



**BOARD OF ADJUSTMENT
AGENDA
September 12, 2018**

I. Call to Order

- **Approval of Minutes**

- **New Business:**

1. **Cocoon Yoga Lab** (*VAR18-0021*) **Variance***
115 NW 2nd Street
 - Parking requirements in the DC zoning district
2. **Bloodworth** (*VAR18-0022*) **Variance***
103 Ridgefield
 - Fence Appeal – Finished Surface Interpretation
3. **CHP, LLC** (*VAR18-0023*) **Variance***
424 SW D Street
 - Side setback requirements in the RC-2 zoning district
4. **Jacobs Group** (*VAR18-0024*) **Variance***
206, 212, 214 & 218 SE 7th Street
 - Rear Yard fence height requirements in the DE zoning district
5. **Wood** (*VAR18-0025*) **Variance***
308 SW E Street
 - Front & Side Yard fence height requirements in the R-1 zoning district

- **Other Business**

- **Adjournment**

Board of Adjustment
Minutes
August 8, 2018

Meeting called to order by Sam Pearson, Vice Chairman

Present: Joe Haynie, Sam Pearson, Jan Holland, and Rustin Chrisco
Absent: Rick Rogers
Staff: Jon Stanley and Tyler Overstreet

Motion by Mr. Haynie, seconded by Ms. Holland to approve the minutes of July 25, 2018 as written.
Approved 4-0

New Business

Item #1

Stoker, Variance Request for 302 SE 2nd Street, Exterior Side Setback in R-1, VAR18-0019

Tyler Overstreet reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Bob Stoker, applicant, explains the variance request to the Board. There is discussion amongst the Board members, staff, and the applicant.

Approved 4-0

Item #2

Bates, Variance Request for 307 Old Forge Drive, Exterior Side Setback in R-1, VAR18-0019

Tyler Overstreet reads the staff report.

Opened public hearing

No public comments

Closed public hearing

The contractor explains the variance request to the Board. There is discussion amongst the Board.

Patricia Bates, homeowner, explains the hardship.

There is an amendment to bring a letter signed from the POA president allowing the covered deck.

Approved 4-0

Motion by Mr. Haynie, seconded by Mr. Chrisco to adjourn

Meeting adjourned

Ali Worley

*A copy of this recording can be obtained from the Bentonville Planning Department.

BOA STAFF REPORT

VAR18-0021 – Cocoon Yoga Lab – Off-Street Parking Variance

TO: Bentonville Board of Adjustment Members
THRU: Shelli Kerr, AIPC, Community Development Director
FROM: Jon Stanley, Senior Planner
BOA DATE: September 12, 2017

GENERAL INFORMATION:

Representative: Mark Hermann w/ Polk, Stanley & Wilcox Architects

Applicant: Michael E. Pruitt

Location: 115 SE 2nd Street

Existing Zoning: DC, Downtown Core

Existing Land Use: Barber Shop

REQUEST: Variance

Off-Street Parking Variance		
	Regulation	Request
Article 501, Sec 501.06 Number of off-street parking spaces required for DC, Downtown Core	1 off-street parking space is required	Request of: 0 parking spaces Variance of : 1 parking space

SURROUNDING ZONING:

Direction	Zoning
North	DC, Downtown Core
South	DC, Downtown Core
East	DC, Downtown Core
West	DC, Downtown Core

BACKGROUND:

The applicant has submitted a variance request to the off-street parking requirements for property located in the DC, Downtown Core zoning classification to allow for the construction of a yoga studio at 115 NW 2nd Street. The applicant is requesting to construct no off-street parking spaces at this location, which is a variance of 1 off-street parking space as required by ordinance.

For additional information, please reference the attached documents.

PUBLIC COMMENT:

Staff HAS NOT received public comment regarding this request.

CONDITIONS OF APPROVAL:

If approved, the following condition(S) shall apply:

1. The approved variance shall be for this location and the proposed yoga studio development only.
2. The applicant must obtain Large Scale Development approval, and obtain an approved building permit prior to any development occurring at this location.

September 4, 2018

Planning Commission
City of Bentonville
305 SW A Street
Bentonville, AR 72712

RE: Cocoon Yoga Lab
115 Northwest Second Street
REQUEST FOR VARIANCE – Article 501 of the Zoning Code

Dear Planning Commission,

On behalf of the developing entity and the current property owner, we respectfully request a variance from the off-street parking and loading requirements, Article 501 of the City of Bentonville, Zoning Code.

Per the requirements for the Downtown Core zoning district, the proposed two-story development would be required to include two (2) off-street parking spaces.

First Floor:	1,871 sf	1 space/500 sf > 3000 sf	0.0 spaces
Second Floor:	1,741 sf	1 space/1,000 sf	1.7 spaces
Third Floor:	314 sf	1 space/1,000 sf	<u>0.3 spaces</u>

Total: 2.0 spaces

BARBER SHOP # = 750
PROPOSED NEW # = 392
3,176

THEREFORE ONLY ONE
NEW PARKING
SPACE IS REQ.
JAN S.

