



**Board of Adjustments
Meeting Agenda
September 13, 2023
Bentonville City Hall
Tech Review: 4:00 PM
Public Hearing: 4:00 PM**

Registration Link: <https://us06web.zoom.us/j/83649675467>

I. Call to Order

II. Approval of Minutes

1. August 23rd Meeting Minutes

Approval of Meeting Minutes

III. New Business

1. Randall

Variance*

703 NW 6th Street (VAR23-0027)

- Front Garage Setback

IV. Old Business

1. Slusin

Variance*

4600 SW Barton Street (VAR22-0035)

- Rear Setback Variance Re-Evaluation

V. Other Business

Adjournment

Note – Some of the members of the Board of Adjustment, as well as City staff members, may attend this meeting virtually. For public health reasons, those who attend in person should consider personal hygiene, the use of facial coverings, and social distancing.

Note – “” after an item indicates a public hearing must be held prior to a vote being taken.*



**BOARD OF ADJUSTMENT
MEETING MINUTES**

August 23, 2023

Bentonville City Hall

305 SW A St

4:00 PM

Meeting Link:

https://us06web.zoom.us/rec/share/NG8Lg2EwjoHrVkEen3lTUTHXcS_LBNXYUz5fRkeJmj699cIvJHmlNXYGFPmuXeIV.YxrUBWiEPRYHZl8P

Board Members Present: Celia Swanson, Dean Kruithof (Chair), BJ Phillips, Sam Pearson, Joe Haynie

Board Members Absent: N/A

City Staff Present: Tom Adler, Luke Aitken, Dan Weese (Engineering)

I. Call to Order

- Meeting is called to Order by Chairman Kruithof at 4:00 PM.

II. Approval of August 9th Meeting Minutes

- Motion by Pearson to approve the meeting minutes as presented, Second by Haynie.
- August 9th meeting minutes are approved 5-0 via voice vote.

III. Old Business

1. The Neighborhood Church

Variance*

2702 I St (VAR23-0025)

- Wall signage for Preschool
- Chairman Kruithof provides an overview of the request and its background, clarifying that the required public hearing was held at the previous August 9th meeting
- Discussion between Mr. Aitken and Chairman Kruithof around the long-term possibility of amending the zoning code to allow wall signage for similar non-residential land uses in Agricultural zoning districts
- Ms. Swanson states that she believes planning staff has provided sufficient options to the applicant that allow some on site signage for the new preschool that would not require a variance be granted
- Mike Jones of Best Sign Group, representing the applicant, states in addition to freestanding signs, that wall signage is integral to identifying the preschool building itself as a separate entity from the neighborhood church, as they serve many families, 85% of whom do not attend the associated Neighborhood Church.

Note – Some of the members of the Board of Adjustment, as well as City staff members, may attend this meeting virtually. For public health reasons, those who attend in person should consider personal hygiene, the use of facial coverings, and social distancing.

Note – “*” after an item indicates a public hearing must be held prior to a vote being taken.

- Pastor Joe Liles echoes the points made by Mr. Jones, emphasizing that the preschool will have a separate suite address from the church itself which necessitates the separate wall signage.
- Motion by Haynie to approve the variance request as presented, Second by Pearson
- Phillips abstains from the vote due to a conflict of interest
- Variance request is approved 3-1
- Ms. Swanson voted no due to her previously stated position

2. Harris

Variance*

398 Vacant parcel, NW J St ([VAR23-0026](#))

- Side Setback
- Chairman Kruithof provides some background on the request
- Dan Weese, Deputy Director of Transportation speaks to the applicant’s rainfall mitigation ability on the proposed site as adequate to comply with City drainage requirements
- Mark Haney, representing the applicant, gives an update to Staff and Board Members on preliminary plan approvals he has received from almost all City utilities for the project
- Mr. Haney provides an overview of the request to Mr. Haynie, who was absent from the presentation Mr. Haynie provided at the August 9th meeting
- Motion by Swanson to approve the variance request as presented, Second by Phillips
- Variance request is approved 5-0

IV. New Business

1. Lynn v. Board of Adjustment

Information

- Case update - Legal Staff, Bonnie Bridges
- Bonnie Bridges, Staff Attorney, gives an update of the case against the Board, stating the judge has overturned their ruling on VAR22-0035 Slusin, and that the Board will subsequently need to reconsider the request and present findings on the new ruling
- Discussion among the Board and Staff around the best date to reconsider the request
- The Board concludes that the request will be reconsidered on September 13th along with a second advertised public hearing

V. Adjournment

*Meeting is adjourned at 4:38 PM by Chairman Kruithof

BOARD OF ADJUSTMENT STAFF REPORT



Chris & Amy Randall

703 NW 6th Street

BOA Date: 9/13/2023

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR23-0027
Applicant / Current Owner	Burris Architecture / Chris & Amy Randall
Site Area	+/- 0.26 Acres
Current Zoning	R-1, Low Density Single Family Residential
Variance Request	Zoning Code Article: 401 – Zoning District Regulations Section: 401.07 Residential (R) Districts regulations

Regulation

Zoning Code Article Section 401.07(C)(2a) Minimum Setback Standards requires a minimum front setback for a street facing garage on property zoned R-1, Low Density Single-Family Residential, of 30 feet from the front property line.

Variance Request

The applicant is requesting a variance of two feet and four inches from the minimum front garage setback of 30 feet, to allow the construction of an enclosed garage to replace the existing unenclosed car port on the property.

Background

The applicant states that the design of the existing home and car port on the property does not allow the homeowner to renovate the existing carport to the size they require for their vehicle. The existing home sits directly behind the carport today, as shown in the attached exhibit provided by the applicant. Building the size of garage desired by the homeowner to meet the 30-foot front setback required by code would require expanding the garage into the home itself, which the applicant states would be cost prohibitive to build. Their narrative states also, that the home was built on an elevated foundation, requiring steps from the garage slab into the house, further constricting the available space to park a modern vehicle.

The applicant claims the existing home's carport and overall design creates a unique hardship, preventing the homeowner from building a garage similar to others in the neighborhood, at 22 feet long, built to accommodate larger modern vehicles.

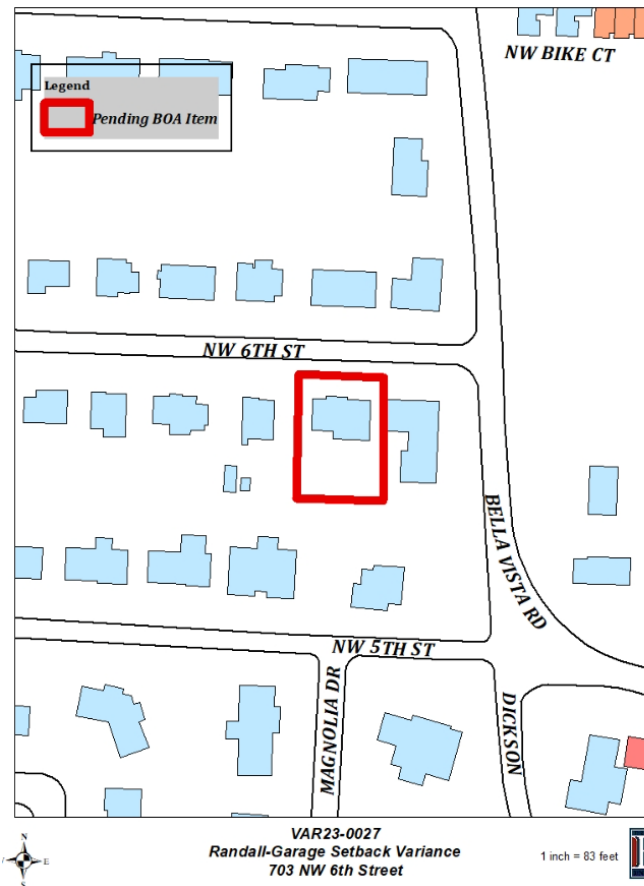
Public Comment

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

Conditions of Approval

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed layout, as provided by the applicant within this application.
2. The applicant must obtain a building permit before construction.



Property Description

This property is located at 703 NW 6th Street and is currently zoned R-1, Low Density Single Family Residential.

Section 301.10.c, Standards of Approval, of the Zoning Code

Standards for approval. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

(1) The applicant demonstrates that:

- a. special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure, or buildings in the same district;
- b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
- c. that special conditions and circumstances do not result from the actions of the applicant; and,
- d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(3) The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) *Conditions.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.



VAR23-0027
Randall-Garage Setback Variance
703 NW 6th Street

1 inch = 83 feet

Page





Burris Architecture

820 Tiger Blvd suite 4 Bentonville, AR 72712
479.319.6045

Date: 8-11-23

To: City of Bentonville - BOA

PROJECT NAME: 703 NW 6th Street

Re: Garage Setback Variance Request –

Acting as the owner's agent, Burris Architecture respectfully requests a 2'4" garage setback variance on the northern property line of parcel# 01-03687-000 located at 703 NW 6th Street. Attached are the property owner consent forms and copy of the Warranty Deed. An explanation of the requested appeal is provided below:

Criteria 1: 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.

Explanation of Appeal: . The existing conditions of the home do not allow for the car port to be infilled. The existing home was constructed in 1980 with an attached single 19' 8" long carport, 2'4" smaller than a standard modern garage, 22' minimum length, that fits the size of modern family vehicles. Furthermore, the home is on an elevated foundation, requiring steps from the garage slab into the house severely constricting the available space to park a modern family vehicle.

Criteria 2: 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.

Explanation of Appeal: As previously discussed, the existing conditions do not allow the owner with the same rights to a modern garage that can accommodate a modern family vehicle as others throughout the city. Therefore, converting the existing carport to a garage would leave insufficient length for a modern vehicle. Expanding the garage into the existing house would require extensive reconstruction and accrued cost. The proposed garage variance would be setback 4' 7" from the front porch that would not affect the architectural appeal of the house.

Criteria 3: That the special conditions and circumstances do not result from the actions of the applicant.

Explanation of Appeal: The special conditions and circumstances listed above are inherently not a result of actions of the property owners. The property owners are valued members of the community and only request to further enhance the beauty of the property, neighborhood and city.

Thank you for your consideration.

Dave P Burris, AIA
479-319-6045
dave@burrisarch.com

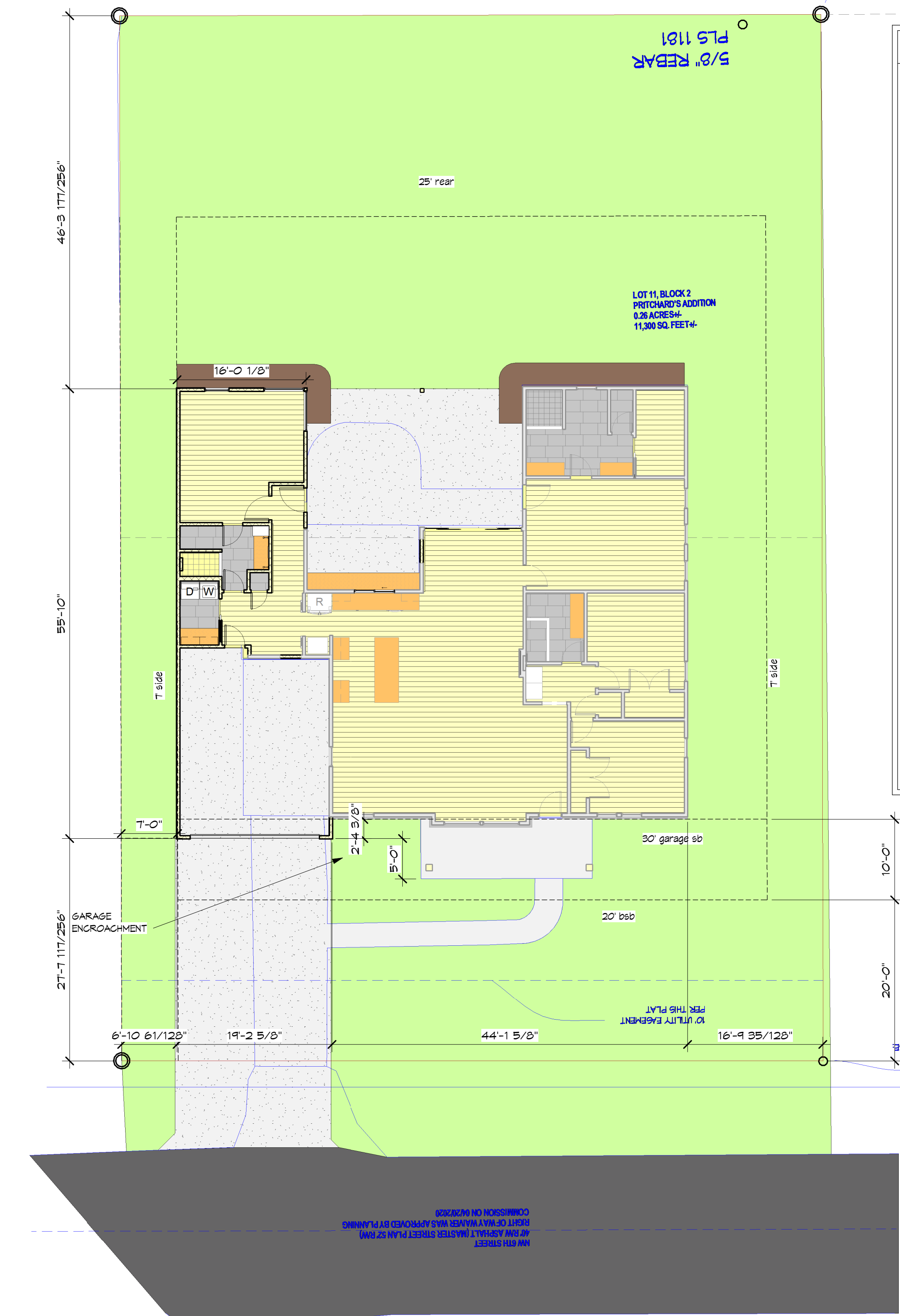
RANDALL

703 6TH ST

BENTONVILLE, AR

P.O.B.
ORIGINAL
SM LOT 11
AND
NEW LOT 11

N: 751670.35
E: 659706.62



1 SITE PLAN
1" = 10'-0"

GENERAL SITE NOTES

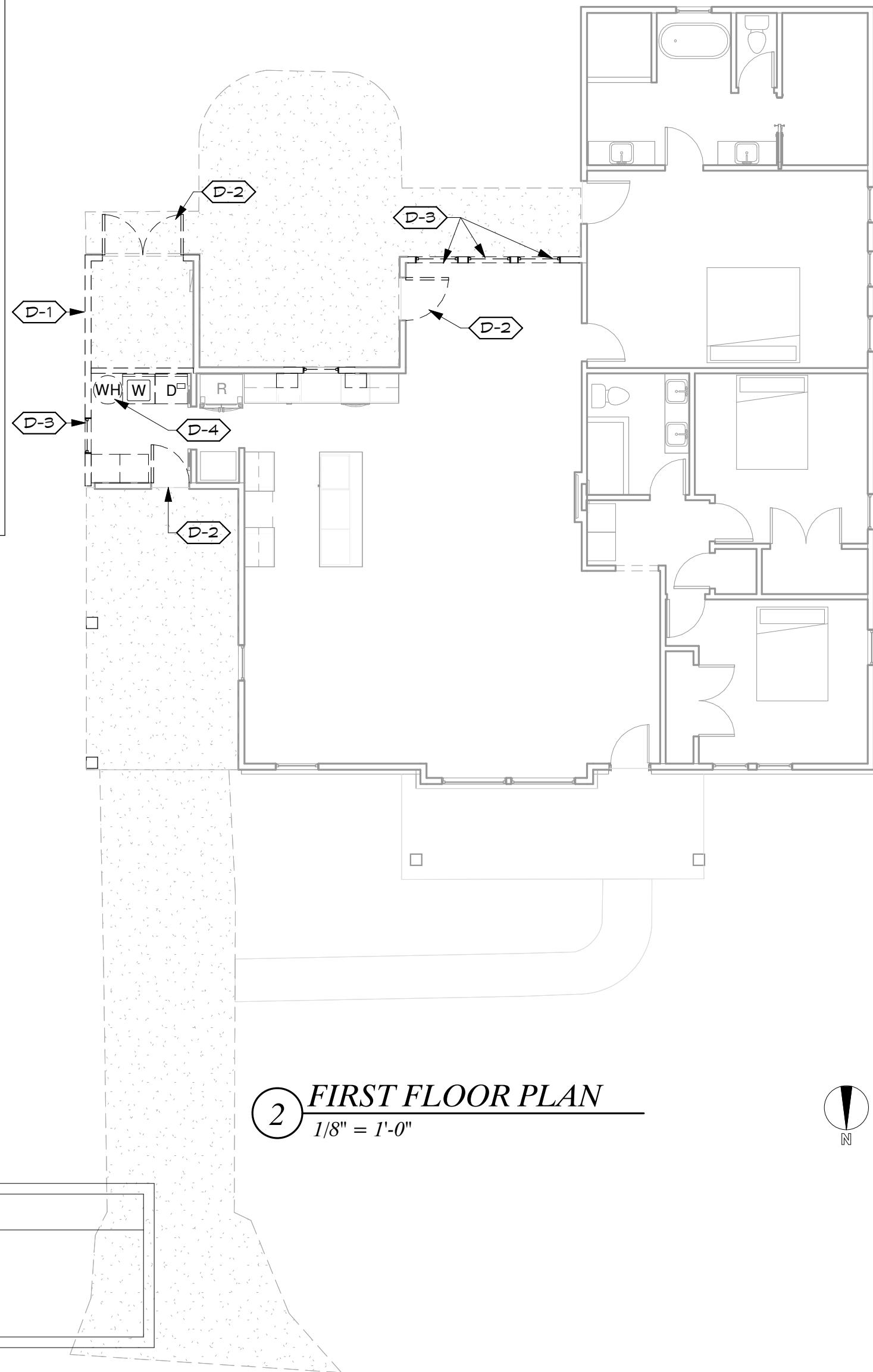
1. TAKE TEMPORARY CONTROL MEASURES TO PREVENT EROSION
SHEET FLOW: USE STRAW OR HAY BALES, SILT FENCING OR
VEGETATIVE FILTERS AS NECESSARY TO MINIMIZE SILT MOVEMENT
OFF PROPERTY.
2. CONTRACTOR SHALL FINISH GRADE SITE SO AS TO DIVERT WATER AWAY
FROM BUILDING STRUCTURE.
3. ALL FILL SHALL BE COMPACTED TO 95% STANDARD OVER
PROCTOR DENSITY (ASTM D-698) AND MIN 3000 P.S.F. BEARING
CAPACITY.
4. MEET EXISTING GRADE AT ALL CONTRACT LIMITS OR PROPERTY LINES.
5. GENERAL CONTRACTOR TO PROVIDE ROUGH GRADING TO 6"
BELOW FINISH GRADE. 6" TOP SOIL TO BE REUSED OR PROVIDED
FOR FINAL GRADING.
6. PROVIDE CONTROL JOINTS AND EXPANSION JOINTS IN
CONCRETE WHERE SHOWN (SEE PLANS AND DETAILS)
WHERE NOT SHOWN PROVIDE AS FOLLOWS:
EXPANSION JOINTS AT 20' O.C. MAX
CONTROL JOINTS AT 6' O.C. MAX AT SIDEWALKS
7. ALL UTILITY LOCATIONS ARE APPROXIMATE, FIELD VERIFY
EXACT LOCATIONS.
8. ALL DISTURBED AREAS TO BE SEEDDED.
9. CONTRACTOR TO VERIFY ALL SITE CONDITIONS PRIOR TO
WORK, NOTIFY ARCHITECT IF CONDITIONS VARY FROM WHAT IS
SHOWN.
10. SITE PLAN IS DIAGRAMMATIC IN NATURE. BOUNDARIES,
UTILITIES, AND OTHER SITE FEATURES SHOULD BE REFERENCED
FROM A LICENSED SURVEYOR. GC SHALL CONFIRM ALL
SETBACKS AND CLEARLY MARK ON SITE PRIOR TO BEGINNING
CONSTRUCTION.
11. GC TO COORDINATE ALL UTILITY CONNECTIONS WITH
APPROPRIATE GOVERNING BODY.
12. SITE PLAN MUST BE APPROVED BY THE BUILDING OFFICIAL
AND THE PLANNING DEPARTMENT PRIOR TO BEGINNING
CONSTRUCTION.
13. GENERAL CONTRACTOR IS TO SUBMIT DRAWINGS TO THE BUILDING
INSPECTOR AND OBTAIN A BUILDING PERMIT PRIOR TO
BEGINNING WORK.
14. GENERAL CONTRACTOR SHALL LOCATE ALL PROPERTY PINS
AND CLEARLY MARK ALL BOUNDARIES PRIOR TO WORK.
15. ALL DIMENSIONS ARE SHOWN FOR BIDDING PURPOSES ONLY,
ACTUAL DIMENSIONS WILL VARY WITH SITE CONDITIONS.

