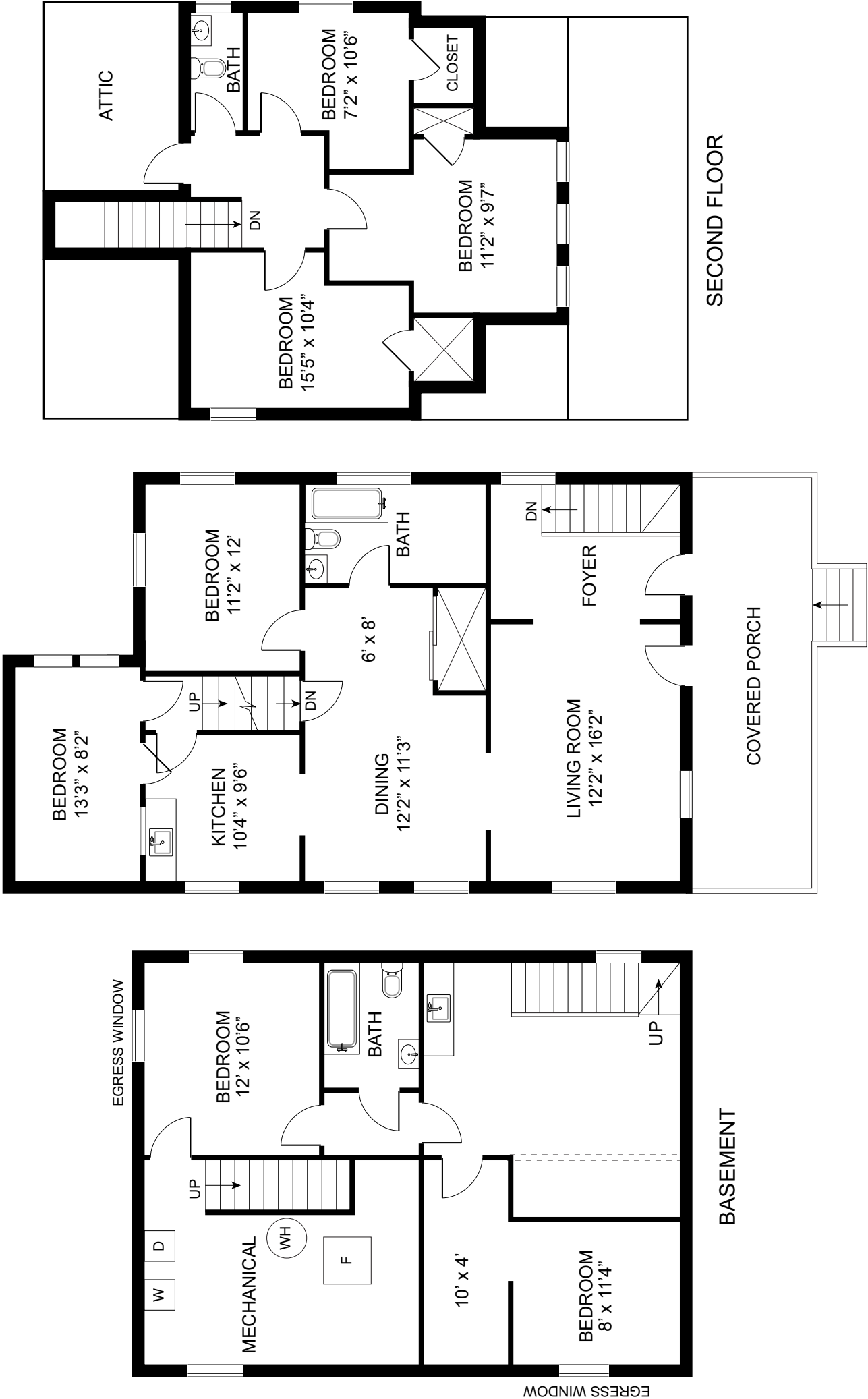
We respectfully ask the Board to consider how to best meet the safety needs of our tenants, while also preserving our ability to keep the property financially stable. We are willing to discuss and explore options with the City to obtain this outcome.

Respectfully Yours,

Jeff Savage, Owner
204 N Main LLC

Attachments:

Current Floor Plan, as submitted by 204 N Main LLC
2021-22 Rental Permit, CR22-5325
Photos of Finished Basement Bedrooms



*All dimensions are approximate and subject to independent verification



RESIDENTIAL RENTAL PERMIT

This permit certifies that a valid residential rental permit has been issued to the address and person(s) listed below.

204 N Main St Unit A

Responsible Party

Plum Tree Realty

Owner

Natrey LLC

Fee:	\$45.00
Permit Number:	CR22-5325
Maximum Unrelated Occupants:	4
Use:	2F - Two-Family
Effective Date:	12/14/2021
Expiration Date:	11/12/2022

Stipulations

The City inspected the interior and exterior of this property.

A copy of this permit shall be posted in a conspicuous place within the dwelling unit per PMC 310.3. This permit cannot be transferred. If ownership of the property changes, the permit must be surrendered to the City of Oxford within ten (10) days. You must submit a completed application and pay appropriate fees for renewal before the expiration of this permit.

City of Oxford Inspections Division 15 S. College Ave., Oxford, OH 45056 (513)-524-5209



RESIDENTIAL RENTAL PERMIT

This permit certifies that a valid residential rental permit has been issued to the address and person(s) listed below.

204 N Main St Unit B

Responsible Party

Plum Tree Realty

Owner

Natrey LLC

Fee:	\$45.00
Permit Number:	CR22-5326
Maximum Unrelated Occupants:	4
Use:	2F - Two-Family
Effective Date:	12/14/2021
Expiration Date:	11/12/2022

Stipulations

The City inspected the interior and exterior of this property.

A copy of this permit shall be posted in a conspicuous place within the dwelling unit per PMC 310.3. This permit cannot be transferred. If ownership of the property changes, the permit must be surrendered to the City of Oxford within ten (10) days. You must submit a completed application and pay appropriate fees for renewal before the expiration of this permit.

City of Oxford Inspections Division

15 S. College Ave., Oxford, OH 45056

(513)-524-5209