We would request that the single (1) on-street parking space adjacent to the property be considered toward the overall parking count, reducing the total requirement to one (1) space.

Due to the size of the site and existing conditions, there is no space for off-street parking on site. However, understanding the intense parking demand in downtown Bentonville, as well as continued and growing interest in development of the downtown core, we believe there is an opportunity to begin to combine resources to be allocated towards the development of public parking infrastructure to better serve downtown Bentonville.

Per discussion with the City Engineering Department, we would propose the development of a parking infrastructure fund, wherein the parking requirements of the downtown core might be met with a fixed fee, to be paid in lieu of each required off-street parking space unable to be accommodated on site.

Please see the attached site plan for further clarification and contact us should you have any questions or need any additional information.

Sincerely,

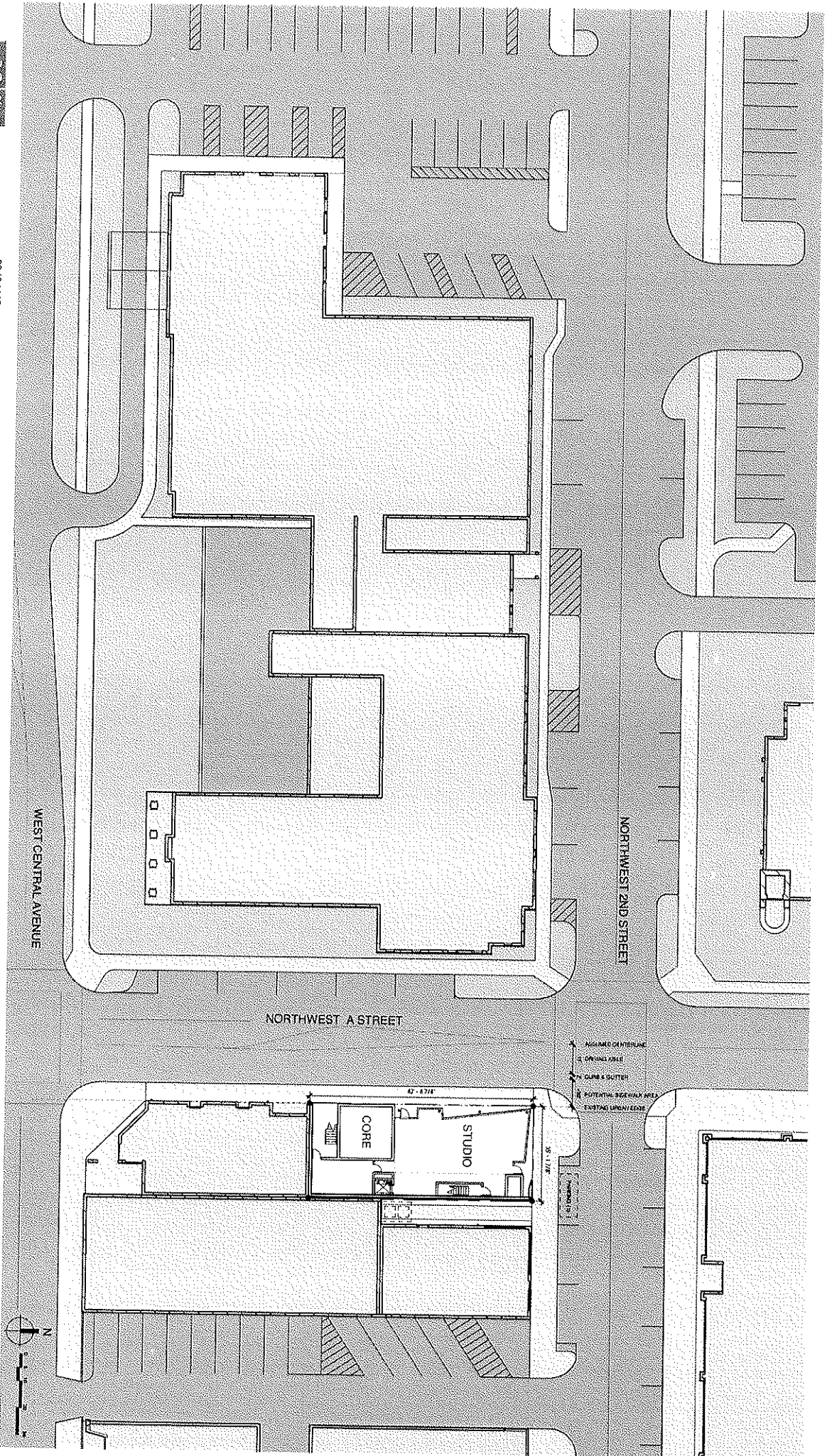


Mark Herrmann, AIA
Encl.