GENERAL DEMO NOTES

1. NOT ALL DEMOLITION IS DETAILED ON THIS SHEET,
COORDINATE W/ ARCHITECT AND CONTACT UPON
DISCOVERY OF EXISTING FEATURES NEEDING REMOVAL
PRIOR TO BUILD BACK.
2. CUT AND PATCH WITH CARE TO AVOID DAMAGE TO WORK,
SAFETY HAZARDS, VIOLATION OF WARRANTY
REQUIREMENTS, BUILDING CODE VIOLATIONS, OR
MAINTENANCE PROBLEMS.
3. SUB-CONTRACTORS TO INSPECT FIELD CONDITIONS TO
IDENTIFY ALL WORK REQUIRED.
4. COORDINATE REMOVAL OF ITEMS WITH BUILD BACK PLAN
FOR ALL DIMENSIONS AND LAYOUTS.

DEMO KEYNOTES

- R-1 EXISTING BUILDING SHELL
- D-1 DEMO PORTION OF EXISTING WALL AS REQUIRED
- D-2 REMOVE EXISTING DOOR
- D-3 REMOVE EXISTING WINDOW
- D-4 REMOVE EXISTING UTILITY, CAP AS REQUIRED



2 FIRST FLOOR PLAN
1/8" = 1'-0"

LEGEND

- EXISTING TO REMAIN
- TO BE MOVED OR RELOCATED

GENERAL NOTES:

1. CONTRACTOR IS TO INSPECT EXISTING CONDITIONS INCLUDING BUT NOT LIMITED TO:
UNDERGROUND WATER MAINS, SEWER, TELEPHONE, AND ELECTRIC. WORK HERE UNDER ARE
INDICATED ON DRAWINGS FOR DIAGRAMMATIC PURPOSES. NO GUARANTEE AS TO THE ACCURACY
OR COMPLETENESS OF SUCH INFORMATION. RESPONSIBILITY FOR SUCH ACCURACY AND
COMPLETENESS IS DISCLAIMED. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR LOCATING
UNDERGROUND INSTALLATIONS PRIOR TO EXCAVATING.
 2. ALL DIMENSIONS ARE FROM FACE OF STUD, FACE OF CONC, OR CENTER LINE UNLESS NOTED
OTHERWISE. DRAWINGS ARE NOT TO BE SCALED, DIMENSIONS SHALL BE IN WRITTEN INFORMATION
ONLY. VERIFY DIMENSIONS PRIOR TO WORK. ALTERATIONS IN DIMENSIONS AFFECTING THE
DESIGN SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT PROMPTLY FOR A
RESOLUTION.
 3. NOT ALL MATERIALS AND ASSEMBLIES HAVE BEEN SPECIFIED. CONTRACTOR IS TO VERIFY ALL
NON-SPECIFIED ITEMS WITH OWNER & ARCHITECT PRIOR TO EXECUTING ANY WORK INVOLVING
THESE ITEMS.
 4. IT IS THE CONTRACTOR'S RESPONSIBILITY TO SUBMIT SUBSTITUTIONS OR DEVIATIONS FROM THE
CONTRACT DOCUMENTS TO THE ARCHITECT FOR APPROVAL. NON-APPROVED DEVIATIONS WILL
HOLD THE ARCHITECTS AND CONSULTING ENGINEERS HARMLESS FOR SUCH ITEMS.
 5. ALL WORK TO CONFORM TO APPLICABLE CODES. THE MOST STRINGENT CODE SHALL APPLY.
DISCREPANCIES IN CODE AND CONTRACT DOCUMENTS SHALL BE BROUGHT TO THE ARCHITECTS
ATTENTION IMMEDIATELY AND RESOLVED BEFORE PROCEEDINGS.
 6. ALL MATERIALS ARE TO BE INSTALLED IN ACCORDANCE WITH MANUFACTURER'S
SPECIFICATIONS AND AS SUCH ALL SUBCONTRACTORS ARE TO INSURE THAT ALL
MANUFACTURER'S WARRANTIES WILL BE HONORED.
 7. ALL SUBCONTRACTORS ARE RESPONSIBLE FOR INSURING THEIR SAFETY AND OF THEIR
PERSONNEL ON THE JOB SITE AT ALL TIMES. THEY SHALL CARRY WORKMAN'S
COMPENSATION AND LIABILITY INSURANCE FOR THEMSELVES AND THEIR EMPLOYEES.
SUBCONTRACTORS AND THEIR EMPLOYEES SHALL BE PERSONALLY RESPONSIBLE TO
FOLLOW ALL OSHA RULES AND REGULATIONS.
 8. GENERAL CONTRACTOR IS TO COORDINATE ALL MECH, ELEC, AND PLUMBING AND
PROVIDE NECESSARY CONSTRUCTION TO FACILITATE SUCH WORK INCLUDING SUPPORTS,
BLOCKING, ROUGH OPENING ETC.
 9. IT IS THE RESPONSIBILITY OF THE GENERAL CONTRACTOR TO REVIEW ARCHITECTURAL
DRAWINGS BEFORE INSTALLATION OF MECH, ELEC OR SYSTEMS INSTALLATION, AND SHALL
NOTIFY ARCHITECT IMMEDIATELY FOR ANY DISCREPANCIES. ANY WORK INSTALLED IN CONFLICT
WITH THE CONTRACT DOCUMENTS SHALL BE CORRECTED BY THE GENERAL CONTRACTOR AT NO
EXPENSE TO THE OWNER OR ARCHITECT.
 10. ALL DRAWINGS, SPECIFICATIONS AND DESIGN OF THE FOLLOWING SYSTEMS ARE TO BE
PROVIDED BY OTHERS AS REQUIRED. OWNER SHALL CONTRACT WITH OTHERS UNDER
SEPARATE CONTRACTS.
- A. CIVIL ENGINEERING B. MECHANICAL ENGINEERING C. ELECTRICAL ENGINEERING

CODE SUMMARY

APPLICABLE CODES:
INCLUDED BUT NOT LIMITED TO, THE LATEST ADOPTED ADDITIONS OF THESE CODES
AS AMENDED BY THE CITY OF BENTONVILLE AND THE STATE OF ARKANSAS

2012 International Residential Code (IRC)
(Vol. 2 with Arkansas State amendments)

THIS PROJECT IS AN ADDITION TO AN EXISTING RESIDENCE. A NEW BEDROOM
SUITE IS BEING ADDED TO THE SOUTH EAST CORNER. SITE IMPROVEMENTS LIMITED
TO NEW DRIVEWAY AND BACK PATIO

THE BUILDINGS ARE NOT SPRINKLERED

BUILDING DATA:
PROPOSED USE: SINGLE FAMILY DWELLING UNIT
R-3

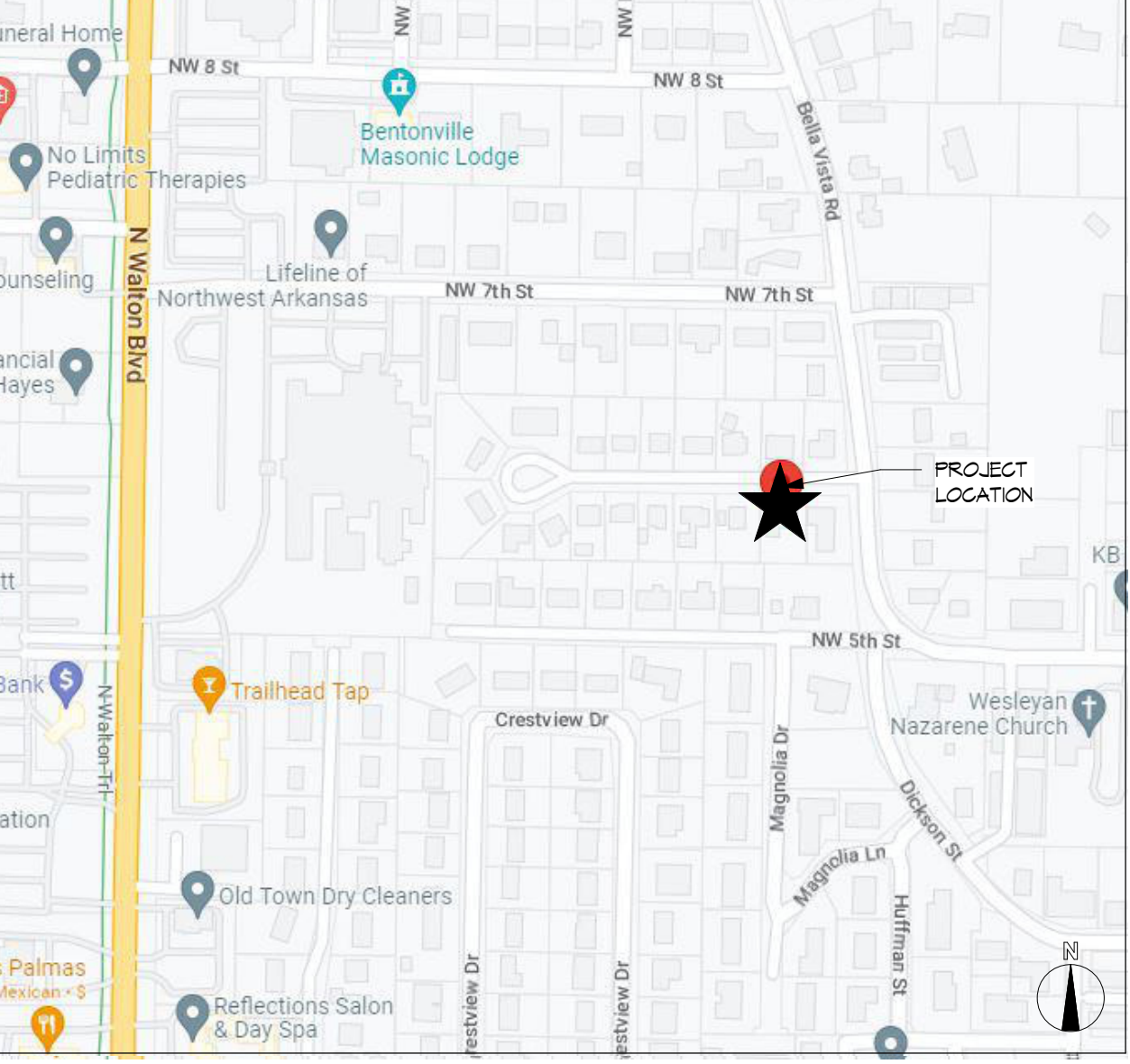
CONSTRUCTION TYPE: 5B

AREA CALCULATIONS:
EXISTING AREA = 1456 SF
AREA OF ADDITION = 450 HEATED
AREA AFTER ADDITION = 2414
GARAGE = 433 SF

SHEET INDEX

#	SHEET NAME	ISSUE DATE	REVISION
A0.0	COVER SHEET	8-11-23	
A0.4	DRAINAGE DETAIL	8-11-23	
S1.0	FOUNDATION PLAN	8-11-23	
A1.0	FIRST FLOOR PLAN	8-11-23	
A1.1	RCP ROOF PLAN	8-11-23	
A2.0	EXTERIOR ELEVATIONS	8-11-23	

LOCATION MAP



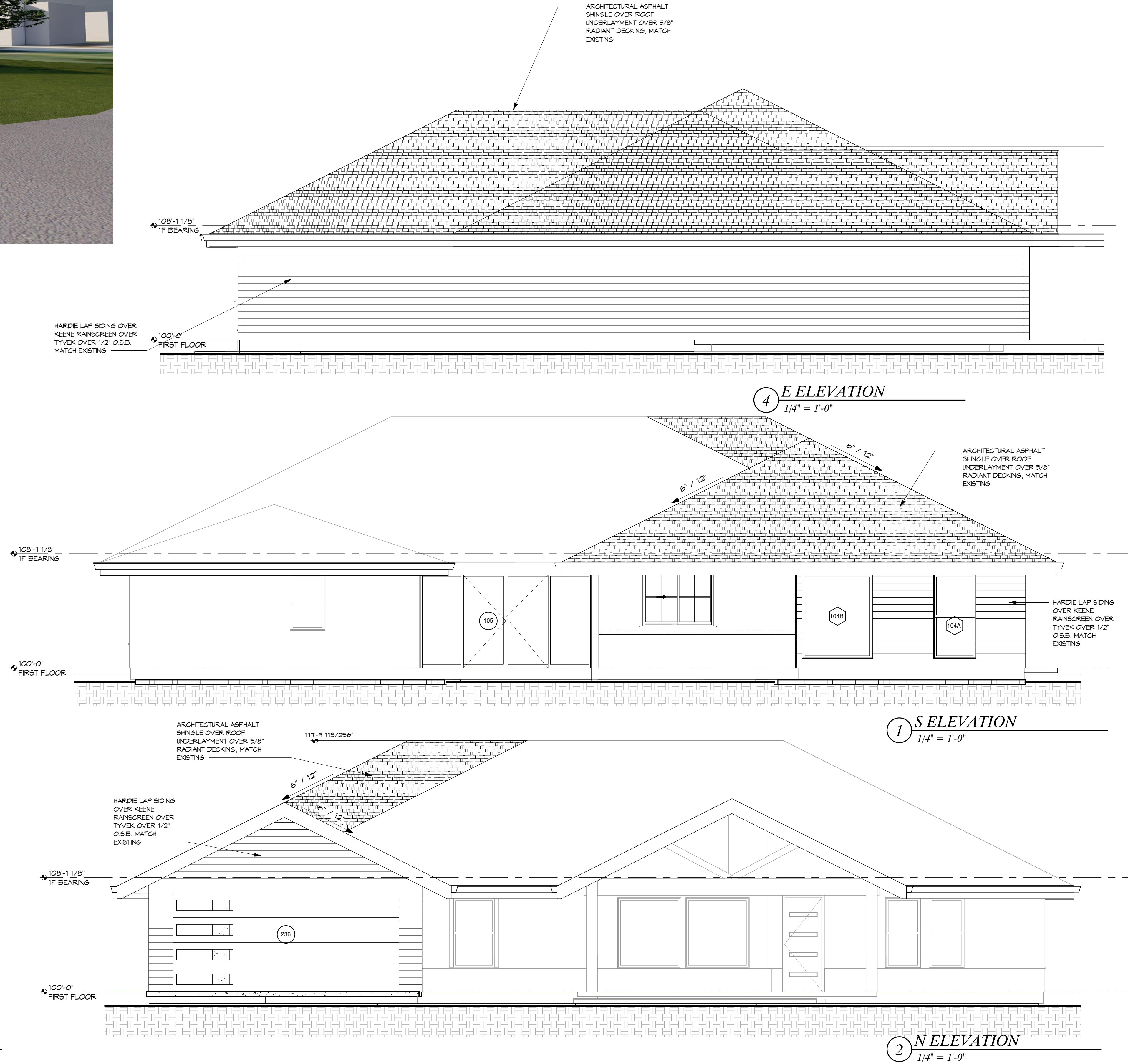
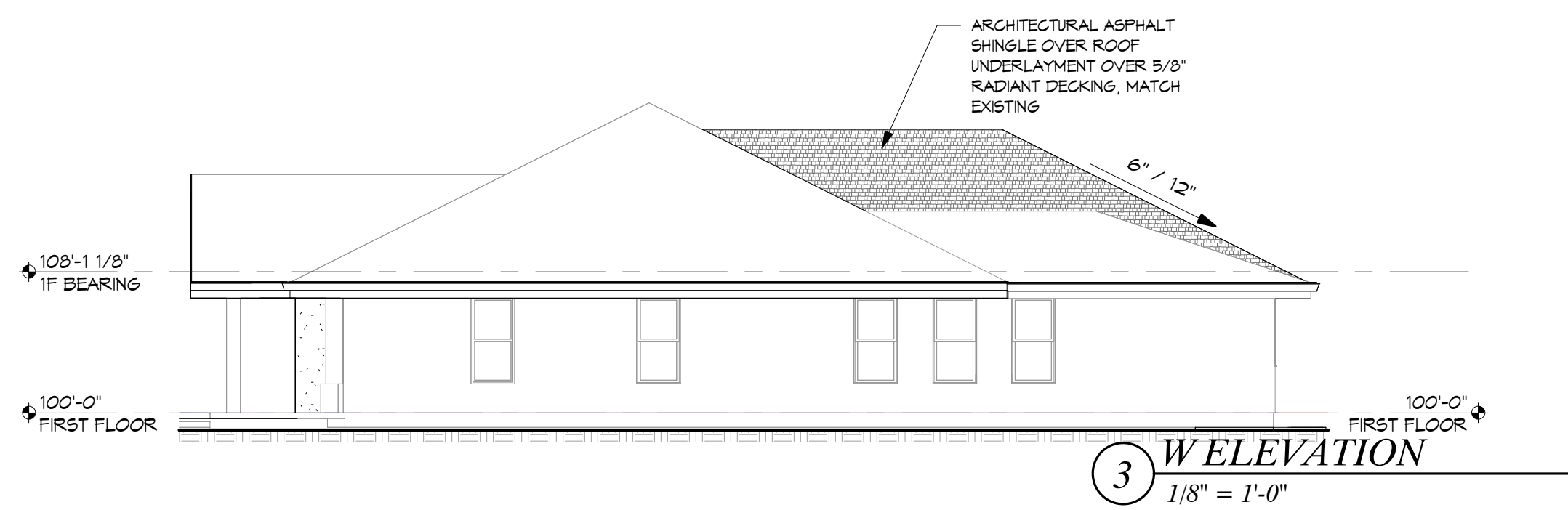
PRELIMINARY
NOT FOR CONSTRUCTION

Burris
Architecture
820 Tiger Blvd, Suite 4,
Bentonville, Ar 72712
479-319-6045

RANDALL
703 6TH ST
BENTONVILLE, AR

DATE
8-11-23
JOB NO.
21132
REVISIONS

A0.0
COVER SHEET



PRELIMINARY
NOT FOR CONSTRUCTION

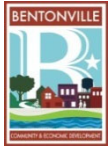
Burris Architecture
8200 Tiger Blvd, Suite 4, Bentonville, Ar 72712
479-319-6045

RANDALL
703 6TH ST
BENTONVILLE, AR

DATE 8-11-23
JOB NO. 21132
REVISIONS

A2.0
EXTERIOR ELEVATIONS

BOARD OF ADJUSTMENT STAFF REPORT



Reconsideration of Joshua & Vanessa Slusin

4600 SW Barton Street

BOA Date: 9/13/2023

Reviewer: Luke Aitken, Planning Technician / Tom Adler

Project Number	VAR22-0035
Applicant / Current Owner	Joshua & Vanessa Slusin
Site Area	+/- 0.25 Acres
Current Zoning	R-1, Low Density Single Family Residential
Variance Request	Zoning Code Article 401.07 Section (c) (1)
Related Projects	RADD22-0044

Property Description

This property is located at 4600 SW Barton Street and is currently zoned R-1, Low Density Single Family Residential.

Regulation

Zoning Code Article 401.07 Section (c) (1) The minimum rear setback shall be twenty-five (25) feet in areas zoned R-1, Low Density Single Family Residential.

Original Variance Request and Appeal

The applicant requested and was granted a variance of 9 feet from the minimum twenty-five-foot rear setback (resulting in a setback of 16' rather than 25') at September 14, 2022 Board of Adjustment meeting. Mr. Kyle Lynn appealed the BOA decision with the State of Arkansas Circuit Court wherein the BOA's decision was reversed and the variance was remanded to the board to make its findings in writing.

Background

The attached original staff report and packet provides the applicant's narrative as to why the variance was requested. It is important to note that the applicant's previous characterization of hardship was one of a financial hardship, not the hardship expressed in the Zoning Code section for the Board's powers and duties: 301.04(C)2 *Variances. To hear and decide requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance.*

Dates of construction of the homes on SW Crossbow Cir

The date for certificate of occupancy for 4605 SW Crossbow Cir. (Lot 12, Building Permit # RES20-0119) is 03/19/2021 and the date for the certificate of occupancy of 4607 SW Crossbow Cir. (Lot 13, Building Permit # RES19-0353) is 05/22/2020. Benton County Circuit Case No. CV 2022-2649-6 states that the covered porch on 4600 SW Barton St was completed around May 2020.

Existing Utility Easement

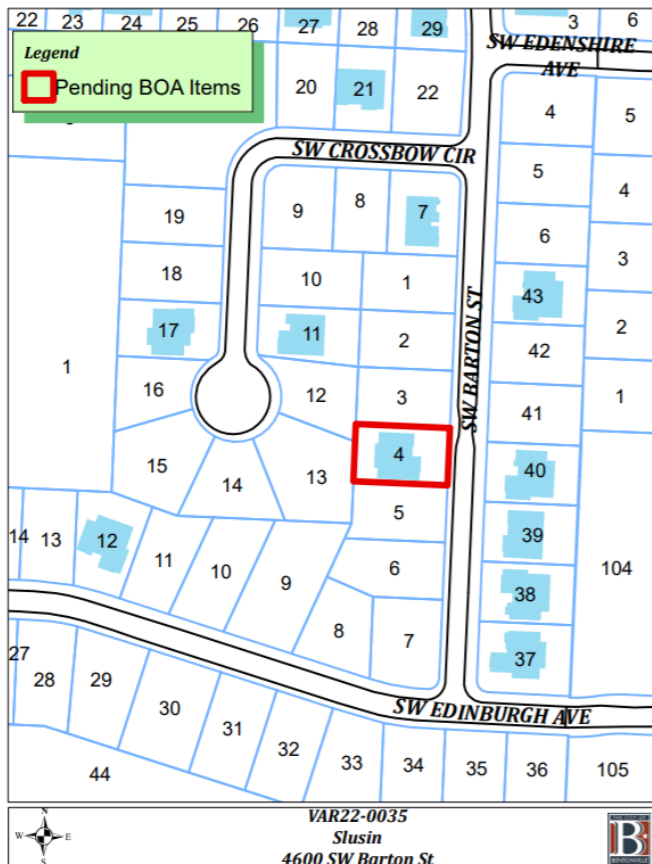
There is a 20' Utility Easement along the back property line of the property. If the patio was build 16' from the rear property line then the patio would be encroaching into the easement by 4'

Allowed encroachments into setbacks

Per 401.04 of the zoning code, there are elements that are allowed to encroach into setbacks such as walkways, on-grade patios, plants, pergolas, and arbors. This porch is integrated into the structure and roofline of the house and is therefore considered part of the house. Further, those "allowed" encroachments may not encroach into an easement unless exempted by the City per 401.04(h)

Public Comment

Staff HAS received public comment regarding this request.



BOARD OF ADJUSTMENT STAFF REPORT

Proposed Conditions of Approval, if Approved

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed layout, as provided by the applicant within this application.
2. The applicant must obtain a building permit before construction begins.
3. The applicant must obtain any approvals from any easement holders that may impact the project.

Section 301.10.c, Standards of Approval, of the Zoning Code

Standards for approval. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

(1) The applicant demonstrates that:

- a. special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district;
- b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
- c. that special conditions and circumstances do not result from the actions of the applicant; and,
- d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

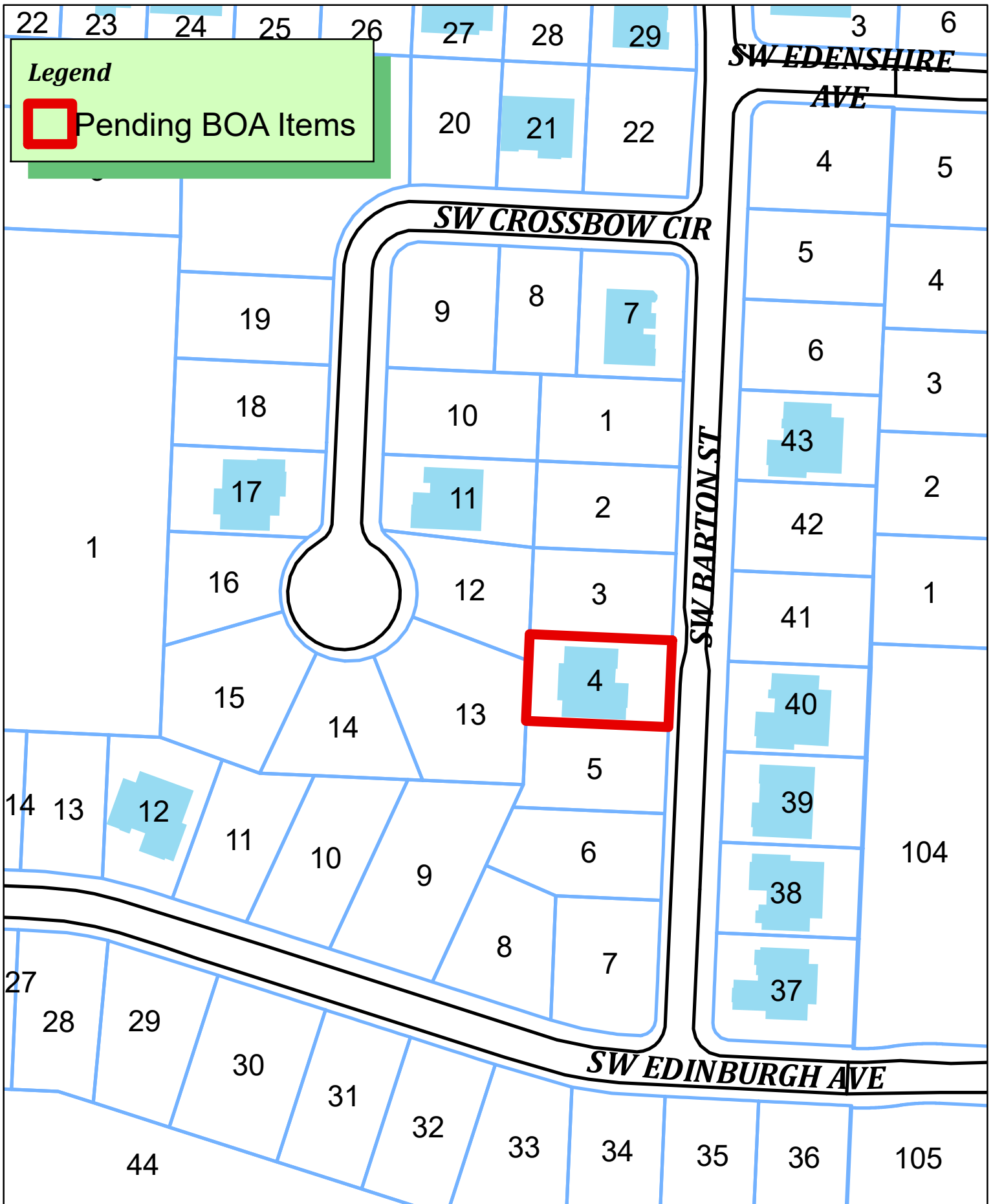
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(3) The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) *Conditions.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.



BENTON COUNTY CIRCUIT COURT
202 E. Central Avenue
Bentonville, AR 72712
Phone: 479-464-6114
Fax: 479-464-6116
e-mail: cdonald@co.benton.ar.us



DOUG SCHRANTZ, JUDGE
Darlene Young, Court Reporter
Chea Donald, Trial Court Assistant
Mary Allen, Court Orders Clerk
A. Roy Bell, Bailiff

STATE OF ARKANSAS
CIRCUIT COURT
NINETEENTH JUDICIAL DISTRICT WEST
DIVISION VI

August 8, 2023

Via U.S. Mail

Mr. Kyle Lynn
4603 SW Barton St.
Bentonville, AR 72713

Via Email

Ms. Bonnie Bridges
Staff Attorney
City of Bentonville, Arkansas

RE: *Kyle Lynn v. Board of Adjustment, Dept. of Planning and Development*
Benton Co. Circuit Case No. CV 2022-2649-6

Dear Mr. Lynn and Ms. Bridges:

Plaintiff appeals from the decision of the Board of Adjustment of the Department of Planning and Development of the City of Bentonville whereby the Board granted a variance permitting a structure which infringed on the rear yard setback established by city code. The construction occurred without the owner or the builder obtaining the required building permit.

The homeowners, Joshua and Vanessa Slusin, hired J & E Remodeling to construct a porch addition to their home located at 4600 SW Barton Street in Bentonville. The subject property is described as Lot 4 of Edgar Estates. The structure, which is a covered porch, was completed approximately May 30, 2020. Neither the homeowners nor J & E Remodeling obtained a city building permit for the construction. The City of Bentonville issued a citation on July 27, 2022, to the homeowners for not obtaining a permit for the addition. That same day, the homeowners applied for the permit.

Lance Blasi, Chief Building Inspector, advised the homeowners to apply for a variance for intrusion of the completed structure into the building setback. The homeowners applied for the variance on August 24, 2022. The matter was presented to the Board of Adjustments on September 14, 2022.

The Board of Adjustments considered the application for variance at its regular meeting on September 14, 2022. Statements of the homeowners, statements of neighbors, and letters, some in support of and some in opposition to the application, were presented to the Board. The Board voted three to two to grant the variance.

The Board of Adjustment has the following duties per A.C.A. 14-56-416(b):

(2) The board shall have the following functions:

(B)(I) (a): Hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance.

(b) The board shall not permit, as a variance, any use in a zone that is not permitted under the ordinance.

(c) The board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

Appeals of decisions of the Board of Adjustment are to the Circuit Court with jurisdiction per A.C.A. § 14-56-416 (b)(2)(B)(ii)(a):

(ii)(a) "Except as provided in subdivision (b)(2)(B)(ii)(b) of this section, decisions of the board under this section shall be appealed to a circuit court of competent jurisdiction."

Under the authority of the statute above, the City of Bentonville adopted as part of its code § 301.10.c(1) which states:

"Standards for approval. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

"(1) The applicant demonstrates that:

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

b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;

c. that special conditions and circumstances do not result from the actions of the applicant;

d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

(2) No nonconforming use of neighboring lands, structures or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(3) The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare”

The question on appeal is whether the Board of Adjustment followed its own policy and procedure. The Court turns to the record. The transcript of the proceedings of the Board relative to this matter on September 14, 2022, begin at page 21 through page 71 thereof.

First, Mr. Lynn contends that the three to two vote for granting of the variance does not comply with the Planning and Development Regulations of Benton County, Section 2.9 which requires a super-majority vote of the Benton County Planning Board to grant a variance. This section is a part of the Benton County code. It does not apply to the City of Bentonville. The City of Bentonville code only requires a majority vote of the Board to approve a variance.

Second, the City of Bentonville adopted § 301.10(a)(1) which governs the grant of a variance by the Board of Adjustment. The section places the burden on the applicant to prove:

- 1) special circumstances exist;
- 2) the applicant would be deprived of commonly enjoyed rights of other properties;
- 3) the special circumstances were not caused by the applicant; **and** (emphasis added)
- 4) the applicant will not receive special privileges that would be denied to similar properties.

The members of the Board and staff heard from property owners within the same subdivision in person and in writing. The applicant spoke in support of the application for the variance indicating that he thought the builder of the porch would obtain the permit, the purpose was to achieve some privacy for the enjoyment of the back yard, and that removal of the structure would create a financial hardship for his family. Some of his concerns about privacy were disputed by others speaking at the hearing. At one point, staff reminded the Board of its duties under Code Section 301.10(c). Ultimately, the Board called for a vote resulting in a three to two vote to grant the variance.

The authority of the Board of Adjustment to grant variances is quite clear. The Board may grant a variance if the applicant proves each of the requirements of § 301.10(c)(1)a, b, c, and d, and the Board makes findings under § 301.10(c), (2), (3), and (4). What is not clear is what findings the Board did make. The record does not make clear that the Board made any findings. Therefore, the decision of the Board of Adjustment is reversed and remanded to the Board to reconsider and to make its findings regarding the code requirements in writing.

An order is filed simultaneously with this letter opinion.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Schrantz", is written over the word "Sincerely," and the printed name below.

Doug Schrantz
Circuit Judge

DS/ml

cc: Court file

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS
DIVISION VI

KYLE LYNN

PLAINTIFF

v.

CASE NO. CV 2022-2649-6

BOARD OF ADJUSTMENT
DEPARTMENT OF PLANNING AND DEVELOPMENT

DEFENDANT

ORDER

NOW on this 8th day of August, 2023, in accord with its letter opinion, this matter is reversed and remanded to the City of Bentonville Board of Adjustment to reconsider the variance application and to render its findings and decision in writing.

IT IS SO ORDERED.



HONORABLE DOUG SCHRANTZ
CIRCUIT JUDGE

cc: Court File

(The following transcript was prepared from the audio labeled "Board of Adjustment")

MR. ROGERS: Good afternoon. We'll start and call to order of the City of Bentonville's Board of Adjustment's Meeting for September 14, 2022. The first item of consideration is review and accrual of the minutes for August 24, 2022.

MR. PEARSON: Motion to approve.

MR. KRUTHOF: Second.

MR. ROGERS: We have a motion and second to approve as presented. If no further conversation or discussion, call roll, please.

BOARD/STAFF SPEAKER: Kruithof?

MR. KRUTHOF: Yes.

BOARD/STAFF SPEAKER: Phillips?

MR. PHILLIPS: Yes.

BOARD/STAFF SPEAKER: Rogers?

MR. ROGERS: Yes.

BOARD/STAFF SPEAKER: Pearson?

MR. PEARSON: Yes.

BOARD/STAFF SPEAKER: Haynie?

MR. HAYNIE: Yes.

MR. ROGERS: Minutes are approved 5-0. On the new business, we have two items tonight for consideration. The first item is a variance request by

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1 Spangler at 3101 and 3103 Southwest Walton Boulevard 2 for a setback variance. If you could read the record, 3 please. 4 BOARD/STAFF SPEAKER: This property is located at 5 3101 S. Walton Boulevard and is currently zoned C-2, 6 General Commercial. Zoning Code Article 401.08, 7 Section c-1, states the minimum side setback adjacent 8 to residential districts in a C-2 zoned property is 9 32 -- is 30 feet. The applicant is requesting a 10 variance of 15 feet from the minimum of 30-foot side 11 setback. 12 According to the applicant's narrative, a portion 13 of the property is -- to the north is adjacent to a 14 religious worship center in an R-O district. Per code, 15 the R-O district require a minimum of 30-foot side yard 16 setback. With the property in the north being a church 17 with larger structures and parking, the applicant feels 18 the request of a 15-foot side setback is consistent 19 with the intent of the zoning code. 20 It should be noted that this project is tied to 21 lot split 22-0041 for the Parkside Row II project. 22 Staff has not received public comment regarding this 23 request. 24 Any conditions of approval -- if approved, the 25 following conditions shall apply: (1) The approved	1 used for what we're calling the Parkside II apartments. 2 Parkside I is going to be this development just on the 3 southeast corner. So we're taking that same type of 4 development, rotating it 90 degrees, and placing it 5 along here. 6 So the funny thing is that we're requesting the 7 setback variance from a residential, but we're putting 8 residential on the C-2, which is allowed by right. We 9 did review would it make sense to rezone the property 10 more residential, but it's not part of the future land 11 use plan. Future land use plan is still a C-2, so 12 we're keeping the C-2, consistent with the land use 13 plan, and requesting a setback variance. 14 BOARD/STAFF SPEAKER: Is the set backside -- side 15 setback request on both sides, the north and south 16 lines, or is it one or the other? 17 MR. DAVE BURRIS: We're -- we're specifically 18 requesting the setback on the northern side. We're 19 going to use the southern side as our access easement 20 for both properties so we'll be able to transverse 21 between Walton and C Street. 22 BOARD/STAFF SPEAKER: So the C-2, Rick, has a 23 30-foot side setback adjacent to the residential 24 direct. So R-O, even though it allows for some 25 commercial districts within our table of uses and
Page 3	Page 5
1 variance shall be for the proposed layout, as provided 2 by the applicant within this application; (2) The 3 applicant must obtain a building permit before 4 construction begins. 5 BOARD/STAFF SPEAKER: This item, being a variance 6 request, requires a public hearing, so I'll now open it 7 up for the public for anyone that would like to speak 8 for or against this item. Other than the applicant's 9 representative, do we have anybody that is attending 10 virtually that would like to speak on this item? If 11 you could, please use your "raise hand" icon. We have 12 none. Any in the chambers? We'll close the public 13 hearing and then we'll invite Mr. Burris up to speak on 14 this item. 15 MR. DAVE BURRIS: Thank you very much for hearing 16 us. The property is a little bit interesting. And our 17 project is interesting in that the church, being on an 18 R-O, which is allowed by conditional use, and then our 19 property being C-2. We are, as you've mentioned, doing 20 a lot split on the western end. Is there a way we can 21 go to the GIS on the slide here? 22 On the western end, we're going to be leaving it 23 commercial. And on the -- on the eastern side, we're 24 kind of requesting a flagship, if you will. But I'll 25 put -- the majority of this eastern side is going to be	1 within code, it's listed as -- 2 BOARD/STAFF SPEAKER: Okay. 3 MR. DAVE BURRIS: That being said, our setback 4 on -- 5 BOARD/STAFF SPEAKER: The backside of your next 6 page there shows the plan. 7 MR. DAVE BURRIS: The front part of the property 8 is going to have a 7-foot setback from the other 9 adjacent commercial use and then changes to 30 feet 10 when it's adjacent to the church use. 11 BOARD/STAFF SPEAKER: Gotcha. Okay. 12 MR. DAVE BURRIS: And we're not asking for full 7 13 foot. Ideally, you know, 10 feet would be the maximum 14 we'd want to put it in proximity, just for fire code. 15 So we're just simply asking for the 15-foot reduction. 16 BOARD/STAFF SPEAKER: And the way I interpret 17 this zoning map is that it's only the property where 18 the church is located that's R-O? 19 BOARD/STAFF SPEAKER: Right. 20 BOARD/STAFF SPEAKER: Based on the vicinity map, 21 there's two tracts, a tract 1 and tract 2. Are those 22 both R-O? You've got the church up front and then you 23 have the vacant land? Okay. Yes. Do we know the 24 ownership of that vacant land? 25 MR. DAVE BURRIS: It's -- it's all First Landmark

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1 Church. In fact, we -- we did the last two additions 2 for them. And if I'm not mistaken, most of that is 3 water detention on tract 2. If you turn that off, it's 4 pretty -- pretty clear. 5 BOARD/STAFF SPEAKER: It is owned by the church. 6 BOARD/STAFF SPEAKER: And then the tract 14 is 7 zone C-2. 8 BOARD/STAFF SPEAKER: Yeah. Thank you. 9 MR. DAVE BURRIS: Thank you. 10 BOARD/STAFF SPEAKER: I'll open it up for the 11 board for any comments or questions in this regard. 12 BOARD/STAFF SPEAKER: How come Bob's the one that 13 always starts this? 14 BOARD/STAFF SPEAKER: I have no problem with what 15 you're trying to attempt. But again, I'm talking about 16 process. I don't see anything here that is unique or a 17 hardship. That being said, I understand exactly what 18 you're trying to do. But I'm saying that all over 19 town, we have similar situations where we have 20 properties that about churches, properties that about 21 schools. They are all zoned and the code says they 22 have to be zoned. If we're going to make a variance 23 for this -- and I don't know if this has ever been done 24 before. Have variances been given for properties that 25 are abutting a conditional use?	1 BOARD/STAFF SPEAKER: You can see. It's up 2 there. So there's a minimum lot size of 6000 for R-O. 3 BOARD/STAFF SPEAKER: Okay. I was thinking 4 R-O -- 5 BOARD/STAFF SPEAKER: RZL is the one that has the 6 0-lot line -- 7 BOARD/STAFF SPEAKER: Okay. 8 BOARD/STAFF SPEAKER: -- in the 4000'S. 9 BOARD/STAFF SPEAKER: Has anybody approached the 10 church about changing their zone? 11 MR. DAVE BURRIS: So I've called the church a 12 couple of times. And I guess I need to call or just go 13 on a Sunday morning, because there's nobody answering 14 that. Again, we're -- we've worked with them in the 15 past and we know them. 16 BOARD/STAFF SPEAKER: Because that might be a 17 solution very easily, because it wouldn't effect the 18 church one iota. 19 MR. DAVE BURRIS: I'm sure that they wouldn't 20 have an issue. I think it's just about catching them 21 on a Sunday morning and try to -- try to -- trying to 22 make that connection. 23 BOARD/STAFF SPEAKER: And again, I want to make 24 it very clear; I'm not against what you're proposing -- 25 MR. DAVE BURRIS: Uh-huh.
Page 7	Page 9
1 BOARD/STAFF SPEAKER: Unique aspect of this one, 2 previously, multifamily was not an allowed use within 3 C-2. We changed that within the last year or so. So 4 this is the first variance we're seeing of this 5 specific type where they're wanting to develop 6 multifamily in C-2 to a residential district. 7 Now, as far as setback variances adjacent to 8 churches or adjacent to conditional uses, we'd have to 9 do some research on that one. I don't know of any off 10 the top of my head. 11 BOARD/STAFF SPEAKER: And you're saying intended 12 use that he's wanting to do is allowed by right in R-O? 13 Would that be a correct statement? 14 BOARD/STAFF SPEAKER: Not multifamily. Can you 15 pull that up? Duplexes are and town homes might be as 16 well. Condos I think may even be. 17 BOARD/STAFF SPEAKER: So if it helps you sink 18 your teeth into this one a bit more specific that might 19 do this as a hardship, the fact that the church being 20 in an R-O, I feel, is a bit strange. While maybe it's 21 allowed by -- by conditional use, most R-O's are 22 restricted to, I think, a 4000-square-foot footprint, 23 if I'm not mistaken. Aren't they reduced in size and 24 scale? 25 BOARD/STAFF SPEAKER: No. No.	1 BOARD/STAFF SPEAKER: -- in this one situation. 2 But it's just I'm always concerned we're going to open 3 the floodgates -- 4 MR. DAVE BURRIS: Uh-huh. 5 BOARD/STAFF SPEAKER: -- on other things that 6 might not be as agreeable. And it just -- in looking 7 at this and what the situation is and all that property 8 that's owned by that church, wouldn't effect the church 9 at all to change their zoning, if that would give you 10 the setback that you need. And I -- I think we'd have 11 to figure out what -- what zoning it would be and make 12 sure it goes with the City's zoning plan. 13 BOARD/STAFF SPEAKER: You're suggesting to table 14 it until we have a chance to talk to the church? 15 BOARD/STAFF SPEAKER: Well, I -- as I've said, it 16 seems that this is something that, from the development 17 standpoint, I don't have a problem with it. But I 18 don't know if the variance is the appropriate solution. 19 BOARD/STAFF SPEAKER: No, I agree with you on 20 the what is the hardship aspect of this. 21 BOARD/STAFF SPEAKER: Yeah. 22 BOARD/STAFF SPEAKER: That's the gotcha that 23 we've got to contend with. 24 BOARD/STAFF SPEAKER: But I'm thinking that if -- 25 and a zoning change doesn't -- doesn't cost that much.