LITTLE ROCK
2222 Cottondale Lane
Suite 100
Little Rock, AR 72202
501.378.0878

FAYETTEVILLE
509 W. Spring St.
Suite 150
Fayetteville, AR 72701
479.444.0473

DATE: 09/04/18
PROJECT: COCOON YOGA LAB
PROJ. #: xx-xxx



SITE

BOA STAFF REPORT

VAR18-0022, Bloodworth, - Fence Finished Surface

TO: Bentonville Board of Adjustment Members
THRU: Shelli Kerr, Community Development Director
FROM: Jon Stanley, Senior Planner
BOA DATE: September 12, 2018

GENERAL INFORMATION:

Representative: Katie and Russell Bloodworth

Applicant: Katie and Russell Bloodworth

Location: 103 Ridgefield

Existing Zoning: R-1, Single Family Residential

Existing Land Use: Single Family Residence

REQUEST: Variance

	Regulation	Request
Article 1400, Section 1400.15, Fence and Wall Requirements, Subsection E.2, Finished Surface	Finished fence surfaces shall face outward from the property when visible from public right-of-way. Posts and support beams shall be inside the finished surface or designed to be integral part of the finished surface.	A 5' fence be permitted with support structure facing outwards and pickets facing inwards.

SURROUNDING ZONING:

Direction	Zoning
North	R-1, Single Family Residential
South	R-1, Single Family Residential
East	R-1, Single Family Residential
West	R-1, Single Family Residential

BACKGROUND:

The applicant has submitted a variance request to the design standards for fences. The applicant is requesting that a 5' tall wooden picket fence be allowed to orient its posts and support structure towards the public right-of-way. According to the applicant's narrative,

they believe that the outward-facing support beams are integral to the design of their fence. At the time of this request, there are no utility easements nor overhead electric that would be impeded with the proposed variance.

For additional information, please reference the attached documents and memo.

PUBLIC COMMENT:

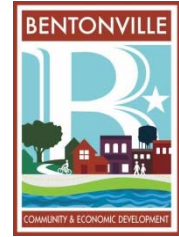
Staff **HAS** received public comment regarding this request.

CONDITIONS OF APPROVAL:

If approved, the following condition(s) shall apply:

1. The approved variance shall be for the proposed height, location and materials of the fence only, as provided by the applicant within this application.
2. The applicant shall obtain an approved fence permit prior to constructing the fence.

MEMO



To: Board of Adjustment
From: Shelli Kerr, AICP, Interim Community Development Director
BOA Date: September 12, 2018
Re: 103 Ridgefield – Fence Variance Request

REQUEST

The applicant of a fence permit at 103 Ridgefield has requested an appeal from staff interpretation regarding fence regulations, specifically Sec. 1400.15 Fence and Wall Requirements, Subsection E.2 Finished Surface. The regulation states:

E. Design Standards. *The following design standards shall apply to any new or replacement of any fence or wall where the length of the replacement exceeds fifty percent (50%) of the length of the existing fence.*

2. Finished Surface. *Finished surface shall face outward from the property when visible from a public right-of-way. Posts and support beams shall be inside the finished surface or designed to be an integral part of the finished surface.*

STAFF INTERPRETATION

It is my interpretation, based on language in the code, that in cases of picket fences, the pickets should be facing outward from the property to the public right-of-way and the posts and support beams facing the interior of the yard. Image A shows how a picket fence would appear from the public right-of-way as the ordinance intended.

The fence at this location was installed with the post and support beams facing the public right-of-way and the pickets facing the interior of the rear yard (Image B). This is inconsistent with staff interpretation of the finished surface.

IMAGE A – conforming when facing public right-of-way



IMAGE B – nonconforming when facing public right-of-way



FENCE PERMIT APPLICATION

06/29/18 The applicant submitted an application for a fence at 103 Ridgefield (application attached). The applicant signed the application stating they would comply with fence regulations. The fence regulations are provided on the second page of the application, with the specific code section regarding the finished surface listed:

FENCE REGULATIONS:

1. Fences must be located on private property built with consent of the property owner.
2. Fencing in front yard cannot exceed 36" in height.
3. Fences must be located at least 5' from street or public right-of-way.
4. No fence may be located within a sight triangle.
(determined on a case by case basis)
5. Fences may be located in a utility easement, however, they must have a gate installed on each end the width of the easement.
6. Fences may not be located in a platted drainage easement.
7. Fence height cannot exceed six (6) feet above grade.
8. Finished surfaces must face outward from the property (where fronting public right-of-way).
9. Fences used to enclose pools and spas must be a minimum height of 48 inches with a maximum clearance between the bottom of the fence and the ground of no more than two (2) inches.

06/29/18 Permit was approved and issued.

COMMUNICATION TIMELINE

Please see the communication timeline below that indicates the string of conversations with the applicant regarding the code requirement. Attached emails provide further details of the conversations.

07/26/18 I received my first correspondence from Mr. Bloodworth.

- Mr. Bloodworth indicated he had conversation with both Darren Warren, Code Enforcement Officer, and Lance Blasi, Chief Building Inspector, about the direction of the pickets.
- He questioned the interpretation of the requirement that *"Finished surface must face outward from the property when fronting the public right-of-way"* and requested formal documentation on the violation.
- I responded to the email answering his questions and notifying him of the option to seek an appeal of interpretation from the Board of Adjustment.