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Page 10 1 Takes a little bit of time. If the church is in favor 2 of it, then that would allow you to do that, especially 3 if you've worked with them in the past. 4 MR. DAVE BURRIS: I really -- I feel like it's 5 just about making that connection and trying to get 6 that letter from them, but I feel like they would be 7 more than open to it. And I'd be happy to. And 8 tabling this just means two weeks. Correct? 9 BOARD/STAFF SPEAKER: It will be nice; in two 10 weeks, I won't be here. I'll be out of town. 11 MR. DAVE BURRIS: Sure. 12 BOARD/STAFF SPEAKER: So y'all don't have to 13 worry about me. 14 MR. DAVE BURRIS: I'm more than happy to table 15 this for two weeks and approach the church and see what 16 they say. I understand what you're saying about being 17 a true hardship; however, again, it being a church on 18 an R-O and the future land use plan showing that be 19 C-2, it's only R-O because -- because they went for the 20 conditional use and just didn't rezone it. 21 BOARD/STAFF SPEAKER: From a practical 22 standpoint, you're on the notes. 23 MR. DAVE BURRIS: Uh-huh. 24 BOARD/STAFF SPEAKER: I -- I see it very much. 25 You're on the notes. But it's just the process we have	Page 12 1 that they agree to it. 2 MR. DAVE BURRIS: Right. And I'm trying to think 3 what -- what would the church say? Say, well, what's 4 the disadvantage of me rezoning? While if they came 5 back and -- and would there be new standards that we'd 6 have to apply to them in a commercial district that 7 otherwise wouldn't be there in an R-O? 8 BOARD/STAFF SPEAKER: The setbacks would be 9 different now, as far as design standards. Whether 10 it's residential or commercial from the land 11 development code, those would be the same regardless. 12 Zoning code wise, shouldn't be any changes to that. 13 Because, like, when a church comes through the 14 development process, we treat it. The advantages come 15 to play, like, if a church is in an A-1 or in an 16 industrial district -- 17 MR. DAVE BURRIS: Uh-huh. 18 BOARD/STAFF SPEAKER: -- then they only have to 19 meet a lesser criteria for -- 20 BOARD/STAFF SPEAKER: Such as libraries, 21 schools -- 22 BOARD/STAFF SPEAKER: Yeah. 23 MR. DAVE BURRIS: Uh-huh. 24 BOARD/STAFF SPEAKER: Now, you could also look at 25 rezoning y'all's property to, like, an R-3, R-4
Page 11 1 to go through. 2 MR. DAVE BURRIS: Yes, sir. 3 BOARD/STAFF SPEAKER: And what we have to 4 consider when we do a variance -- and I'm just thinking 5 that since the church can go in practically 6 any zoning -- 7 MR. DAVE BURRIS: Uh-huh. 8 BOARD/STAFF SPEAKER: -- if you change the 9 zoning, wouldn't effect the church. The church isn't 10 going to go anywhere. And then that would give you the 11 ability to develop like you want to develop. 12 MR. DAVE BURRIS: Uh-huh. By rezoning us? Or 13 rezoning the church? 14 BOARD/STAFF SPEAKER: No, I'm saying rezone the 15 church. 16 MR. DAVE BURRIS: Oh, you're suggesting that we 17 rezone the church. 18 BOARD/STAFF SPEAKER: Yes. 19 MR. DAVE BURRIS: Not get an approval from them 20 to do what we want to do. 21 BOARD/STAFF SPEAKER: No. I'm saying if the 22 church would agree to it, rezone the church property. 23 MR. DAVE BURRIS: Do you see any hiccups there? 24 Is that -- 25 BOARD/STAFF SPEAKER: You'd have to make sure	Page 13 1 as well. 2 MR. DAVE BURRIS: And again, that would -- that 3 would have been be a slam dunk, obviously, to not have 4 to be here. But we kind of thought rezoning this and 5 taking it out of the future land use plan would be a 6 bit more obtuse and felt like the variance was the best 7 path moving forward. So I think we all agree that -- 8 that putting this thing 15 feet from the property line 9 is not obtuse; that it's consistent with the code. 10 Honestly, rezoning it in an adjacent piece of property 11 and going through that process, that seems -- that 12 seems a bit much. 13 BOARD/STAFF SPEAKER: Just thinking outside the 14 box. 15 MR. DAVE BURRIS: I'm with you. I -- but I feel 16 like going to the church and asking them to rezone 17 and -- and maybe even doing it at our cost and our 18 time, it's -- I think that's a lot for asking for the 19 setback that I think that we agree. 20 So again, I -- I think that if we have to sink 21 our teeth into a true hardship is that -- that the 22 church is on an R-O by conditional use and -- and our 23 setback, stating it's off the district and not uses, 24 is -- is -- is maybe the strange component. But then 25 it makes this more unique than, say, another piece of

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Page 14 1 property. 2 BOARD/STAFF SPEAKER: I guess my experience is 3 I've seen churches on residential properties 4 everywhere. That's not an unusual thing. 5 MR. DAVE BURRIS: No. On A's and R's by -- by 6 conditional use. And -- and -- and I guess the 7 question would be in the -- in the future, does the 8 church come down and there become more apartments here 9 or houses -- single-family houses? And I think that's 10 maybe, again, this is probably the unique portion here. 11 This is the middle of town with a future land use plan 12 of a C-2. If anything, in the future, if the church 13 does get torn down and gets changed, it's most likely 14 going to a C-2 and becoming more multifamily or 15 commercial. So I -- again, I -- I feel like -- I feel 16 like this -- this is what makes this one site a bit 17 more unique and we can't just say that applies to 18 everything. 19 BOARD/STAFF SPEAKER: Certainly. 20 BOARD/STAFF SPEAKER: (Inaudible) 21 BOARD/STAFF SPEAKER: We have always had a 22 practice of thinking uniqueness of each application as 23 it stands on it's own. We've always been concerned 24 about setting precedent. But we've also been flexible 25 in a commonsense rule due to a technicality.	Page 16 1 hardship? 2 BOARD/STAFF SPEAKER: Sure. 3 MR. DAVE BURRIS: Because of the choices of what 4 the church decided to do and their lack of wanting to 5 rezone and their -- their actions towards going for 6 conditional use, it -- it takes away our right to be 7 able to put up something that otherwise would have been 8 allowed by right. So it's the actions of not our own 9 doing, but the church being allowed to go in by 10 conditional use, not by right, that that -- maybe that 11 is our hardship. 12 BOARD/STAFF SPEAKER: But it's -- a church is 13 allowed in the R-O. It hasn't changed the zoning. 14 MR. DAVE BURRIS: Not by right. By conditional 15 use, if I'm not mistaken. Correct? 16 BOARD/STAFF SPEAKER: Yes. 17 MR. DAVE BURRIS: So we are allowed to put in 18 multifamily by right. They're only allowed to go into 19 R-O by conditional use. So by -- by their actions and 20 not rezoning it, it put us into the -- into the 21 hardship. 22 BOARD/STAFF SPEAKER: And I'm guessing that it 23 was zoned R-O a long time ago, prior to the contextual 24 development of the area. 25 BOARD/STAFF SPEAKER: I would say likely. You
Page 15 1 My personal opinion is the latter is what this 2 is. Are we creating a particular precedent that we 3 might end up having to fight against future situation? 4 Maybe. But this, to me, is a commonsense ruling. 5 Church isn't going anywhere. It's been there a long 6 time. This is basically an in-field. Nothing else is 7 going in there. There is no contextual (inaudible) for 8 the area. It's kind of a -- there's not a clear 9 hardship, but there's a balance. 10 BOARD/STAFF SPEAKER: (Inaudible) 11 BOARD/STAFF SPEAKER: I don't think there's 12 really one needed other than what's stated, that it's 13 more the proposed layout as provided by the applicant, 14 within the application or the proposed use. And I can 15 go at either way. I'm fine with tabling, as well, with 16 the applicant doing some further due diligence in 17 regards to the rezoning situation. So I could go 18 either way. 19 BOARD/STAFF SPEAKER: What are we saying is the 20 hardship? 21 BOARD/STAFF SPEAKER: (Inaudible) 22 BOARD/STAFF SPEAKER: (Inaudible) is said, I know 23 where common sense is, but this is -- 24 BOARD/STAFF SPEAKER: Yeah. 25 MR. DAVE BURRIS: Can I take a stab at a	Page 17 1 can pull that, though, if you pull the approved PC 2 items. We can find out when it was rezoned. 3 BOARD/STAFF SPEAKER: What he restated, does that 4 cover the hardship? 5 BOARD/STAFF SPEAKER: It could. I mean, that's 6 at y'all's discretion. The counterargument to that is 7 they could also lose a unit on each of those and meet 8 the setbacks and still develop something allowed by 9 right. Sorry, Dave. 10 BOARD/STAFF SPEAKER: It was rezoned to R-O from 11 A-1. 12 BOARD/STAFF SPEAKER: 22 years ago. 13 BOARD/STAFF SPEAKER: 22 years. 14 BOARD/STAFF SPEAKER: There was really nothing 15 out there 22 years ago other than Phillips Park. And 16 the trend, as of late, is residential and office 17 commercial-type of development in the area anyway in 18 the last 10 years. 19 BOARD/STAFF SPEAKER: What's the density allowed 20 on R-O? 21 BOARD/STAFF SPEAKER: So there isn't an 22 overarching density gap, per se. But as far as what's 23 allowed, it's a 6000-square-foot lot minimum. So if 24 you were to convert that to units per acre, that's 25 what, about 7 units an acre.

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1 BOARD/STAFF SPEAKER: All right. Well, we have a 2 suggestion here to potentially table. Is that the 3 direction that the board feels more comfortable with? 4 Or do we need to proceed on with calling roll? 5 BOARD/STAFF SPEAKER: BJ, do you need to recuse 6 yourself on this one? 7 MR. PHILLIPS: Yeah, I'm not going to commit 8 or -- 9 BOARD/STAFF SPEAKER: Okay. 10 MR. PHILLIPS: -- or vote. 11 BOARD/STAFF SPEAKER: The only practical thing 12 about a table for two weeks is if you're going to 13 recuse and I'm not going to be here, will there be 14 three members that can consider this? 15 BOARD/STAFF SPEAKER: It will be our brand-new 16 board member, Cilia Swanson (phonetic), and then if Joe 17 and Sam are here. 18 BOARD/STAFF SPEAKER: And then it's got to be -- 19 BOARD/STAFF SPEAKER: It's got to be 100 percent. 20 BOARD/STAFF SPEAKER: 100 percent. 21 BOARD/STAFF SPEAKER: All three. 22 BOARD/STAFF SPEAKER: All three. 23 BOARD/STAFF SPEAKER: I think it's a commonsense 24 thing. I agree. I wish we had a better hardship to 25 hang our hat on but --	1 feel like we're going to make the same argument with it 2 and they're going to say, well, if that's what the BOA 3 told you to do, we can do it. But again, from staff's 4 opinion, keeping zoning in the -- in the future land 5 use plan is most ideal, moving forward. Am I incorrect 6 on that? 7 BOARD/STAFF SPEAKER: Yeah. If you were to 8 request, say, a zoning to, like, an R3/R4, we would 9 require the land use plan to be amended concurrent with 10 that so -- 11 BOARD/STAFF SPEAKER: I say we vote on it. 12 BOARD/STAFF SPEAKER: Nothing wrong with that. 13 BOARD/STAFF SPEAKER: Okay. We'll call it into 14 question then. Call the roll for approval, please. 15 BOARD/STAFF SPEAKER: Okay. Rogers? 16 MR. ROGERS: Yes. 17 BOARD/STAFF SPEAKER: Pearson? 18 MR. PEARSON: Yes. 19 BOARD/STAFF SPEAKER: Haynie? 20 MR. HAYNIE: Yes. 21 BOARD/STAFF SPEAKER: Kruithof? 22 MR. KRUIHOF: No. 23 BOARD/STAFF SPEAKER: You're approved 3-2 with 24 that one abstention. 25 MR. DAVE BURRIS: Thank you.
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1 BOARD/STAFF SPEAKER: I would sure -- I'd feel a 2 little better if we kind of fleshed out the rezoning 3 question before we took that step. 4 BOARD/STAFF SPEAKER: There is always the option 5 that if that's the way it goes and the board only has 6 three members, the applicant can request a further 7 table to get a full board, better odds. Now, grant it 8 that delays you a month, potentially -- 9 MR. DAVE BURRIS: Or asking the church to rezone. 10 BOARD/STAFF SPEAKER: Or looking into your 11 rezoning as well. I mean, try to see if there's a way 12 to rezone instead of a variance that would allow you to 13 do what you want to do. 14 MR. DAVE BURRIS: I -- I -- I -- I agree. 15 Rezoning is, like, it's not about the money. We 16 could -- we could rezone this all day long. We just 17 felt that from -- from the -- from the staff's opinion, 18 rezoning and taking it out of the designation of the 19 future land use plan is -- is -- would not be the 20 prudent move. 21 I mean, going in, in front of the planning 22 commission and saying we're here to rezone this out of 23 your -- your future land use plan that you all have 24 adopted and taking it into something else, it's -- 25 that's pretty questionable. I mean, it can be done. I	1 BOARD/STAFF SPEAKER: All right. Thank you. All 2 right. Next item on the agenda is a variance for -- 3 and forgive me for mispronunciation? Slusin? 4 MR. JOSHUA SLUSIN: Slusin. 5 BOARD/STAFF SPEAKER: Slusin. Okay. 4600 6 Southwest Barton Street for a setback variance. If you 7 would, read the record. 8 BOARD/STAFF SPEAKER: Just a note. We received a 9 letter -- a comment -- additional one at the last 10 minute from a member of the public, and he handed it to 11 me. There's only one copy, so you guys would have to 12 send that around. Would you like to read that before 13 I -- 14 BOARD/STAFF SPEAKER: No. Go ahead and read the 15 record. When we open up for public haring, we will 16 discuss the additional submittals. 17 BOARD/STAFF SPEAKER: This property is located at 18 4600 Southwest Barton Street and is currently zoned 19 R-1, single family residential. Zoning Code Article 20 401.07, Section c-1, states the minimum rear setback 21 shall be 25 feet in areas zoned R-1. The applicant is 22 requesting a variance of 9 feet from the minimum 23 25-foot rear setback. 24 According to the applicant's narrative, a 9-foot 25 rear setback variance is necessary to keep in place an

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Page 22 1 addition to the existing home which was constructed 2 within the rear setback without a building permit in 3 2020. The applicant's narrative states they hired J 4 and E Home Remodeling to construct a non-livable, 5 covered back porch with a scale and esthetic designed 6 to match the existing house. The applicants were under 7 the assumption that, as part of the process, the 8 contractor retained all necessary permits to complete 9 the project, which ultimately was found to be false. 10 The applicant concludes that the structure was 11 primarily built to provide privacy from neighboring 12 two-story homes which looked down to the applicant's 13 backyard. The narrative states, also, that removing 14 this structure would deprive them of rights commonly 15 enjoined by their properties in the same area. Staff 16 has received public comment regarding this request. 17 Please see the attached. I'm sure you guys have gotten 18 a chance to view a couple of those letters. 19 Conditions of approval -- if approved, the 20 following conditions shall apply: (1) The approved 21 variance shall be for the proposed layout as provided 22 by the applicant within this application; and (2) the 23 applicant must obtain a building permit before 24 construction begins. There's also a related project 25 that -- on there. It's the permit application that	Page 24 1 least -- 2 BOARD/STAFF SPEAKER: He went to make copies. 3 BOARD/STAFF SPEAKER: He went to make copies. 4 Okay. So I suspect that there will be several here 5 that would like to speak on it. So what I encourage 6 you to do is that if you come up to speak, that you 7 state your name, your address, and that if one of you 8 speaks on an item, that it's consistent with everybody 9 else; that we don't hear 15 conversations of the same 10 item or the same agreement or disagreement. If you 11 could do that, we can -- we can process this 12 efficiently. So I'll go ahead and open up for public 13 hearing and we'll allow anyone that would like to speak 14 on this item to either approach the podium or we'll 15 open up virtually. 16 BOARD/STAFF SPEAKER: Just a note, as well, I've 17 included a sign-in sheet at the podium, if you're able 18 to write your name down. 19 BOARD/STAFF SPEAKER: Okay. Very well. Anyone 20 in the chambers that would like to step forward? Yes, 21 sir. Please. 22 MR. KYLE LYNN: All right. Kyle Lynn. I'm at 23 4603 Southwest Barton Street. All right. So I think 24 all of y'all have probably got the letter that I've got 25 here. So you know, before coming here today, after
Page 23 1 they applied for retroactively, after they learned that 2 it was constructed illegally. 3 BOARD/STAFF SPEAKER: Okay. Before we open that 4 for public hearing, I want to make sure that I'm clear 5 that the request is a variance of 9 feet, leaving 16 6 feet as the setback -- resulting setback. 7 BOARD/STAFF SPEAKER: That's correct. 8 BOARD/STAFF SPEAKER: And that construction had 9 already started on this. Is that right? Or is it 10 completed? 11 BOARD/STAFF SPEAKER: To my knowledge, the 12 construction has been completed. Is that correct? 13 MR. JOSHUA SLUSIN: (Inaudible) 14 BOARD/STAFF SPEAKER: Okay. 15 BOARD/STAFF SPEAKER: There's a couple rendering 16 (inaudible). 17 BOARD/STAFF SPEAKER: Yeah, I saw that. 18 BOARD/STAFF SPEAKER: Okay. 19 BOARD/STAFF SPEAKER: Now I'll open up the public 20 hearing for those that would like to speak on this 21 item. I'd note that we have some virtually, and I -- I 22 assume that some in the chambers are here to speak on 23 it as well. So as part of the public hearing, we have 24 noted that there are several submittals to the City in 25 regard to this. I believe the board has those or at	Page 25 1 realizing that there was a public hearing, you know, I 2 read over what the homeowner had said the reason why, 3 you know, that he should be allowed to keep his porch 4 on the setback. I read the variance application, the 5 narratives online. He had three letters that he 6 actually supported, as well, of neighbors. 7 But you know, the one thing I was really 8 disappointed about, there was not one thing where he 9 took responsibility for any of the actions. He's 10 blaming all of what happened on somebody else. There 11 are no documents posted online showing that the POA at 12 the time -- RLP, which the -- we've actually recently 13 taken over the HOA, but it was RLP before that. 14 There's no approval for them, per the Edgar Estate's 15 covenants that were filed on 8/11/2017. 16 Upon purchasing a house, everybody's given a list 17 of the covenant so you know exactly what the rules are. 18 So per covenant page 3, Section 5, before commencing 19 construction, you must get approval from the developer 20 in writing, which I've got a copy of the covenants if 21 y'all want to see the covenants. 22 BOARD/STAFF SPEAKER: Okay. 23 MR. KYLE LYNN: Page 5, Section 7, no building 24 shall be located on any lot nearer to the minimum 25 building setback lines shown on the anticipated final

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Page 26 1 recorded plat. Porches, steps, chimneys, window boxes, 2 and other portions of the permitted structure shall not 3 project beyond the minimum setback. Didn't get any 4 type of approval for that. 5 Had the homeowner submitted the plans to RLP 6 before construction, the construction company would 7 have let him know the violations that he was going to 8 do. You know, he would have let him know that part of 9 the covenants say you can't do it; say the ordinance 10 says you had to get it approved. That didn't happen. 11 The homeowners' letter also states it would 12 create a financial hardship if he was required to 13 deconstruct a back porch. You know, not only did the 14 homeowner not get approval from Edgar Estates, but 15 approval permits from the City of Benton during the -- 16 sorry -- from -- and also the -- from the City of 17 Bentonville during this process. If so, the homeowner 18 wouldn't be what he considered a hardship. He wouldn't 19 be in this situation. If he would have asked the City 20 for approval or if he would have asked the HO builder, 21 this would have never happened. So that is not a 22 hardship. 23 Also, he would not be having this hearing had he 24 had made -- had he had made sure that the construction 25 company he hired retained all the necessary permits.	Page 28 1 covenants; you know there's a City ordinance; to me, it 2 looks like they was like, probably not going to get 3 approved; we're just going to do it; we're just not 4 going to get caught. They got caught. 5 Homeowner purchased this residence in March of 2018. 6 That's actually when I moved in as well. I actually 7 looked at his house before I bought my house. So his 8 thing is that it was because of privacy. If you move 9 into a neighborhood, there is no privacy. You've got 10 people behind you; you've got people on the sides. I 11 purchased across the street. I have a retention pond. 12 I have nobody behind me. I don't have to worry about 13 neighbors. 14 He says he built the porch for privacy. The 15 porch -- which we've got actually a -- pictures here of 16 a review they did online that said this was their dream 17 porch. Doesn't say they built it for privacy. It said 18 it's their dream porch, which means that's not the 19 reason they built it, for privacy. They built it 20 because they wanted this porch. 21 So like I said, me and my fiance actually 22 purchased across the street because, you know, it -- 23 you've got to know if you move into a neighborhood, 24 there's going to be people around you. They're going 25 to have security cameras. If you want privacy, you
Page 27 1 You know, if I'm going to build something 20 or 2 \$25,000, I'm going to make sure that that company is 3 doing stuff correct. It's not -- you know, it's their 4 responsibility, but in the end game, it's the 5 homeowner. He has to make sure those permits have been 6 pulled. He did not do that. 7 If this was, indeed, the construction company's 8 fault for not pulling the permits, the homeowner should 9 be getting with the construction company or the 10 construction company's insurance to fix the addition. 11 Once again, you know, it's his responsibility to make 12 sure they were pulled. Didn't happen. Ultimately, it 13 was the homeowner's responsibility to make sure the 14 construction company retained all of the necessary 15 permits to ensure the addition to this home was within 16 the building codes. Therefore, the homeowners should 17 be held responsible, financially, for fixing this 18 structure so it is not out of the guidelines of the 19 City requirements. 20 No homeowner should be allowed not to follow the 21 POA covenants or Bentonville City codes. No homeowner 22 should be awarded a variance after the fact because 23 they felt like they could do the changes without 24 getting caught. And that's, you know, if you look and 25 you know you're a homeowner; you know you've got the	Page 29 1 move out to the country. 2 And also, I'm actually a current board member. 3 He's the president. So we've actually held meetings at 4 his house. I've sat on that porch. He said it's 5 supposed to provide privacy? I can see in every 6 neighbor's yard. There's no privacy. The back of the 7 porch has this huge opening with crossbeams. If it was 8 for privacy, that would have been closed in. So he's 9 got a house right across that's looking straight in, 10 wide open. 11 So I don't know -- I really don't understand the 12 whole privacy thing when we've got this that shows it 13 was built as a dream porch. There's nothing there that 14 shows it was. What he did tell me he did, he planted 15 trees -- some fast-growing trees along his property 16 line. He put these in for privacy, so I guess when he 17 was entertaining on this dream porch, that nobody could 18 see him. 19 Granting this variance to the homeowner who is 20 the current Edgar Estates PO -- POA president, like I 21 said -- so not only did he break the rules; he broke 22 the rules before he was president. He knew them at 23 that time. When he was president, he for sure knew the 24 rules. He didn't call that out to the board members. 25 He didn't say, "Hey, this is what I did. Is it okay?"

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1 Do we need to talk about this? Do we need to get this 2 passed?" Never happened. Never mentioned it one time. 3 All right. Also, since he took office in 2021, 4 he's actually made decisions, throughout the 5 neighborhood, who can do something and who can't do 6 something. He's breaking the rules on his own, but 7 he's telling the homeowners what they can do and what 8 they can't do. To me, that's, you know, just not 9 right. Just like he never asked approval for the 10 addition for the POA before construction, he also 11 mentioned -- never mentioned it to the board members. 12 I feel that the homeowner should have reached out to 13 the current POA members. Never did. 14 Actually, when I found out about this violation, 15 that it led to a citation -- and you've got the public 16 hearing sign out front -- actually posted something on 17 our Facebook group to let the homeowners know it's a 18 public hearing. You know, if you don't agree with 19 this, you should show up. Just so happens that his 20 wife is the admin. They pulled that post down. I 21 contacted her to find out why it was pulled down, and 22 she never responded. I called -- didn't call -- I 23 contacted her again. 24 They actually contacted the police to file 25 harassment suit against me because I was trying to let	1 BOARD/STAFF SPEAKER: Only a fine. 2 MR. KYLE LYNN: Yes. It's not that -- we've 3 tried to update covenants, but you had to have 70 4 percent of the community. And our community, it -- 5 trying to get 70 percent of the community -- 6 BOARD/STAFF SPEAKER: Most covenants that I'm 7 aware of left themselves the ability to use legal 8 proceedings -- 9 MR. KYLE LYNN: Right. 10 BOARD/STAFF SPEAKER: -- to enforce the codes. 11 MR. KYLE LYNN: Yeah. Well, that was definitely 12 a misstep by the original -- 13 BOARD/STAFF SPEAKER: On your dates, when -- were 14 they already there when the POA versus changed into a 15 HOA? When did that take place again? 16 MR. KYLE LYNN: So from the time that he actually 17 built it, the time we switched over? 18 BOARD/STAFF SPEAKER: Right. 19 MR. KYLE LYNN: He built it in 2020 and we 20 switched over last September to the homeowners having 21 the covenants. 22 BOARD/STAFF SPEAKER: So just -- just -- just to 23 make sure I'm clear, there were covenants prior to? 24 MR. KYLE LYNN: Yes. Yeah. RLP were the -- 25 actually ran the covenants and the bylaws, the
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1 the public know what was going on. Since then, I've 2 got a cease and desist order that he used the HOA money 3 to file a cease and disorder where I couldn't go around 4 the neighborhood and talk to the neighbors and let them 5 know what was going on. So he has been trying to keep 6 this quiet the entire time. So the -- like I said, 7 I've got a list of the covenants if you want to see the 8 covenants but -- 9 BOARD/STAFF SPEAKER: Question for you on your 10 covenants. What leverage does the Homeowners 11 Association have with violation in the covenant? 12 MR. KYLE LYNN: I'm sorry. Could you repeat the 13 question? 14 BOARD/STAFF SPEAKER: What leverage does the POA 15 have -- 16 MR. KYLE LYNN: Okay. 17 BOARD/STAFF SPEAKER: -- against a violation to 18 the covenants? 19 MR. KYLE LYNN: It's just a fine once he's -- 20 since, I mean, it should have never happened. Right? 21 But right now -- 22 BOARD/STAFF SPEAKER: And you have not -- you 23 have not placed, in the covenants, language in regard 24 to legal proceedings against violations? 25 MR. KYLE LYNN: No, there's not.	1 developer of the community. 2 BOARD/STAFF SPEAKER: Y'all didn't change 3 anything other than just the name since -- 4 MR. KYLE LYNN: That's all we've been able to 5 change so far. 6 BOARD/STAFF SPEAKER: A brief reminder. Y'all's 7 vote is specifically on the zoning code, not the POA 8 covenants. 9 BOARD/STAFF SPEAKER: Right. Just civil. 10 BOARD/STAFF SPEAKER: Okay. Thank you. 11 MR. KYLE LYNN: Uh-huh. 12 BOARD/STAFF SPEAKER: Anyone else that would like 13 to speak on this? Yes, sir? 14 ROHIT CHATURVEDI: So I am the homeowner of the 15 house right behind what you can see, 4607. 16 BOARD/STAFF SPEAKER: If you can state your name. 17 ROHIT CHATURVEDI: I am the homeowner of the 18 house right behind 4607. So when I built the house, I 19 had choice to move close to the fence, but I wanted my 20 privacy. And this structure is invading my privacy 21 because they came so close to the fence line. 22 Secondly, I submitted an application to the board 23 here from 12 of the residents from Edgar Estates who 24 denied this. Because if this is approved, there's no 25 spatial give here, and we don't think that we want to

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1 set a precedence that everyone can do things like this 2 and request, after the facts, for a variance and do the 3 crime and then, you know, just ask for forgiveness. So 4 we strongly believe that this should not be approved 5 and the structure should be removed. 6 BOARD/STAFF SPEAKER: Don't forget to sign in, 7 please. 8 ROHIT CHATURVEDI: Sure. And I appreciate if you 9 could read the applicant because I'm representing 12 10 people from the Edgar Estates residents, if you can 11 read that application I shared with you. Thank you. 12 BOARD/STAFF SPEAKER: (Inaudible). 13 BOARD/STAFF SPEAKER: What was your first name, 14 please? 15 ROHIT CHATURVEDI: Rohit Chaturvedi. 16 BOARD/STAFF SPEAKER: You're at 4607 17 Southwest Barton? 18 ROHIT CHATURVEDI: Yes. 19 BOARD/STAFF SPEAKER: We, the residents of Edgar 20 Estates, request denial of the variance of 9 feet from 21 25-foot rear setback for the house of Edgar Estates at 22 4600 Southwest Barton Street for the following reasons. 23 They believe this variance will set an undesirable 24 precedent in the neighborhood. Granting of this 25 variance will set a trend for unapproved construction	1 variance would provide special privilege to the 2 applicant. All other homes were built and continue to 3 follow the minimum required setbacks, and no other home 4 has been given encouragement variance rights in the 5 rear setback in the neighborhood. 6 BOARD/STAFF SPEAKER: Just note that this has 7 been signed by 12 residents in the area. 8 BOARD/STAFF SPEAKER: We also have an email to 9 Mr. Height (phonetic), as part of your presentation 10 here, that was not initially part of the package, from 11 a Tran Hue (phonetic) -- Hue Tran: "Please do 12 not let pass this variance. I live in the community 13 and this could sprout to the point chaos with extended 14 patios. It will bring the value down and privacy will 15 be degraded." 16 BOARD/STAFF SPEAKER: All right. Anybody else 17 that would like to step forward? Yes. Hi. 18 MS. MEREDITH BROWN: My name is Meredith Brown 19 and I live at 1804 Southwest Edinburgh Avenue. If 20 you'll see on the map, my backyard is diagonally, like, 21 catty-corner to the property in discussion. So I don't 22 know -- 23 BOARD/STAFF SPEAKER: You're next door neighbor 24 to Mr. Rohit? 25 MS. MEREDITH BROWN: I'm behind him. So if you
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1 and variable variances. All other residents of the 2 Edgar Estate neighborhood comply with the zoning 3 ordinance. And the applicant does not demonstrate any 4 hardship was (inaudible) to comply. 5 The current established setback of 25 feet 6 ensures (inaudible) space and privacy between 7 properties. If approved, this variance will change the 8 essential character of the neighborhood and will 9 substantially impair the privacy and enjoyment of other 10 neighbors. It will further negatively impact property 11 values and the houses in the neighborhood. 12 The structure was constructed without the 13 necessary building permits from the City. This 14 violates the City's policies. This structure needs to 15 be deconstructed. Further, there is no hardship that 16 necessitated the variance. There's no unique physical 17 circumstance or (inaudible) condition that prevents the 18 property to be developed without conforming to the 19 zoning code. Variance negatively impacts the privacy 20 of properties abutting the subject lands. We talked 21 about that. 22 Special conditions -- special conditions and 23 circumstances do result from the actions of the 24 applicant, as the applicant never sought approval from 25 the POA and never took any City permits. Granting this	1 just move -- 2 BOARD/STAFF SPEAKER: Use your mouse, please. 3 MS. MEREDITH BROWN: Yeah. Right here where the 4 swimming pool is. 5 BOARD/STAFF SPEAKER: Oh, gotcha. 6 MS. MEREDITH BROWN: Correct. So I can 7 definitely see the structure from my backyard. I 8 definitely -- so I feel like that makes me have a say 9 in it, need a say in it. My husband and I have had the 10 same privacy concerns as -- as they had when they were 11 building this structure. There is a two-story house 12 behind us who has very aggressive spotlights, cameras, 13 everything. We have built -- we have planted, you can 14 see, over 20 trees in our backyard and an outdoor 15 fireplace to try to create some sort of privacy from 16 it. 17 And it's just so unfortunate that it has come to 18 this, but my husband and I are definitely in the same 19 space. And when you constantly feel like you're in 20 your back -- if you go in your backyard you're being 21 recorded or when you step into your backyard a huge 22 spotlight automatically senses you and comes on 23 directly into your backyard, it's like you do whatever 24 you need to do to, like, create privacy. Otherwise, my 25 backyard would be useless. And I know that theirs --

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1 theirs is the same. 2 I fully stand behind this structure. I was -- 3 actually witnessed it being built, and we were 4 constantly commenting on how gorgeous it was. It kind 5 of has a lodge feel to it. And the way that they did 6 it is integrated so well with their house that it looks 7 like it was always there. It doesn't look like some 8 random add-on, you know, that they had poorly done. It 9 really looks nice and expensive. 10 And for me, it adds value to my house because 11 when you step into my backyard, you see this gorgeous 12 structure, when everyone else has nothing, you know, 13 has just done the bare minimum of anything in their 14 backyard, any landscaping, anything. 15 And so I fully stand behind the need for that 16 privacy, because I feel -- we feel like we're being 17 viewed and encroached upon and the spotlights that come 18 on and the cameras and everything. So we're kind of in 19 the same boat. 20 And just, as a member of the neighborhood, to 21 comment on the things that the first gentleman said, I 22 was never given a list of the POA covenants when we 23 bought our -- or when we built our house. The POA was 24 just a nightmare at the time and it was run by a 25 business that was just kind of like, I mean, I feel	1 McClary. I live at 1805 Southwest Edinburgh. I 2 actually live across the street from her house. So his 3 canopy is not visible from my yard, but I have spent a 4 lot of time in his backyard, admiring it, enjoying it. 5 But I'm really here for two reasons. One is I am 6 a member of the POA, and I think it will help if you 7 have a little bit of background on our POA. It was 8 handled by a management company for several years and 9 they did nothing. They were almost impossible to get 10 in contact with. If you used the phone number, if you 11 used the website, if you used any of their 12 communication things -- options, they just didn't 13 return calls. So it got where people weren't even 14 paying their dues. 15 Finally, I moved there two-and-a-half years ago, 16 and it's a very quick-growing neighborhood. There 17 probably have been 70 houses built since I built mine. 18 Maybe 50, but somewhere in that neighborhood. Very 19 fast-growing neighborhood. 20 And when we finally got together and started 21 talking, as members, ownership -- landowners, property 22 owners, we started writing letters, demanding to see 23 the books. Because our entrances were not kept; our 24 retention ponds were not mowed. We saw nothing. If a 25 street light went out, we didn't know who to call. So
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1 like they just downloaded POA rules from the internet 2 and made those the POA rules. 3 Even when it came time for us to pay our dues, my 4 husband and I couldn't even figure out who we -- who to 5 pay, where to send this check to. We couldn't -- I 6 emailed several people. I called several people. So 7 it wasn't like this grand setup organization that was 8 so easy to approach or get ahold of or anything. I 9 never even saw the covenants. 10 And I also would just like to say that I had my 11 house built in this neighborhood, and I never asked my 12 builder to show me a single permit. Because I don't 13 know. You -- that's -- I didn't realize that that was 14 even a -- you just trust people. 15 And so I just feel like there's a lot of spite, 16 and especially with people that are commenting that 17 can't even see this structure. This structure is 18 literally in my backyard. I can see it from my entire 19 backyard, and I am saying that it's gorgeous and that 20 it adds value to their house, to the neighborhood, to 21 my house, to everyone. So yeah. 22 BOARD/STAFF SPEAKER: Thank you. 23 BOARD/STAFF SPEAKER: Did you sign in? 24 MS. MEREDITH BROWN: No. I'm sorry. 25 MS. RITA McCLARY: Good evening. I'm Rita	1 it was -- like Meredith said, it was almost 2 nonoperational. 3 And obviously, when we got their books, we found 4 out that they were paying their secretaries for their 5 company out of our fees and out of our dues. So 6 there's -- there's been a long-term history of the POA, 7 as it was owned by that company, of doing nothing 8 except taking money. So that's a little bit of the 9 history there. 10 The other thing I wanted to speak to was property 11 values. I think we would all agree that besides large, 12 updated kitchens and bathrooms and storage space, one 13 of the things people are now looking for is outdoor 14 living space. And I have sold my last three homes 15 without using a realtor because we have been ones that 16 have gone and done the extra landscaping for privacy. 17 We've put in arbors, or whatever, to help gain privacy. 18 And I know for a fact that selling our properties -- 19 our realtors always said you're going to get more money 20 because of your backyard. And we do. I -- we take 21 pride in our backyard. 22 But I know the same thing with Joshua; he has not 23 just built that structure. I know the picture you saw 24 was just a structure and a patio. But he has 25 landscaped, put in all kind of shrubs. He has made it

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1 very desirable from any view. 2 And I just wanted to make sure that, number one, 3 you knew a little bit about our POA and probably the 4 reason he didn't even think about contacting them; or 5 if he did contact them, he wasn't going to get anywhere 6 with them. And then second of all, that it's my 7 opinion -- and I'm just a person who has bought and 8 sold homes -- that outdoor living space does raise 9 property values if it's done in a professional manner. 10 So that's all I have. 11 BOARD/STAFF SPEAKER: I believe that's everybody 12 here. Before you step up, we have some virtually and 13 I'd like to open up the hearing for those that are 14 virtual. If you would like to speak on this item and 15 do not have a reiteration of what has been already 16 spoken, please raise your hand and we'll get you on. 17 Is there anyone virtually that would like to speak? 18 All right. If you could -- if you could state that 19 name for us so we could acknowledge them. 20 BOARD/STAFF SPEAKER: (Inaudible) 21 BOARD/STAFF SPEAKER: You can unmute yourself and 22 you're allowed to speak. 23 MR. RENJITH ERRESSERILL: Yes. Can you hear me? 24 BOARD/STAFF SPEAKER: Yes. 25 MR. RENJITH ERRESSERILL: Yes. So I actually	1 homeowner would have to renew to apply for the 2 variance, but this sets a precedence for which 3 (inaudible)? 4 BOARD/STAFF SPEAKER: Correct. It's -- so the 5 board of adjustment is a quasi-judicial board. So 6 their -- their decisions do set precedent for future 7 homeowners. So if you were able to, say, let's say, 8 for instance, the property owner next door to me was 9 granted a variance; I'm being deprived that same right, 10 that would then be your hardship that, because the 11 board has set a precedent, they would rule in your 12 favor. 13 MR. RENJITH ERRESSERILL: Okay. And -- and -- 14 and what is it effectively then, I mean, is it just 15 patios? Like I said, could somebody extend their 16 livable space as well? 17 BOARD/STAFF SPEAKER: A variance request -- a 18 variance request could be applied for anything. 19 BOARD/STAFF SPEAKER: You'd just have to state 20 that explicitly in your variance request. We deal with 21 them on a case-by-case basis. 22 MR. RENJITH ERRESSERILL: Okay. 23 BOARD/STAFF SPEAKER: Yeah. 24 MR. RENJITH ERRESSERILL: So then it kind of 25 opens up the precedent of anybody having -- being able
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1 joined a little later on and I apologize for that. But 2 I think I kind of read through the, you know, the 3 hearing says what -- so all in all, I guess one -- and 4 I don't know if I'm allowed to ask a question, but 5 effectively, from what I understood the variance, if 6 permitted, allows residents to -- does it mean that any 7 resident within the community no longer has to abide by 8 the 25-foot variance, effectively, from the back -- the 9 fence to the house? 10 BOARD/STAFF SPEAKER: Yes. I mean, this decision 11 would set a precedent that would allow that. Yeah. 12 MR. RENJITH ERRESSERILL: Okay. And -- and then 13 does that precedent mean that -- does it -- is it 14 effectively meaning that -- I guess what can then be 15 extended? Is it the entire -- I mean, if somebody 16 wanted to build an enclosed structure all the way to 17 enclose the structure, is there a way to do that? 18 BOARD/STAFF SPEAKER: It would depend upon the 19 hardship on which the variance is granted. So 20 depending on how the board rules, it could set a 21 precedent for other property owners to do, you know, 22 attached porches like the request on the agenda this 23 evening. But any -- any -- any homeowners wishing to 24 do that would also have to apply for a variance. 25 MR. RENJITH ERRESSERILL: Okay. So each	1 to (inaudible). Right? 2 BOARD/STAFF SPEAKER: Having trouble hearing you 3 on -- 4 BOARD/STAFF SPEAKER: Not necessarily -- yeah. 5 MR. RENJITH ERRESSERILL: Sorry. 6 BOARD/STAFF SPEAKER: I was unable to hear 7 your -- the last part of your question. Go ahead. 8 BOARD/STAFF SPEAKER: So I take it his concern is 9 that someone could then come up and say, I want a 10 variance for the same 9 feet in my backyard and I want 11 it to be livable. 12 BOARD/STAFF SPEAKER: Uh-huh. 13 BOARD/STAFF SPEAKER: Yeah. 14 BOARD/STAFF SPEAKER: That would be a separate 15 case that we would -- 16 BOARD/STAFF SPEAKER: It would be. 17 BOARD/STAFF SPEAKER: -- stand on its own merits. 18 BOARD/STAFF SPEAKER: We're talking about 19 hypotheticals. 20 BOARD/STAFF SPEAKER: Right. 21 BOARD/STAFF SPEAKER: We need to be talking about 22 specifically what's in front of us right now. 23 BOARD/STAFF SPEAKER: That's right. 24 MR. RENJITH ERRESSERILL: Sure. I know. I was 25 just -- because, you know, as of a homeowner in the