07/27/2018 I received a follow-up email from Mr. Bloodworth.

- Stated he disagreed with my response, that they would ultimately work with the city to resolve the matter, and that they still hadn't received formal notification.
- I responded that I had addressed his questions, that the decision remained, and that he had an opportunity to appeal. Also explained that we prefer to work with property owners prior to issuing a formal violation. But, since he requested it, we would send him a violation notice.
- I notified the Mayor regarding the issue and was told to hold him to the ordinance.

08/06/2018 A final inspection of the fence is scheduled and passed in error.

- The applicant requested a final inspection, despite being aware of the issue regarding the direction of the pickets. A violation notice had not been sent, therefore was not an open case, so there was nothing in the system that flagged the permit regarding the issue being discussed. We had temporary staff assisting at the time who proceeded to schedule the final inspection.
- A building inspector conducted the inspection, unaware of the issue regarding direction of the pickets, and approved the inspection based on compliance with the location shown on the application, not for design.

08/08/2018 I became aware that a violation notice had not been sent and requested Code Enforcement to issue an official notice at the applicant's request, unaware that a final inspection had been scheduled and approved.

08/10/2018 Code enforcement issues a violation notice ([copy attached](#)).

08/14-16 Code enforcement and myself became aware of the overlap with the final inspection and the violation notice and took corrective action.

- I received an email from Bloodworth about receiving the violation notice dated Aug. 10 after he had been notified that the final inspection had passed.
- Lance responded to Mr. Bloodworth that the final inspection was scheduled and approved in error. Lance indicated that the fence needed to be corrected and the final inspection had been changed from approved to failed due to the picket location.
- Email from Bloodworth continuing to question what happened.
- I responded to his concerns, explained he can still go to the board of adjustment and provided a link to the application form and the deadlines.

8/24 Darren emailed Mr. Bloodworth indicating the fence had not been brought into compliance. Notifying him of the upcoming deadline and that if a variance wasn't submitted, he may be issued a citation.

8/25 Received email from Mr. Bloodworth stating he had sent the variance application.

8/28 Darren emailed Mr. Bloodworth letting him know we had received the variance application.

Finished Surface. Finished surface shall face outward from the property when visible from a public right-of-way. Posts and support beams shall be inside the finished surface or designed to be an integral part of the finished surface.

A. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land structures or buildings in the same district.

- Special conditions/circumstances don't apply as the posts and lateral beams of the fence were "designed to be an integral part of the finished surface" (e.g. there are no exposed fasteners that are visible, etc.), consistent with city code.
- In addition, again from a design standpoint, picket fences traditionally are just as frequently constructed with the lateral beams facing the street as they are facing the property interior, and this aesthetic design choice would be consistent with many architectural landmarks within the state, including the Arkansas State House in downtown Little Rock.

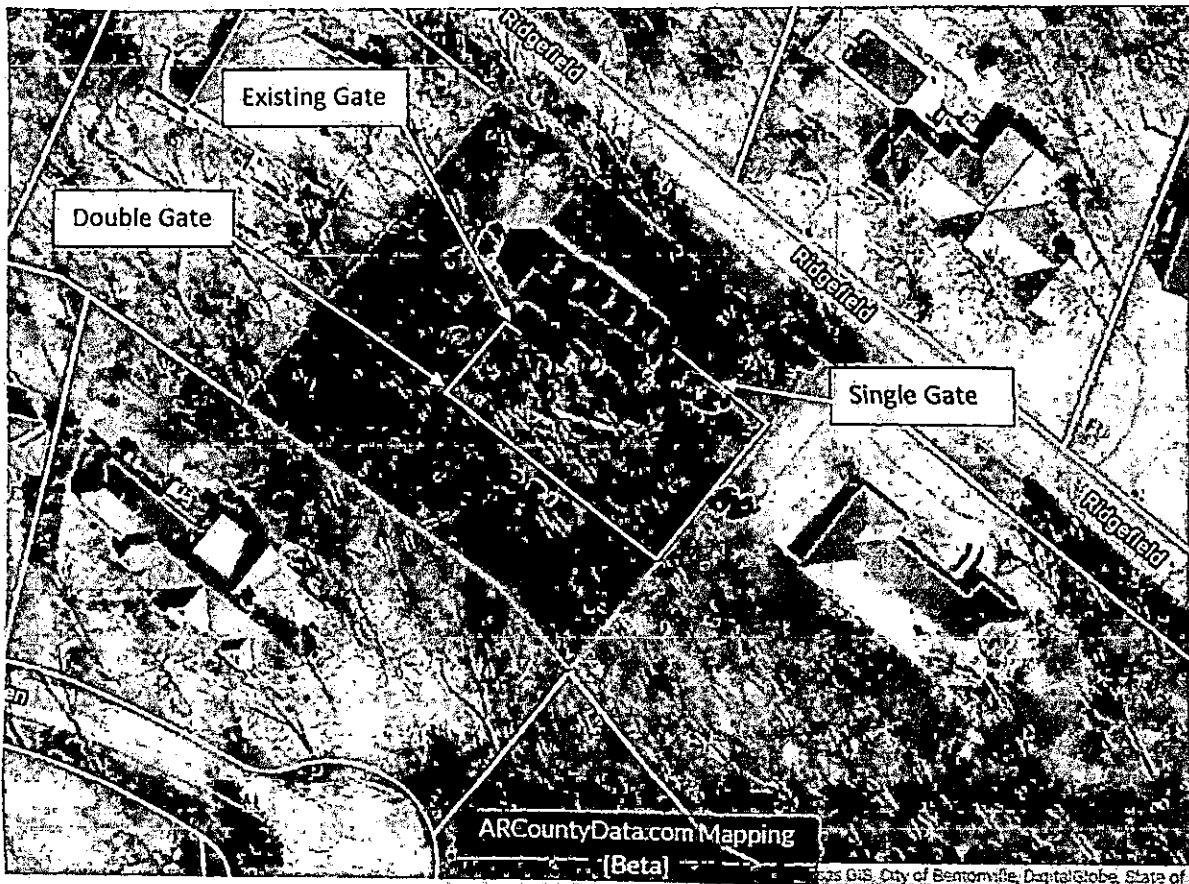
B. That literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.