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Page 46 1 community, I just want to understand, okay, you know, 2 what does this open it up to? Right? Because 3 tomorrow, I mean, again, just, you know, in this case, 4 we're saying, you know, does it negatively effect the 5 value of the property or positively effect it. Right? 6 Similarly, when -- if others start putting 7 structures in, not every structure might necessarily 8 positively impact the value of any property, depending 9 on how it's put together and how far it is going to be 10 away from my property. Right? Because it effectively 11 brings the other property down. So that's why I was 12 trying to understand what this would open up. You 13 know, a variance such as this, what -- what would it 14 open up, effectively. 15 BOARD/STAFF SPEAKER: So as members of the board 16 previously stated, if you did want to pursue a variance 17 similar to this one, you would still have to apply for 18 it separately, and it would be considered separately in 19 another public hearing, in another meeting. 20 MR. RENJITH ERRESSERILL: Okay. 21 BOARD/STAFF SPEAKER: So other than a factfinding 22 mission on yourself, are you in approval of this or 23 not? 24 MR. RENJITH ERRESSERILL: Do I have to say yes or 25 no? Sorry.	Page 48 1 9-foot variance. 2 BOARD/STAFF SPEAKER: Well, one second. Did I 3 hear you say that this was built in 2020? 4 MR. JOSHUA SLUSIN: Yes. 5 BOARD/STAFF SPEAKER: The house or the roof? 6 MR. JOSHUA SLUSIN: The porch that they're -- 7 BOARD/STAFF SPEAKER: The porch that everybody is 8 talking about was built two years ago? 9 MR. JOSHUA SLUSIN: That is correct. 10 BOARD/STAFF SPEAKER: Okay. All right. Thank 11 you. 12 MR. JOSHUA SLUSIN: We moved into our property in 13 2018. 14 BOARD/STAFF SPEAKER: Okay. 15 MR. JOSHUA SLUSIN: But before I give details on 16 my request, I just want to take a brief moment to make 17 a statement around some of the commentary made today. 18 As some stated, I am the acting president of the 19 community POA. One specific board member that spoke 20 today at the very start was served a special meeting 21 notice for removal of seat for a multitude of reasons. 22 That meeting is slated for tomorrow. 23 This member has taken to harassing every 24 individual within the POA, individuals across the 25 community, defaming our character and spreading
Page 47 1 BOARD/STAFF SPEAKER: Well, this is an 2 opportunity to speak for or against the item. You can 3 have no comment, I guess. 4 MR. RENJITH ERRESSERILL: I -- I'm going to say 5 no comment. 6 BOARD/STAFF SPEAKER: Okay. Thank you. 7 BOARD/STAFF SPEAKER: Thank you. 8 BOARD/STAFF SPEAKER: All right. Does -- anybody 9 else virtually would like to speak on this item? If 10 you do, if you could please raise your hand on the 11 virtual icon. 12 BOARD/STAFF SPEAKER: He's already had his 13 chance. 14 BOARD/STAFF SPEAKER: All right. I'll allow the 15 applicant to step forward and speak to these issues, 16 please. 17 MR. JOSHUA SLUSIN: Good afternoon and thank you 18 for meeting with me. This meeting here is, you know, 19 the board of adjustments and staff, but talking about 20 myself, Joshua Slusin and my wife, Vanessa Slusin. We 21 are the owners of 4600 Southwest Barton. Want to thank 22 you for your time. We are here to seek an approval for 23 a variance requesting our property to allow us to keep 24 our porch that we built in 2020 that is currently 16 25 feet from the rear setback. That is asking for a	Page 49 1 misinformation within our community in the form of 2 retaliation for this impending removal from his POA 3 position. His harassment got to a point where my wife 4 had to go to the police and file a complaint because of 5 his excess amount of harassment, even after asked to 6 stop communicating with us. 7 So with that being said, he has also been served 8 a cease and desist from the POA's attorney because of 9 his actions. He has taken to going door to door within 10 the community, spreading misinformation about the POA, 11 and actually taking personal action against myself and 12 my wife and our property because of his removal of the 13 board. 14 That cease and desist has not done anything. He 15 has disobeyed that cease and desist by continuing 16 campaigning within the community and spreading even 17 more information about ourselves and getting other 18 parties to come and try to fight my permit for my 19 porch. Again, this is all information -- 20 disinformation that he is trying to spread around the 21 POA. There was plenty of statements made that are 22 meant as personal attacks on ourselves because of his 23 board position. 24 I have included copies of the police record and 25 the cease and desist from our attorneys and the letters

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1 there for you so you can see that the statements that 2 are made are true about his activities. The three-page 3 letter that he also submitted is him turning this into 4 a POA situation versus a permit issue with us and the 5 City. The entire piece of full misinformation has no 6 bearing on the board of adjustment's meeting. 7 With that stated, this is not a POA hearing. 8 This is not a POA meeting. But rather, it is a permit 9 variance request for myself with the board of 10 adjustments and staff. Everyone is entitled to a 11 voice, but many statements appear to be attacks on us 12 and don't actually relate to our variance request. 13 There was a redacted public statement made 14 within -- there were 10 bullet points. 9 of those 15 bullet points were not factual and call on our 16 character. I would like to know and understand how can 17 any of these improvements, as you see in the pictures, 18 is going to devalue the property. 19 Other offensive things is stating that I had 20 issues with side setback property distances. There was 21 no side setback issues there. It's false information. 22 Some of the rear setback measurements in that person's 23 statement, also false. 24 And lastly, for any complete stranger not knowing 25 me to publicly come out and say that my financial	1 two-story windows that look down onto our back porch 2 and property, making it uncomfortable for us just to 3 sit out there and enjoy our property. Our first action 4 was to install landscaping around the property to try 5 to block out this annoyance. That did not prevail. 6 So then in late spring of 2020, we set out 7 licensed contractors to provide us with options to gain 8 some privacy. We even contacted the builder RLP to see 9 if they would do this for us, and they told us to go 10 find our own contractor to do it. They were also the 11 POA owners at that time. And that was literally the 12 only advisement I got from RLP at that current time. 13 So we ended up contracting J and E Home 14 Remodeling to do the job. We paid them roughly \$25,000 15 to complete this job. They provided us details on 16 their approach, what they were going to do, all the 17 different plans. The plan appeared to provide us some 18 privacy towards a lot of the issues and concerns we 19 had. The builder maintained all pitches, continuity 20 that were existing on the property. They dismantled my 21 existing roof and actually tied the structure into my 22 frame and made it cohesive so it looked like it was a 23 part of the original structure. 24 They brought an entire team, subcontracted all 25 parts of the project. Plenty of crews were there and
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1 situation is not in a situation is unfounded and 2 unwarranted. They do not know me or my personal 3 financial situation to actually state that it is not a 4 thing for me to consider. 5 So I want to discuss my position around our 6 variance. We bought our house in 2018. When we 7 purchased the property, we were unknowing and naive to 8 what the builder's future plans were. We initially 9 could walk out into our backyard and sit on our back 10 porch and enjoy our property. 11 Over the course of the next two years, the 12 properties filled in around our house; specifically, 13 two large two-story houses popped up directly behind us 14 in the cul-de-sac. That was not an issue. The issue 15 quickly became a factor of us losing our rights to 16 enjoy our property privacy, as most owners in the 17 community are given. 18 The owners at 4605 Crossbow and 4607 Crossbow 19 both outfitted the rear and sides of their property 20 with an assortment of cameras and floodlights. As 21 Meredith previously stated, we would walk out into our 22 back porch and feel like we were escaping a prison. 23 Every spotlight would turn on and we would be in full 24 view of everybody. 25 Added to that, both of these properties have	1 equipment was there for a period of time doing this 2 project. We were under all assumptions that everything 3 was kosher, as there were many crews coming and going, 4 handling all different parts of the project. So we 5 were under the assumption they were following all 6 guidelines. We had no other reason to believe 7 otherwise. 8 The completed project met our expectations and 9 provided us with getting some privacy back. The work 10 has sheltered us from everything that was obstructing 11 us from 4605 Crossbow. We are still seeking to add 12 more landscaping and/or barriers around our porch to 13 block out the remainder of 4607 Crossbow, as those 14 lights still shine in our house every day and the 15 cameras still kick on every time we walk into our back 16 porch. 17 Over two years have passed and the City just 18 notified us that there was a missing permit on the 19 structure. This was the first time we were actually 20 made aware of this. We immediately started working 21 with the City on applying for and coming to resolutions 22 to correct this. We are seeking out to work with the 23 City on a proper resolution with this. 24 I've included the photos so you can understand 25 the view of our porch. You'll see that both owners are

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1 using their side house properties as gardenings. They 2 don't actually use those properties for anything more 3 than lots of vegetable plants that are overshadowing 4 and crawling over my fence line now. 5 Other photos show how we have used our 6 landscaping to block out our windows, to try to stop 7 the lights from shining in on our property. 8 Additionally, you'll notice that we did put landscaping 9 around the porch to actually block in and give us 10 privacy within the porch. 11 Our extreme measures give us privacy, but it also 12 gives our neighbors privacy of them not being able to 13 see us with all the landscaping we're adding around our 14 structure. We were able to get supporting signatures 15 from the houses directly to the left and right of us 16 and one house behind us as well. As you heard, there 17 are other people here that supported it as well. 18 To ask us the deconstruct or massively change a 19 structure, at this point, will cost financial hardship 20 and it will take away our right to enjoy our privacy, 21 our property, and enjoy our backyard as we did when we 22 purchased that property. 23 Again, for complete strangers to make public 24 statements about my financial situation is also 25 completely unfounded and unwarranted. And I'd be glad	1 MR. JOSHUA SLUSIN: That is correct. 2 BOARD/STAFF SPEAKER: So we cannot speak to that. 3 MR. JOSHUA SLUSIN: I completely agree. 4 BOARD/STAFF SPEAKER: Just any setback issue. My 5 question is for clarification. Did you state that 6 initially when the porch was built, that it was not 7 physically attached to your house? 8 MR. JOSHUA SLUSIN: No. 9 BOARD/STAFF SPEAKER: But then later became 10 attached because you felt like it was a more attractive 11 solution? 12 MR. JOSHUA SLUSIN: We did not do that. We 13 consulted multiple contractors. And this contractor 14 that we actually hired, they suggested that they tie it 15 into the property and build it connected so it would 16 feel and look natural versus -- 17 BOARD/STAFF SPEAKER: Okay. 18 MR. JOSHUA SLUSIN: -- an unattached building 19 next to a building. 20 BOARD/STAFF SPEAKER: Okay. All right. 21 BOARD/STAFF SPEAKER: All right. Thank you very 22 much. 23 MR. JOSHUA SLUSIN: Thank you. 24 BOARD/STAFF SPEAKER: Open it up for the board 25 for any questions or comments thus far.
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1 to give any kind of information around my financial 2 constraints if you guys would like so, but, you know, 3 that's up to you guys. 4 BOARD/STAFF SPEAKER: Not interested. 5 MR. JOSHUA SLUSIN: We are asking the board of 6 adjustments for approval on our rear setback of 9 feet 7 or a solution that will allow us to maintain the right 8 to enjoy our property and privacy without causing us 9 any major constraints. Again, we're not trying to make 10 this a POA argument. We feel that there are 11 individuals here that are on a mission to take this out 12 personally because of the removal of the board, and 13 that is not what the purpose of this is. It is for us 14 to ask for a 9-foot variance setback. 15 BOARD/STAFF SPEAKER: Thank you. So -- so I 16 don't have a question but -- 17 MR. JOSHUA SLUSIN: Yeah. 18 BOARD/STAFF SPEAKER: -- I appreciate what you 19 said earlier, that we're not here to discuss POA 20 issues. 21 MR. JOSHUA SLUSIN: Right. 22 BOARD/STAFF SPEAKER: That was the reason for my 23 question of whether there was any leverage in the POA 24 documents. That is the route that your POA needs to go 25 about solving the POA issues.	1 BOARD/STAFF SPEAKER: After everything we've 2 heard, it still goes back to how close it is to the 3 property line. 4 BOARD/STAFF SPEAKER: Right. 5 BOARD/STAFF SPEAKER: No matter what we build. 6 BOARD/STAFF SPEAKER: Right. 7 BOARD/STAFF SPEAKER: I mean, that's what we're 8 here to discuss. 9 BOARD/STAFF SPEAKER: Right. 10 BOARD/STAFF SPEAKER: And just to be clear, if 11 the applicant had sought a building -- or if the 12 applicant's contractor, rather, had sought a building 13 permit prior to beginning construction -- 14 BOARD/STAFF SPEAKER: Yeah. 15 BOARD/STAFF SPEAKER: -- the permitting office 16 downstairs would have caught the fact that it was built 17 within a setback and they would require them to 18 resubmit plans showing it not being a setback. 19 BOARD/STAFF SPEAKER: I would hope that we could 20 trust that the building professionals would know the 21 process and the code. 22 BOARD/STAFF SPEAKER: Right. 23 BOARD/STAFF SPEAKER: (Inaudible) you know, even 24 though I think it's the homeowner's responsibility to 25 pick the right contractor too. But so I certainly

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1 sympathize with that, but it does come down to 2 hardship. And so we -- we have reviewed this as a 3 hardship in regards to 9 feet. Any other comments or 4 questions? 5 Certainly, precedent is an issue here. I do 6 think that that is the case. I can't review the site 7 plan of the lot. Didn't see any necessary hardships 8 available other than the lighting on the houses next 9 door, potential for privacy. Having the plane above 10 your head isn't necessarily a solution, in my opinion, 11 to privacy, but those things that go with this 12 presentation certainly do address the privacy issue. 13 My question, I guess -- and we have raised this 14 before -- is that if the applicant would have built 15 this as not being attached to the house, what would the 16 conditions have been then? 17 BOARD/STAFF SPEAKER: (Inaudible). 18 BOARD/STAFF SPEAKER: Is Tyler still online? 19 MR. TYLER: Yeah. It would have had to have been 20 separated 7 feet from that rear property line since 21 it's under, you know, 200 square feet or -- but then we 22 do have, in the code now, for accessory structures 23 where they have to be separated a minimum of I believe 24 10 feet from the primary structure. So... 25 BOARD/STAFF SPEAKER: But at the time, what --	1 BOARD/STAFF SPEAKER: So the fact that it's 2 connected, the concern, from a planning standpoint, is 3 that since it's a covered structure, there is potential 4 to enclose that structure in. Right? 5 BOARD/STAFF SPEAKER: If we approve it, we'll 6 approve it under the condition it not be enclosed. 7 BOARD/STAFF SPEAKER: Tyler, do you know if 8 that's possible? 9 TYLER: I mean, sure. You could do that. That's 10 possible. 11 BOARD/STAFF SPEAKER: That it could never be 12 enclosed? 13 BOARD/STAFF SPEAKER: Never be enclosed. Could 14 be a screened porch with -- 15 BOARD/STAFF SPEAKER: Since variances are -- 16 BOARD/STAFF SPEAKER: That would make it so that 17 (inaudible). 18 MR. TYLER: Yeah, you could -- you could do that. 19 I mean, you could approve it contingent upon it never 20 being enclosed, yes, so that it's not occupiable space. 21 BOARD/STAFF SPEAKER: Enclosed as a conditioned 22 space. I wouldn't see any problem with putting screens 23 on there that do nothing to condition the space. I 24 mean, it's just a screen. 25 BOARD/STAFF SPEAKER: Other than, like, an above
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1 what -- 2 MR. TYLER: At the time, and based upon previous 3 rulings you all have made, it would be 7 feet off the 4 rear property line if it was a detached, freestanding 5 accessory structure. 6 BOARD/STAFF SPEAKER: With no separation? It 7 just didn't have -- 8 MR. TYLER: That's right. It just has to be 9 freestanding. 10 BOARD/STAFF SPEAKER: Okay. 11 BOARD/STAFF SPEAKER: What is the overall 12 dimension of the structure now, in general? 13 BOARD/STAFF SPEAKER: It's on here. 15-by-18. 14 BOARD/STAFF SPEAKER: I'm guessing 18 would be 15 the -- 16 BOARD/STAFF SPEAKER: It's the width. 17 BOARD/STAFF SPEAKER: 18 is the width? 18 BOARD/STAFF SPEAKER: Yeah. 16-by-18. 19 BOARD/STAFF SPEAKER: I think if it would have 20 been allowed as a freestanding structure within 7 feet 21 of the rear fence and no separate design, I mean, it 22 could have had the exact same design, same pitch, 7 23 feet -- 24 BOARD/STAFF SPEAKER: Same everything. 25 BOARD/STAFF SPEAKER: Right.	1 screen. 2 BOARD/STAFF SPEAKER: Right. Yes. A mesh-like, 3 you know, like screens that you would have on your 4 windows. But yeah, as long as it doesn't, in the 5 future, become conditioned for indoor space. 6 BOARD/STAFF SPEAKER: Based on the new ordinance, 7 if this were to be built not attached, you could just 8 about get your 10-feet of separation and be 7 feet off 9 the setback and meet code. And based on what I heard, 10 the issues that the property owners have, that would be 11 even worse, based on their comments. 12 BOARD/STAFF SPEAKER: So this is really the best 13 option. 14 BOARD/STAFF SPEAKER: It comes down to hardship 15 again, the hardship of giving and extra 9 feet of 16 setback to achieve privacy. 17 BOARD/STAFF SPEAKER: Question, while we're 18 thinking this out, for Tyler. You know, had 19 attachments like this before on fences and other 20 things. Is there no recourse against these builders 21 from the City's standpoint? 22 MR. TYLER: Recourse against the builders? 23 BOARD/STAFF SPEAKER: Yeah, because this is not 24 the first that -- 25 MR. TYLER: I'm going to defer that to --

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Page 62 1 BOARD/STAFF SPEAKER: Go ahead. 2 MR. TYLER: Sorry. I'd -- I'd have to defer that 3 to building and fire safety. You know, there may be 4 something with their contract licensure we could look 5 at. But without the City having, like, a business 6 license, there isn't a whole lot that we could do on, 7 say, our end of things. 8 But Sam, to your point, to prevent issues like 9 this happening in the future, I could almost see a 10 process where when we have a building permit applied to 11 in the planning or the building inspection office and 12 they, say, have, you know, have a status of requires 13 re-submittal, they need to make changes, we should 14 probably go and drive by that property within, you 15 know, a month or two months, if they've gone silent. 16 Because they could be liable to build it anyway. 17 BOARD/STAFF SPEAKER: Yeah, you would think that 18 the City would have some sort of recourse against the 19 construction company that built it at the time without 20 applying for a permit since that's -- 21 BOARD/STAFF SPEAKER: Yeah. 22 BOARD/STAFF SPEAKER: Granted it's the homeowners 23 responsibility but -- 24 BOARD/STAFF SPEAKER: Well, I think it comes back 25 down to you speaking clearly and concisely about your	Page 64 1 The roof, itself, is giving us shelter from, you know, 2 people looking in from the second stories. And that is 3 where the windows are and we were, you know, concerned 4 about. So for removal of that, I think that would open 5 us up to, again, having the concern of not being able 6 to even go outside because people are watching through 7 their windows, staring down on our backyard, itself. 8 You know, we've spent a significant amount of 9 money and efforts on trying to provide privacy for our 10 property, itself. To remove it, it's going to cost us 11 a significant amount to do so. But then if we were 12 forced to remove this, we would need to spend 13 additional efforts of coming in with new ways to give 14 us additional privacy, creating barriers, getting 15 another slew of trees, spending a lot more effort just 16 to attempt to get to where we were today, all for a 9- 17 foot exception asked right now. 18 So if we are forced to, you know, do something 19 differently with this, we're going to pay -- have to 20 spend the money and efforts on changing that structure 21 and then additional money and efforts on outfitting our 22 property with other security and privacy measures, 23 whether it be some sort of retaining wall, some sort of 24 fire places, trees, whatever is within the bounds and 25 allowed within the City.
Page 63 1 hardship. If you could approach the podium and discuss 2 that with us a little bit more about how this roof 3 plane can be applied to privacy. 4 MR. JOSHUA SLUSIN: Sure. The roof, itself, has 5 sheltered out all the motion sensors for the property 6 to the right. The window on the right is no longer 7 looking down on my porch. That was our biggest concern 8 was that window was staring right down on us. And for 9 us, we felt like we couldn't sit out there because of 10 concern that somebody was always watching us. 11 We -- you know, we're attempting to block out all 12 lights from both residents and their cameras shining in 13 on our property. We didn't fully achieve it at this 14 point. We've blocked out about 60 percent of all 15 motion and motion sensors that do kick on when we walk 16 out to our property. 17 Asking us to remove it or reduce it or anything 18 of that sort will then open us up to having all the 19 lights kick on at all times and watch every motion that 20 we are doing, cameras kicking on. Currently, we don't 21 use our property as much as we'd like to because we 22 still have concerns that we don't have the privacy that 23 we want. 24 Again, we've outfitted with as many trees as we 25 can to try to grow and block that property out for us.	Page 65 1 But currently, we cannot enjoy our property. And 2 that is all we're looking to do, is to use our property 3 and enjoy it like everyone else gets to do, without the 4 concern of five spotlights kicking on, two cameras 5 kicking on, and somebody standing in a window looking 6 down on us. And that's what we're asking, as 7 residents, to be allowed to have privacy and use our 8 own backyard without having to be expected to spend 9 significant amount of money to undo what we've done and 10 spend additional monies to provide us with other forms 11 of barriers and privacy. 12 BOARD/STAFF SPEAKER: Technically, it could be 13 torn down, scooted, moved closer to the fence -- 14 BOARD/STAFF SPEAKER: Right. 15 BOARD/STAFF SPEAKER: -- made bigger, and 16 rebuilt. 17 MR. JOSHUA SLUSIN: And that is my additional 18 concern. If it was a freestanding, not attached to the 19 house, we would be in compliance. Because we are 16 20 feet away from the fence and if we had a one-inch gap 21 between the structure and the house, it would have been 22 okay. 23 BOARD/STAFF SPEAKER: That's in regard to City. 24 BOARD/STAFF SPEAKER: Right. 25 BOARD/STAFF SPEAKER: He still has to get through

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1 the POA. 2 BOARD/STAFF SPEAKER: That's their problem. 3 BOARD/STAFF SPEAKER: That's their problem. 4 BOARD/STAFF SPEAKER: Yeah, we're not -- we're 5 not concerned with POA so -- 6 MR. JOSHUA SLUSIN: That is correct. This is the 7 City's concern. 8 BOARD/STAFF SPEAKER: Well, I do think that -- 9 that there are some potential for hardships. However, 10 everyone that lives in the subdivision, including 11 myself, have these same issues that you just -- you 12 would expect by living in a residential subdivision. 13 BOARD/STAFF SPEAKER: All right. Thank you. 14 MR. JOSHUA SLUSIN: Thank you. 15 BOARD/STAFF SPEAKER: Yes, sir. If you could 16 please step forward. State your name again as to who 17 you are. 18 ROHIT CHATURVEDI: Thank you for allowing me, 19 sir. My name is Rohit Chaturvedi. I live at 4607. I 20 heard couple of times that I have floodlights. I would 21 like to see a picture ever if there was a floodlight 22 facing their backyard. There was never a floodlight. 23 The camera, it's still here. I can show and I can get 24 the installer, also, when he installed. The camera is 25 100 percent facing my yard.	1 ROHIT CHATURVEDI: Yes, sir. 2 BOARD/STAFF SPEAKER: So you have five or six 3 times more backyard than he does. Right? 4 ROHIT CHATURVEDI: But my side yard is pretty 5 close, so I have windows there. 6 BOARD/STAFF SPEAKER: And your side yard looks 7 out to his backyard? 8 ROHIT CHATURVEDI: Yeah. 9 BOARD/STAFF SPEAKER: Okay. 10 ROHIT CHATURVEDI: And then there was some 11 comments on the two-story. I cannot change my house. 12 My house, there is not a single window on that side. 13 BOARD/STAFF SPEAKER: All right. 14 ROHIT CHATURVEDI: Thank you. 15 BOARD/STAFF SPEAKER: Yeah. 16 BOARD/STAFF SPEAKER: Anyone else would like to 17 speak? Back to the board. How would you like to 18 proceed? 19 BOARD/STAFF SPEAKER: In something like this, we 20 have two different points of view. I think it's better 21 to go back to basics, and I think we all ought the look 22 at Section 301.10.c. Number one, the applicant 23 demonstrates that special conditions and circumstances 24 exist; number two, literal interpretation will deprive 25 the applicant of rights commonly enjoyed by other
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1 BOARD/STAFF SPEAKER: So you're adjacent, 2 contiguous to his property? 3 ROHIT CHATURVEDI: I am the -- 4 BOARD/STAFF SPEAKER: Looks like y'all can get 5 together and work out the security and lighting issue. 6 Right? 7 ROHIT CHATURVEDI: Of course, sir. But there was 8 never a floodlight facing their backyard, and there's 9 no camera. I can show you live feed and I can also get 10 the installer. And third point regarding that garden 11 that I built, I built that garden after the fact, to 12 give privacy. Because from when they come so close to 13 the fence line, I had to hide something. I did that 14 this year because we were just feeling like, you know, 15 they have people coming over there. They are watching 16 movies and whatever. But they're so close to the fence 17 line. So I had to build a garden. I put some arch. 18 Actually put some climbers, just to get some privacy 19 from me. And as I stated earlier, I could have very 20 close to the fence line following the variances, but I 21 wanted some separation. So now it's surprising because 22 there's so much gap while someone is building and 23 coming more close to fence line. 24 BOARD/STAFF SPEAKER: And your house has the 25 substantial backyard? Right? On the cul-de-sac?	1 properties; number three, the special conditions and 2 circumstances do not result in the actions of the 3 applicant; and number four, the granting the variance 4 does not confer on the applicant any special privileges 5 denied by this chapter to other lands, structures, and 6 buildings in the same district. And I'm sitting here 7 saying I don't think the applicant has demonstrated any 8 of those four. 9 MR. TYLER: I would also point you to Item 2 10 where we talk about nonconforming uses of lands, 11 structures, or buildings shall not be used as grounds 12 for the granting of a variance. 13 BOARD/STAFF SPEAKER: Any further concern or 14 comment? Any other comment by the applicant? 15 MR. JOSHUA SLUSIN: Again, we are just looking to 16 ask for a reasonable solution so we can maintain 17 privacy, and we want to work with the City on whatever 18 that does mean. We are, you know, seeking to keep some 19 sort of privacy or some sort of proper resolution here, 20 so we want to work with the City on whatever that 21 means. We hope you do consider our situation and what 22 it will imply for a 9-foot asked. So thank you. 23 BOARD/STAFF SPEAKER: Anything else? Ready the 24 call roll? Call roll for approval, please. 25 BOARD/STAFF SPEAKER: This is a vote for approval

18 (Pages 66 to 69)

Board of Adjustment

Page 70

1 of Variance 22-0035. Pearson?
2 MR. PEARSON: Yes.
3 BOARD/STAFF SPEAKER: Haynie?
4 MR. HAYNIE: Yes.
5 BOARD/STAFF SPEAKER: Kruithof?
6 MR. KRUTHOF: No.
7 BOARD/STAFF SPEAKER: Phillips?
8 MR. PHILLIPS: Yes.
9 BOARD/STAFF SPEAKER: Rogers?
10 MR. ROGERS: No.
11 BOARD/STAFF SPEAKER: Your approval is approved
12 3-2. Any other business before the board tonight?
13 BOARD/STAFF SPEAKER: Before we close, I'd like
14 to state this is my last meeting. It's been an
15 absolute pleasure working with staff and, specifically,
16 you guys on the board. I thoroughly have enjoyed the
17 debate and the challenge we've had over the years, and
18 I truly have loved being with you guys. And I'm going
19 to miss you very much.
20 BOARD/STAFF SPEAKER: You're going to be missed.
21 BOARD/STAFF SPEAKER: After that, I will
22 entertain a motion for adjournment.
23 BOARD/STAFF SPEAKER: Motion to adjourn.
24 BOARD/STAFF SPEAKER: All right. We're
25 adjourned.

Page 71

1 BOARD/STAFF SPEAKER: Thank you guys.
2 MR. TYLER: Hey, before y'all shut it off --
3 BOARD/STAFF SPEAKER: Yes, sir.
4 MR. TYLER: Rick, I just want to say thank you
5 for your service to the board of adjustment. It's been
6 a pleasure. I've learned a lot from you in how to look
7 at land use issues as well. So we're going to miss
8 your input on the board.
9 BOARD/STAFF SPEAKER: Thank you, Tyler.
10 MR. TYLER: Thank you so much.
11 BOARD/STAFF SPEAKER: I appreciate you.
12 MR. TYLER: No problem.
13 (WHEREUPON, the Zoom recording is concluded.)
14 * * * * *
15 * * *
16 *
17
18
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Page 72

CERTIFICATE

1
2 STATE OF ARKANSAS)
3)
4 COUNTY OF CRAWFORD)

5 I, RONDA BROWN, Certified Court Reporter, a notary
6 public in and for the aforesaid county and state, do hereby
7 certify to the following:

8 1) The foregoing Zoom-recorded transcription was taken
9 by me.

10 2) Being a Court Reporter, I then reported the Zoom
11 recording in Stenotype to the best of my skill and ability, and
12 the foregoing pages contain a full, true, and correct
13 transcript of my said Stenotype notes then and there taken;

14 3) I am not in the employ of and am not related to any
15 of the parties or their counsel, and I have no interest in the
16 matter involved;

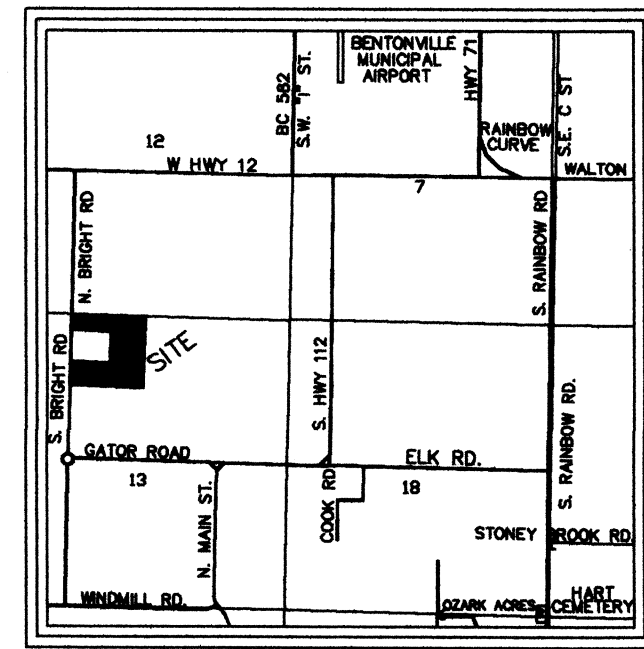
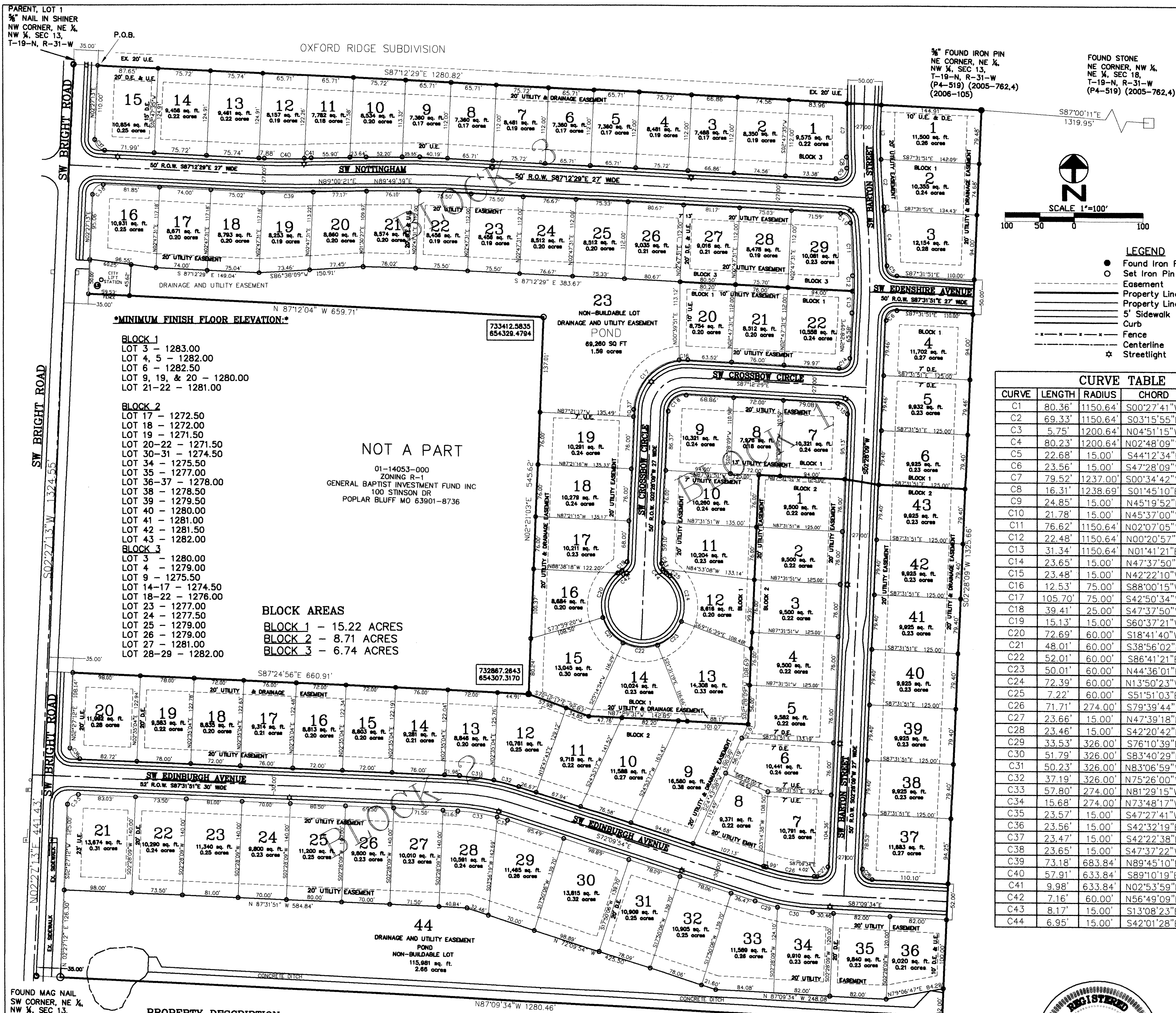
17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 affixed my seal of office this 1st day of May, 2023.



19 Ronda Brown, CCR
20 Certificate Number 385
21 NOTARY PUBLIC
22 In and for the County of Crawford
23 State of Arkansas
24 Commission Expires August 10, 2031
25 Alexander Realtime Reporting, LLC
P.O. Box 874
Rogers, Arkansas 72757
SAlexreporter@gmail.com

19 (Pages 70 to 72)

Alexander Realtime Reporting, LLC
(479) 631-3888



CURVE	LENGTH	RADIUS	CHORD	CHORD LENGTH
C1	80.36'	1150.64'	S00°27'41"W	80.34'
C2	69.33'	1150.64'	S03°15'55"E	69.32'
C3	5.75'	1200.64'	N04°51'15"W	5.75'
C4	80.23'	1200.64'	N02°48'09"W	80.22'
C5	22.68'	15.00'	S44°12'34"E	20.58'
C6	23.56'	15.00'	S47°28'09"W	21.21'
C7	79.52'	1237.00'	S00°34'42"W	79.51'
C8	16.31'	1238.69'	S01°45'10"E	16.31'
C9	24.85'	15.00'	N45°19'52"E	22.10'
C10	21.78'	15.00'	N45°37'00"W	19.91'
C11	76.62'	1150.64'	N02°07'05"W	76.60'
C12	22.48'	1150.64'	N00°20'57"E	22.48'
C13	31.34'	1150.64'	N01°41'21"E	31.34'
C14	23.65'	15.00'	N47°37'50"E	21.27'
C15	23.48'	15.00'	N42°22'10"W	21.15'
C16	12.53'	75.00'	S88°00'15"W	12.52'
C17	105.70'	75.00'	S42°50'34"W	97.17'
C18	39.41'	25.00'	S47°37'50"W	35.45'
C19	15.13'	15.00'	S60°37'21"W	15.09'
C20	72.69'	60.00'	S18°41'40"W	68.32'
C21	48.01'	60.00'	S38°56'02"E	46.74'
C22	52.01'	60.00'	S86°41'21"E	50.40'
C23	50.01'	60.00'	N44°36°01"E	48.57'
C24	72.39'	60.00'	N13°50'23"W	68.08'
C25	7.22'	60.00'	S51°51'03"E	7.22'
C26	71.71'	274.00'	S79°39'44"E	71.50'
C27	23.66'	15.00'	N7°39'18"E	21.28'
C28	23.46'	15.00'	S42°20'42"E	21.14'
C29	33.53'	326.00'	S76°10'39"E	33.52'
C30	51.79'	326.00'	S83°40'29"E	51.73'
C31	50.23'	326.00'	N83°06'59"W	50.18'
C32	37.19'	326.00'	N75°26°00"W	37.17'
C33	57.80'	274.00'	N81°29'15"W	57.69'
C34	15.68'	274.00'	N73°48'17"W	15.68'
C35	23.57'	15.00'	S47°27'41"W	21.22'
C36	23.56'	15.00'	S42°32'19"E	21.21'
C37	23.47'	15.00'	S42°22'38"E	21.15'
C38	23.65'	15.00'	S47°37'22"W	21.28'
C39	73.18'	683.84'	N89°45'10"E	73.14'
C40	57.91'	633.84'	S89°10'19"E	57.88'
C41	9.98'	633.84'	N02°53'59"E	9.99'
C42	7.16'	60.00'	N56°49'09"E	7.16'
C43	8.17'	15.00'	S13°08'23"E	8.07'
C44	6.95'	15.00'	S42°01'28"E	6.89'

CERTIFICATE OF APPROVAL

PURSUANT TO THE BENTONVILLE SUBDIVISION REGULATIONS AND ALL OTHER CONDITIONS AND APPROVAL HAVING BEEN COMPLETED, THIS DOCUMENT IS HEREBY ACCEPTED. THIS CERTIFICATE IS HEREBY EXECUTED UNDER THE AUTHORITY OF THE SAID RULES AND REGULATIONS.

DATE OF EXECUTION:

SIGNED: 

SIGNED: Beth McCaslin
MAYOR CITY OF BENTONVILLE

SIGNED: Linda Spence
CITY CLERK, CITY OF BENTONVILLE

CERTIFICATE OF ACCURACY

I, DAVID B. PLATZ, HEREBY CERTIFY THAT THIS PLAT CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME AND BOUNDARY MARKERS AND LOT CORNERS SHOWN HEREON ACTUALLY EXIST AND THEIR LOCATION, TYPE AND MATERIAL ARE CORRECTLY SHOWN AND ALL MINIMUM REQUIREMENTS OF THE ARKANSAS MINIMUM STANDARDS FOR LAND SURVEYORS HAVE BEEN MET.

DATE OF EXECUTION: 3-11-16

SIGNED: David B. Phleg
REGISTERED LAND SURVEYOR
NO. 1553
STATE OF ARKANSAS

CERTIFICATE OF OWNERSHIP

I, THE UNDERSIGNED, OWNER OF THE REAL ESTATE SHOWN AND DESCRIBED HEREIN, DO HEREBY CERTIFY THAT WE HAVE LAID OFF, PLATTED, AND SUBDIVIDED AND DO HEREBY LAY OFF, PLAT, SUBDIVIDE SAID REAL ESTATE IN ACCORDANCE WITH THIS PLAT AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC THE STREETS, ALLEYS, DRIVES, EASEMENTS, ETC. AS SHOWN ON SAID PLAT.