- If Board of Adjustment disagrees with our above assessment that our fence posts and beams were "designed to be an integral part of the finished surface", we would be deprived of the rights commonly enjoyed by other properties in the following ways
 - Our property would be unsafe for children, therefore unusable for our family and others, since children would be able to easily climb over the fence and access the road if the lateral beams faced the interior of the property.

C. That the special conditions and circumstances do not result from the actions of the applicant.

- First, again, we maintain that our fence is in compliance with city code already since the posts and lateral beams were "designed to be in an integral part of the finished surface". As such, special conditions and circumstances shouldn't apply.
- That said, if the Board of Adjustment disagrees with this assessment, then the inevitable safety issues cited would exist regardless of any actions on the applicant's part. Future homeowners would be subjected to similar safety risk, and any potential neighboring children who visit the property would be subject to the same risk.

52/80/123/12

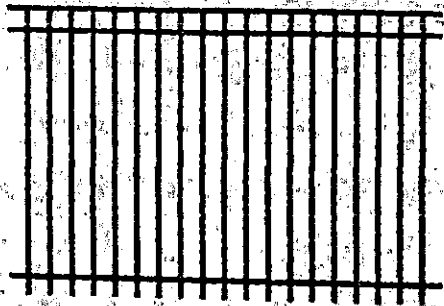


Orange line is existing picket fence that the new wrought iron fence will attach to.

White line is new 5' wrought iron fence location.

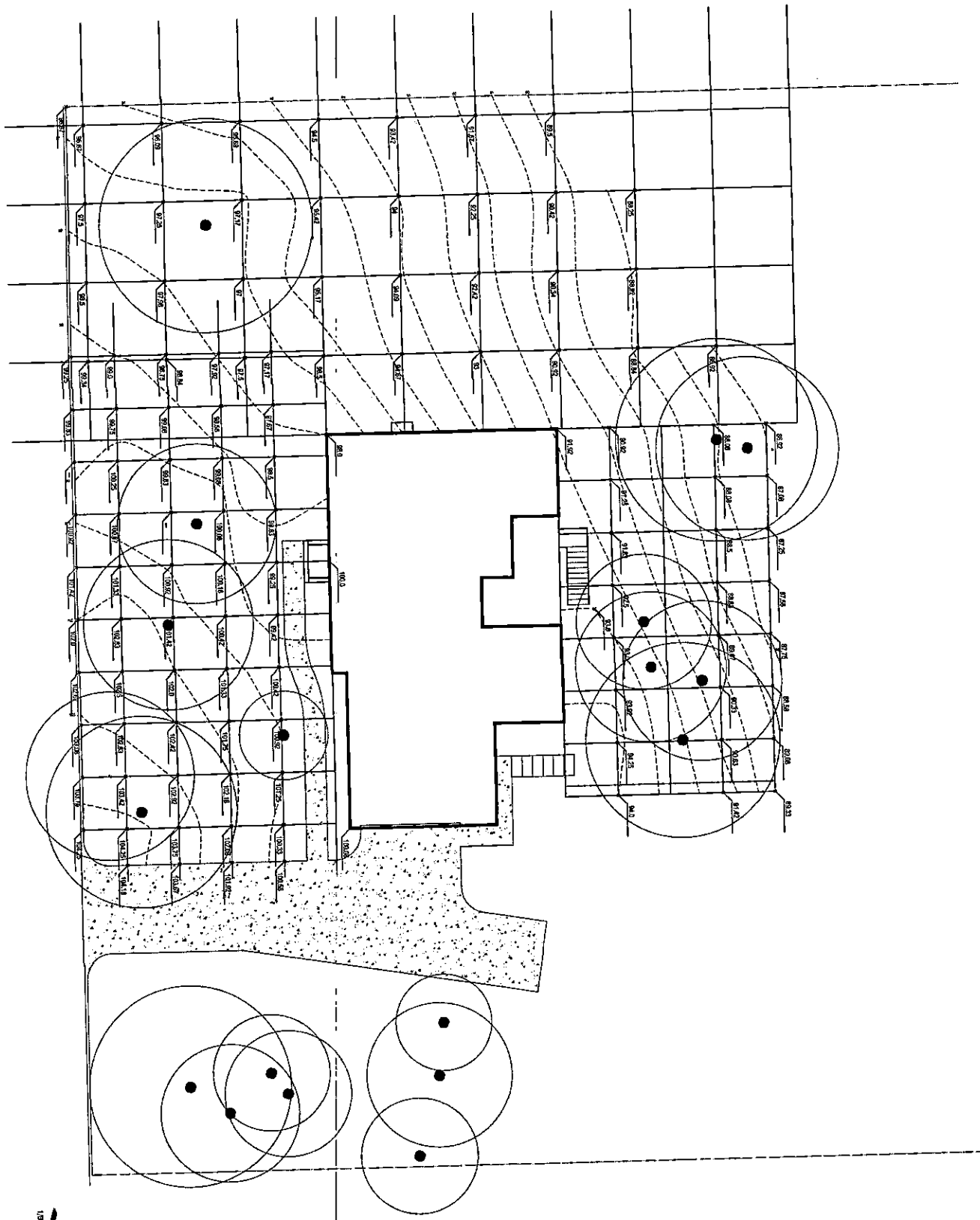
Yellow line is new 5' cedar wood picket fence location.

Wrought iron fence style



Picket fence style





1/8" = 1'-0"

L3.00
survey data

DATE	BY	REVISION

CITY
LANDSCAPE DESIGN

standby.com
bentonville, arkansas
512 405 1363 & 505 553 3460

bloodworth residence
103 ridgefield
bentonville, arkansas



BOA STAFF REPORT

VAR18-0023 – CHP, LLC – Side Setback Variance

TO: Bentonville Board of Adjustment Members
THRU: Shelli Kerr, AIPC, Community Development Director
FROM: Jon Stanley, Senior Planner
BOA DATE: September 12, 2018

GENERAL INFORMATION:

Representative: Powell McKinney

Applicant: CHP, LLC

Location: 424 SW D Street

Existing Zoning: R-C2, Single Family Residential

Existing Land Use: Undeveloped single-family lot

REQUEST: Variance

Rear Setback Variance		
	Regulation	Request
Article 401. Sec 401.7-D(1) Minimum Side Setback Requirements for R-C2, Central Residential – Moderate Density	7' minimum side setback	Request of: 5' Variance of : 2'

SURROUNDING ZONING:

Direction	Zoning
North	R-1, Single Family Residential
South	R-C2, Single Family Residential
East	R-1, Single Family Residential
West	R-1, Single Family Residential

BACKGROUND:

The applicant has submitted a variance request to the side interior setback for property located at 424 SW D Street that resides in the R-C2, Central Residential-Moderate Density zoning classification to allow for the construction of a single family home. The applicant is requesting a 5' side interior setback be allowed along the northern and southern property lines, which is a variance of 2' from the 7' required by ordinance.

For additional information, please reference the attached documents.

PUBLIC COMMENT:

Staff HAS NOT received public comment regarding this request.

CONDITIONS OF APPROVAL:

If approved, the following condition(S) shall apply:

1. The approved variance shall be for the proposed footprint of the single-family home, as provided by the applicant within this application.
2. The applicant must obtain an approved building permit prior to construction of the structure.
3. Any projections into the 5 foot setback including but not limited to soffits, fascias, bay windows or any other projections, must be non-combustible material or 1 hour rated construction. The ventilation of soffits is prohibited on side locations where the 10 foot fire separation requirement cannot be achieved.

City of Bentonville
Board of Adjustments
August 30, 2018

Re: Board of Adjustment Hearing September 12, 2018: Variance Request for New SFD 424 SW D St, Bentonville.

To Whom It May Concern:

We are pursuing a variance for the reduction of the side setbacks at 424 SW D St from 7' to 5' on each side. As we have owned this property for more than three years and prepared the enclosed plan based on the previous setback requirements (which were revised this year). Allowing the decreased setbacks will be consistent with neighboring properties down the street. In addition, we are prepared to fire rate in accordance with building specifications.

We greatly appreciate your consideration of our application.

Sincerely,

A handwritten signature in black ink, appearing to read "Powell", followed by a large, stylized circular flourish.

Powell McKinney
CHP, LLC



To: Owner/Contractor

From: Lance Blasi, Chief Building Inspector

Re: All structures constructed in areas that allow a less than 7 foot side setback.

Any projections into the 5 foot side setback including but not limited to soffits, fascias, bay windows or any other projections, must be **non-combustible material** or **1 hour rated** construction. The **ventilation of soffits is prohibited** on side locations where the 10 foot fire separation requirement cannot be achieved.

Address: _____

Date: _____

Owner/Contractor _____

(Signature)

BOA STAFF REPORT

VAR18-0024, Jacobs Group, - Rear Yard Fence Height

TO: Bentonville Board of Adjustment Members
THRU: Shelli Kerr, Community Development Director
FROM: Jon Stanley, Senior Planner
BOA DATE: September 12, 2018

GENERAL INFORMATION:

Representative: Alyson Jacobs

Applicant: Jacobs Group

Location: 206, 212, 214, 218 SE 7th Street

Existing Zoning: DE, Downtown Edge

Existing Land Use: Single Family Residences

REQUEST: Variance(s)

Rear Yard Fence Height Variance		
	Regulation	Request
Article 1400, Sec1400.15.D.12 Fence Height	Maximum Height shall be six (6) feet above grade	Request of: 7' Variance of : 1'

SURROUNDING ZONING:

Direction	Zoning
North	R-1, Single Family Residential
South	DE, Downtown Edge
East	DE, Downtown Edge
West	DE, Downtown Edge

BACKGROUND:

The applicant has submitted a variance request to the maximum fence height requirements for the rear yards of properties located at 206, 212, 214 and 218 SE 7th Street. The applicant is requesting that a 7' tall fence be allowed which is a variance of 1' from the 6' allowed by ordinance. At the time of this request, there are no utility easements, drainage easements nor overhead electric that would be impeded with the proposed variance.

For additional information, please reference the attached documents.

PUBLIC COMMENT:

Staff has **NOT** received public comment regarding this request.

CONDITIONS OF APPROVAL:

If approved, the following condition(s) shall apply:

1. The approved variance shall be for the proposed height, location and materials of the fences only, as provided by the applicant within this application.
2. The applicant shall obtain an approved fence permit prior to constructing the fences.

JACOBS GROUP

Specializing in Downtown Housing

August 15, 2018

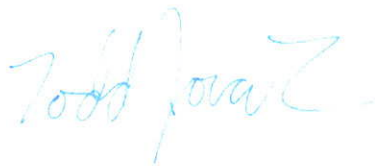
City of Bentonville
Board of Adjustments
305 SW A Street
Bentonville, Arkansas 72712

RE: 206, 212, 214 and 218 SE 7th Street – Variance for fence height

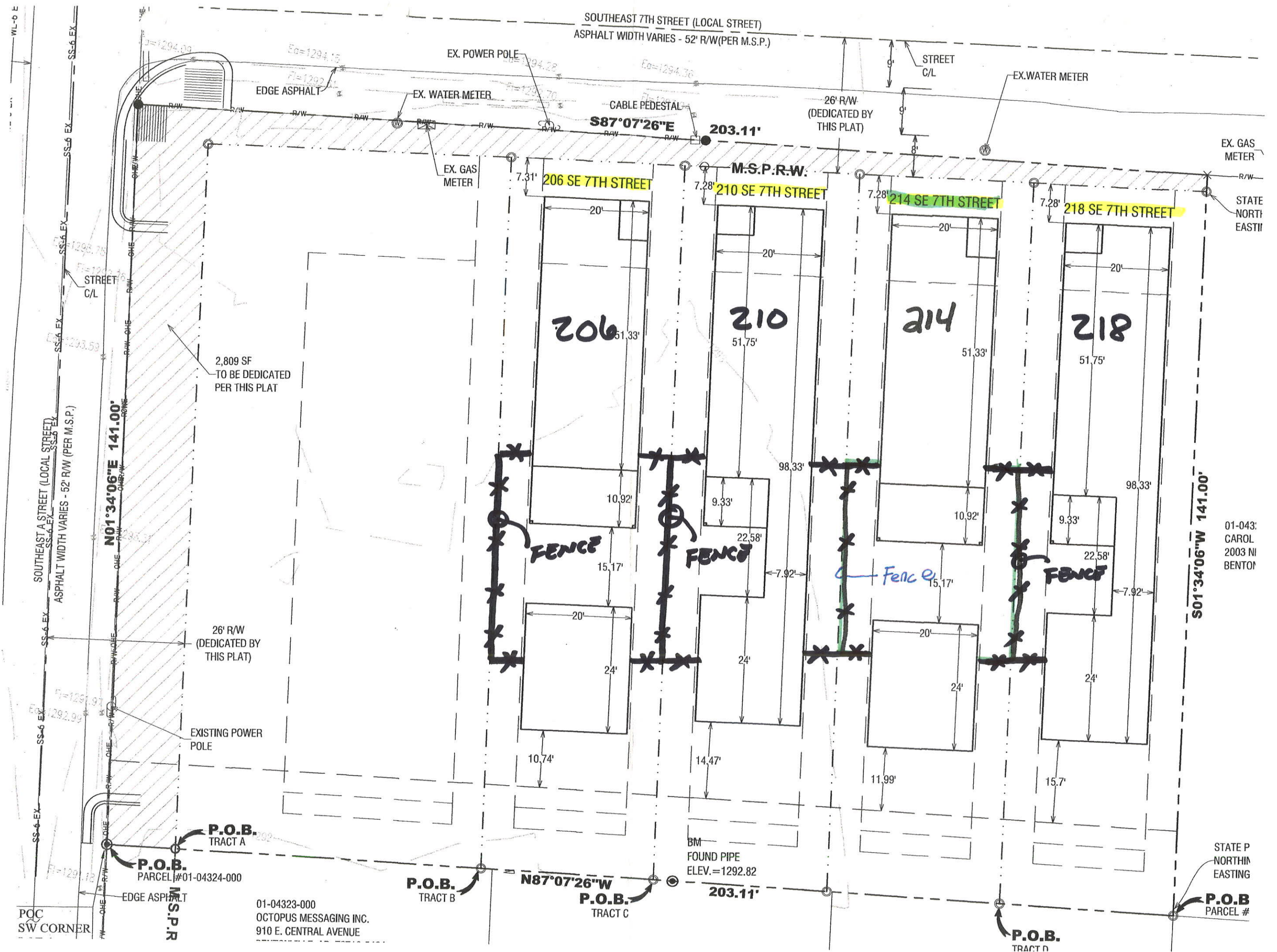
Dear Mr. Stanley,

We are requesting to build a 7' tall privacy fence at 206, 212, 214 and 218 SE 7th Street. Due to the higher density of the project, a standard 6 ft fence will not provide enough privacy for the future home owners. These homes have rear decks which are approximately 3' above the final grade. A person standing on the deck can easily see into their neighbor's courtyard. The requested 7' privacy fences are internal to the houses and have little visibility to the street.

Sincerely,



Todd Jacobs



BOA STAFF REPORT

VAR18-0025, Wood, - Side Exterior Yard Fence Height

TO: Bentonville Board of Adjustment Members
THRU: Shelli Kerr, Community Development Director
FROM: Jon Stanley, Senior Planner
BOA DATE: September 12, 2018

GENERAL INFORMATION:

Representative: Bobby & Jennifer Wood

Applicant: Katharine & Zac Wood

Location: 308 SW E Street

Existing Zoning: R-1, Single Family Residential

Existing Land Use: Single Family Residence

REQUEST: Variance

Side Exterior & Front Yard Fence Height Variance		
	Regulation	Request
Article 1400, Sec1400.15.D.12 Fence Height	Maximum Height shall be three (3) feet above grade	Request of: 5' Variance of : 2'

SURROUNDING ZONING:

Direction	Zoning
North	R-1, Single Family Residential
South	R-1, Single Family Residential
East	R-1, Single Family Residential
West	R-1, Single Family Residential

BACKGROUND:

The applicant has submitted a variance request to the maximum fence height requirements for the front and side exterior yards. The applicant is requesting that a 5' tall fence be allowed which is a variance of 2' from the 3' allowed by ordinance. Per the attached narrative and site plan, the proposed 5' tall fence will be constructed 5' off the

public right-of-way. At the time of this request, there are no utility easements nor overhead electric that would be impeded with the proposed variance.

For additional information, please reference the attached documents.

PUBLIC COMMENT:

Staff has **NOT** received public comment regarding this request.

CONDITIONS OF APPROVAL:

If approved, the following condition(s) shall apply:

1. The approved variance shall be for the proposed height, location and materials of the fence only, as provided by the applicant within this application.
2. The applicant shall obtain an approved fence permit prior to constructing the fence.

To whom it may concern:

We would like to apply for a variance for a backyard fence which will be 5 ft in height.

The reasons being:

Our property is in a transient location with lots of bikers and passers-by. With a 50 lb dog and a small child we feel the need to address the lack of security and little privacy on the property, and we feel that a 3 ft fence would not address these issues sufficiently. A 3 ft fence is appropriate for decorative purposes in the front portion of a property. The backyard, however, as commonly enjoyed by neighbors around us, is created with privacy and security in mind thus calling for a taller fence (as seen on surrounding properties). Our biggest concern is for drivers driving fast on 4th street. It is very important to us that our family and dog are able to play safely on our property without chance of being hit by a car. Our lot is positioned with streets on three sides, and literal interpretation of the provisions does indeed deprive us of having a safe, traditional backyard space. The two streets we would like to have fencing on are 4th and Glover. All of the properties on our block face East onto E St. with the rear of the properties on Glover. The majority of these properties have (tall) privacy fencing along Glover. This is where we would like to have a tasteful gate installed which would add curb appeal to the property, and potentially increase the value of our property as well as those surrounding. Gated properties add value to the downtown area and attract a sophisticated buyer which is needed for the market as prices rise significantly. The fence we wish to install will be a 5 ft picket style fence, allowing visibility for drivers at the corner and still providing us a significant increase in privacy and security in comparison to a 3 ft fence which would allow both the dog and the child to escape, and render the 'backyard' useless for our traditional purposes.

We appreciate your consideration.

Katharine and Zachary Wood
415-300-6353
mrszwood@gmail.com

Glover

proposed 5 ft fence
& gate is in red
(with 5 ft set back)

4th
St.