DATE OF EXECUTION: 3/11/16

SIGNED: _____

SIGNED: _____
BRIGHT ROAD, L.L.C. REPRESENTATIVE

SOURCE OF TITLE: D.R.:

PAGE:

SUBSCRIBED AND SWORN TO
BEFORE ME ON THIS 14TH DAY
OF MARCH, 2016. *[Signature]*

Bruce J. Bennett
Notary Public
Benton County, State of Arkansas
Commission # 12403335
Expires March 1, 2025

EDGAR ESTATES
SUBDIVISION
BLOCK 1, 2, & 3
A REPLAT OF LOT 1 & 2
OF FLAGSTONE ADDITION

FINAL REPLAT		REVISIONS	
		No.:	BY:
OWNER: RLP DEVELOPMENT LLC P.O. BOX 3207 BENTONVILLE, AR 72712		DATE:	DATE:
273--7989 OR 366--7989		DRAWN BY:	DATE:
 CONSULTING INC.		CHECKED BY:	JOB No.:
P.O. BOX 293 BENTONVILLE, AR 72712		DBP	2/10/16 2014200
		SCALE:	SHEET:
		1"=100'	1

ENGINEER & SURVEYOR
W/R CONSULTING, INC.
P.O. BOX 223
BENTONVILLE, AR 72712
(479) 273-7989

DEVELOPER & OWNER
RLP DEVELOPMENT LLC
P.O. BOX 3207
BENTONVILLE, AR 72712
(479) 530-2337

PROPERTY DESCRIPTION

LOTS ONE AND TWO OF FLAGSTONE ADDITION AS SHOWN IN
PLAT RECORD 2012 AT PAGE 145 FILED ON APRIL 23, 2012
AS FOUND IN THE CIRCUIT CLERK'S OFFICE FURTHER
DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST
CORNER OF THE NE 1/4 OF THE NW 1/4 IN SECTION 13,
T-19-N, R-31-W, THENCE SOUTH 87°12'29" EAST 35.00
FEET TO THE POINT OF BEGINNING, THENCE SOUTH 87°12'29"
EAST 1280.82 FEET TO A FOUND IRON PIN, THENCE SOUTH
02°28'09" WEST 1325.66 FEET TO A FOUND IRON PIN,
THENCE NORTH 87°09'34" WEST 1280.46 FEET TO A FOUND
IRON PIN, THENCE NORTH 02°27'13" EAST 441.43 FEET TO A
FOUND IRON PIN, THENCE SOUTH 87°24'56" EAST 660.91
FEET TO A FOUND IRON PIN, THENCE NORTH 02°21'03" EAST
545.62 FEET TO A FOUND IRON PIN, THENCE NORTH
87°12'04" WEST 659.71 FEET TO A FOUND IRON PIN, THENCE
NORTH 02°27'13" EAST 335.06 FEET BACK TO THE POINT OF
BEGINNING CONTAINING 30.66 ACRES MORE OR LESS.

RIGHT OF WAY DEDICATION

RIGHT OF WAY IS DEDICATED 35' FROM
CENTERLINE OF BRIGHT ROAD, TOTAL AREA OF
DEDICATION IS 0.60 ACRES.

NOTE

2. 5' WIDE SIDEWALKS WITH A 5' GREEN SPACE WILL BE COMPLETED AT TIME OF HOME CONSTRUCTION PER CITY ORDINANCE.

3. MINIMUM FINISH FLOOR ELEVATION FOR LOTS SHALL BE AT LEAST ONE FOOT (1') ABOVE THE CURB ELEVATION IN FRONT OF THE HOUSE OR THE PROSCRIBED ELEVATION LISTED ON THIS DRAWING FOR SELECT LOTS, WHICHEVER IS HIGHER.

4. ALL NEW EASEMENTS SHOWN ON THIS PLAT ARE TO BE DEDICATED BY THIS PLAT.

ZONING

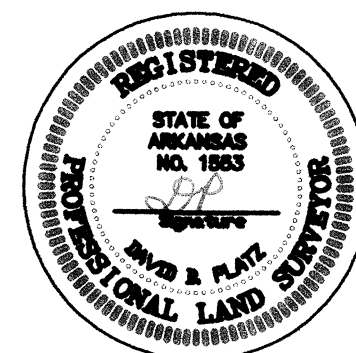
THIS PROPERTY IS ZONED: R-1

FLOOD CERTIFICATION

THIS PROPERTY DOES NOT LIE IN A
SPECIAL FLOOD HAZARD AREA AS SHOWN
ON FEMA PANEL #05007C0255 K, DATED
JUNE 5, 2012.

SETBACKS

FRONT SETBACK	30 FEET
FRONT SETBACK w/o GARAGE	20 FEET
SIDE SETBACK	7 FEET
REAR SETBACK	25 FEET





Joshua & Vanessa Slusin

4600 SW Barton Street

BOA Date: 9/14/2022

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR22-0035
Applicant / Current Owner	Joshua & Vanessa Slusin
Site Area	+/- 0.25 Acres
Current Zoning	R-1, Low Density Single Family Residential
Variance Request	Zoning Code Article 401.07 Section (c) (1)
Related Projects	RADD22-0044

Property Description

This property is located at 4600 SW Barton Street and is currently zoned R-1, Low Density Single Family Residential.

Regulation

Zoning Code Article 401.07 Section (c) (1) The minimum rear setback shall be twenty-five (25) feet in areas zoned R-1, Low Density Single Family Residential.

Variance Request

The applicant is requesting a variance of nine feet from the minimum twenty-five-foot rear setback.

Background

According to the applicant's narrative, a nine-foot rear setback variance is necessary to keep in place an addition to the existing home which was constructed within the rear setback without a building permit in 2020. The applicant's narrative states they hired J&E Home Remodeling to construct a non-livable, covered back porch with a scale and aesthetic designed to match the existing house and roof, with the same pitch. The applicants were under the assumption that as part of the process, the contractor retained all necessary permits to complete the project which ultimately was found to be false.

The applicant concludes that the structure was primarily built to provide privacy from neighboring two-story homes that look down into the applicant's backyard. Their narrative states that removing this structure would deprive them of rights commonly enjoyed by other properties in the same area.

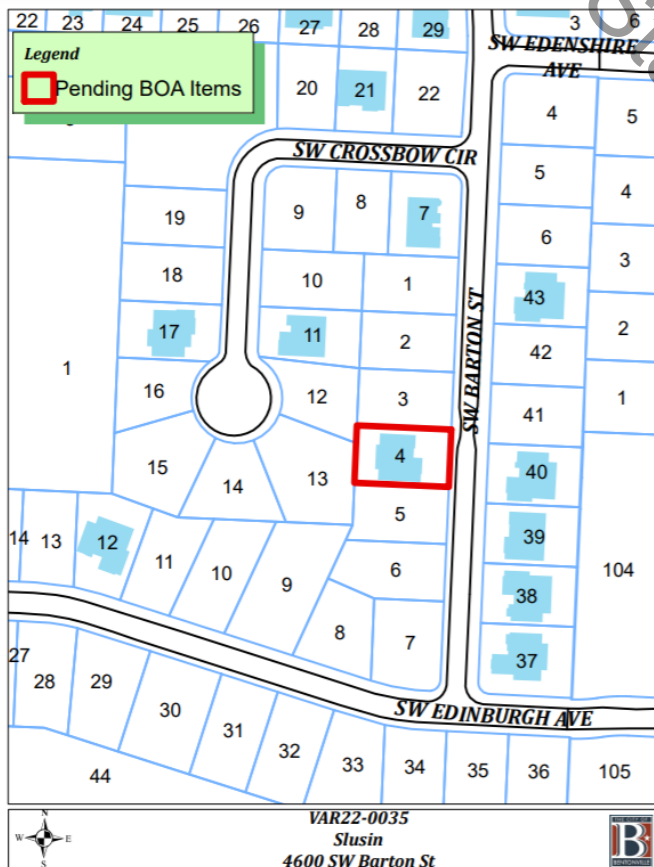
Public Comment

Staff HAS received public comment regarding this request. See attached.

Conditions of Approval

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed layout, as provided by the applicant within this application.
2. The applicant must obtain a building permit before construction begins.



Section 301.10.c, Standards of Approval, of the Zoning Code

Standards for approval. A variance from the terms of this chapter shall not be granted by the board of adjustment unless and until:

(1) The applicant demonstrates that:

- a. special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structure or buildings in the same district;
- b. that literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter;
- c. that special conditions and circumstances do not result from the actions of the applicant; and,
- d. that granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures, or buildings in the same district.

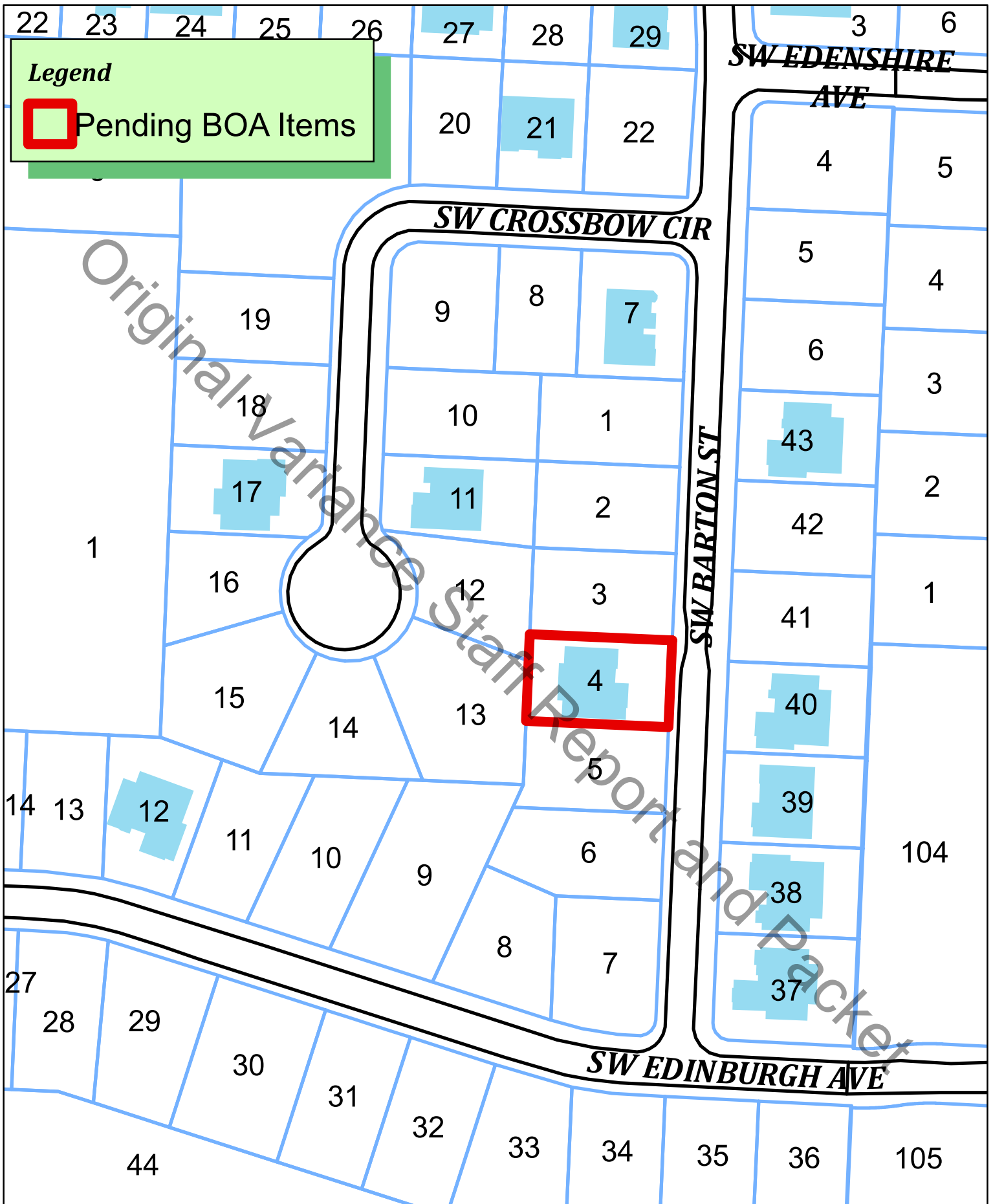
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(3) The board of adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance is the minimum variance that will make possible the reasonable use of land, building or structure.

(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(5) *Conditions.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not permissible under the terms of this chapter in the district involved, or any use expressly or by implication prohibited by the terms of this chapter in said district.



August 24th, 2022

Variance Application Narrative

RE: 4600 SW Barton St. Bentonville, AR 72713

The owners, Joshua and Vanessa Slusin, of 4600 SW Barton Street, respectfully request a 9' rear setback variance to allow a non-livable, covered porch to remain on the property.

Background: We hired J&E Home Remodeling to construct our non-livable, covered back porch. We were under the assumption that as part of the process, the contractor retained all necessary permits to complete the project. This project was completed two years ago, and the setback violation and lack of permit was recently brought to our attention.

The variance is requested for the following reasons:

- Requiring us to deconstruct this non-livable, covered back porch will create a financial hardship if we are instructed to remove 9' of the structure to be compliant with the 25' setback requirement.
- This structure was built to give us privacy from our neighbors. Our backyard is landlocked between houses that have second floors that look down into our backyard. There are also cameras and many security lights that shine and record our backyard. This non-livable, back porch offers us privacy from our neighbors. Removing this structure would deprive us of rights commonly enjoyed by other properties in the same district.
- The scale and aesthetic of the non-livable, covered back porch was designed to match our house and roof, with the same pitch and scale.
- There are no special conditions or circumstances that will result from the actions of this variance request.

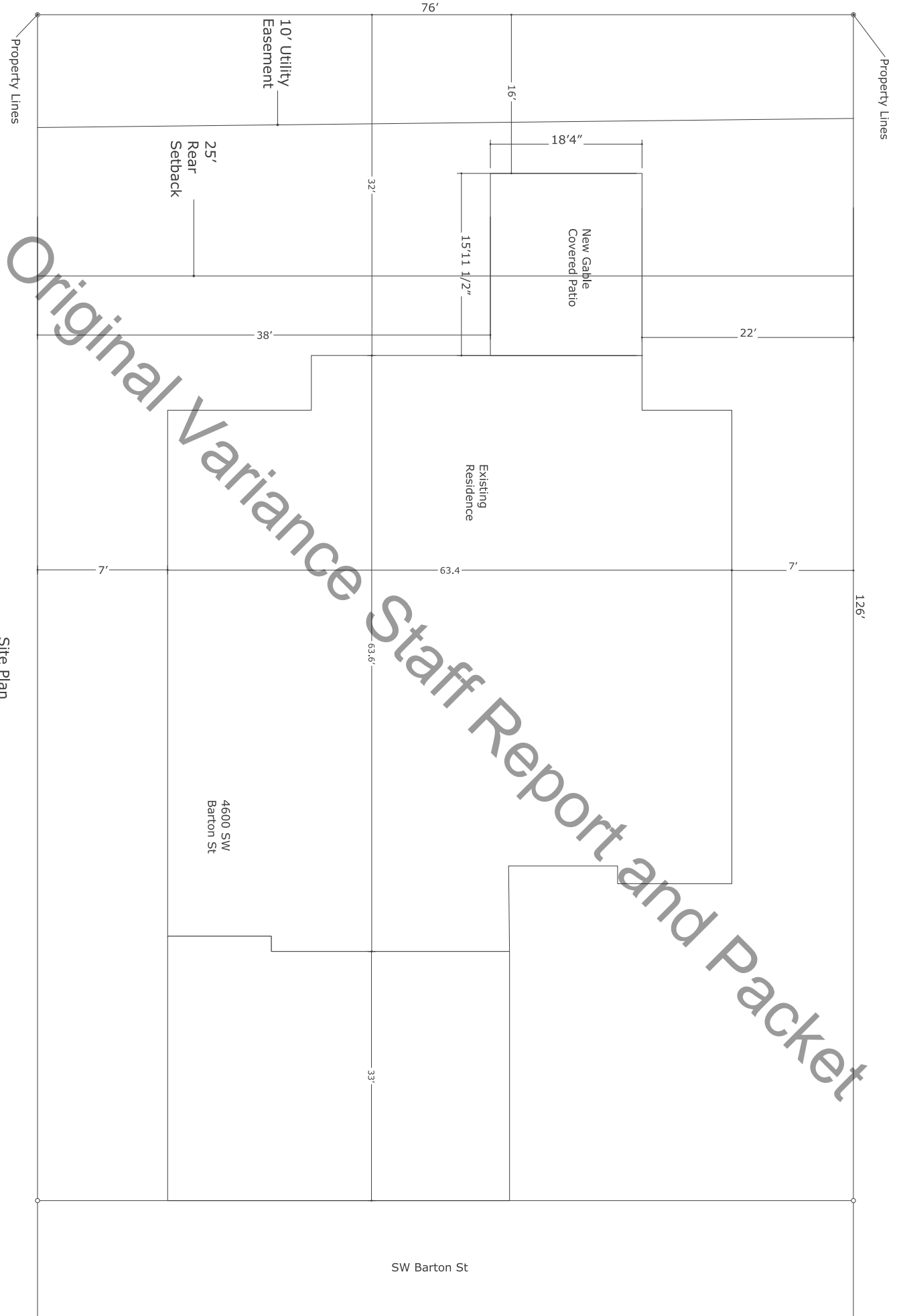
Addition to Narrative for BOA Variance

Please find attached three additional items:

- 1) Letter of support for variance from north side property owner – Michael Tisher
- 2) Letter of support for variance from west side property owner – Benin Chellamthara Job
- 3) Letter of support for variance from south side property owner – Sudheer Babu Uppala

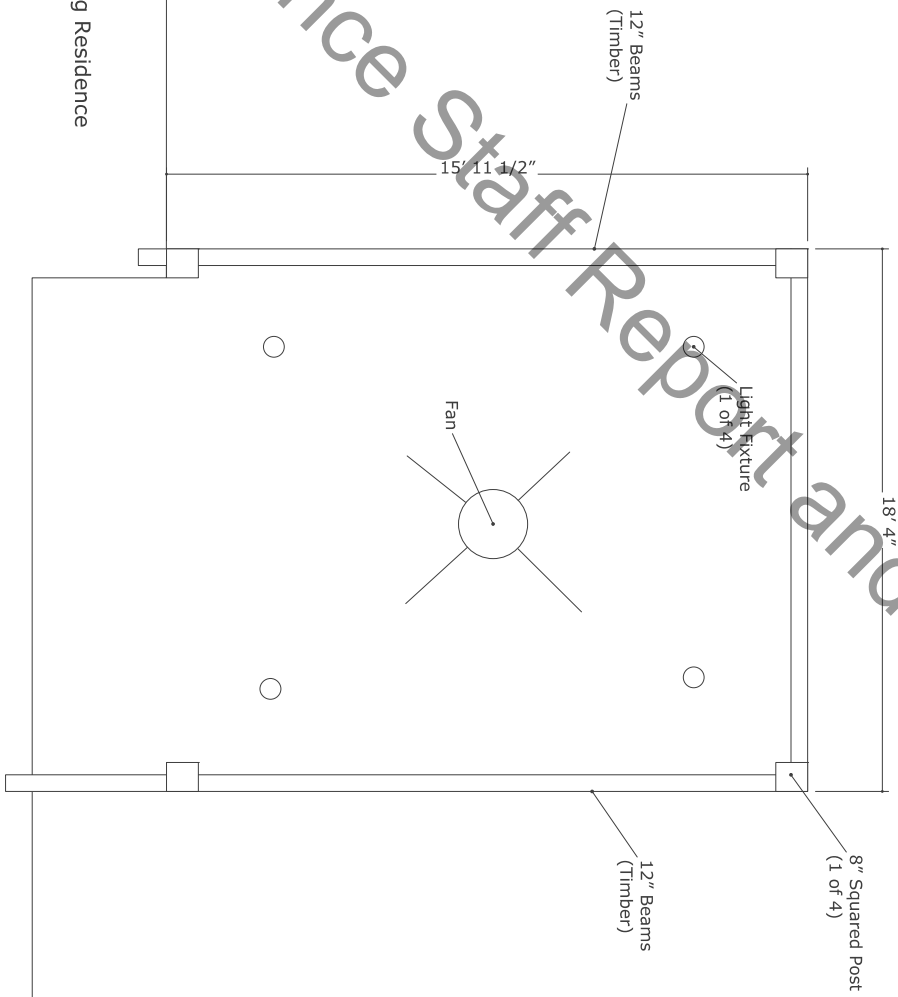
Original Variance Staff Report and Packet

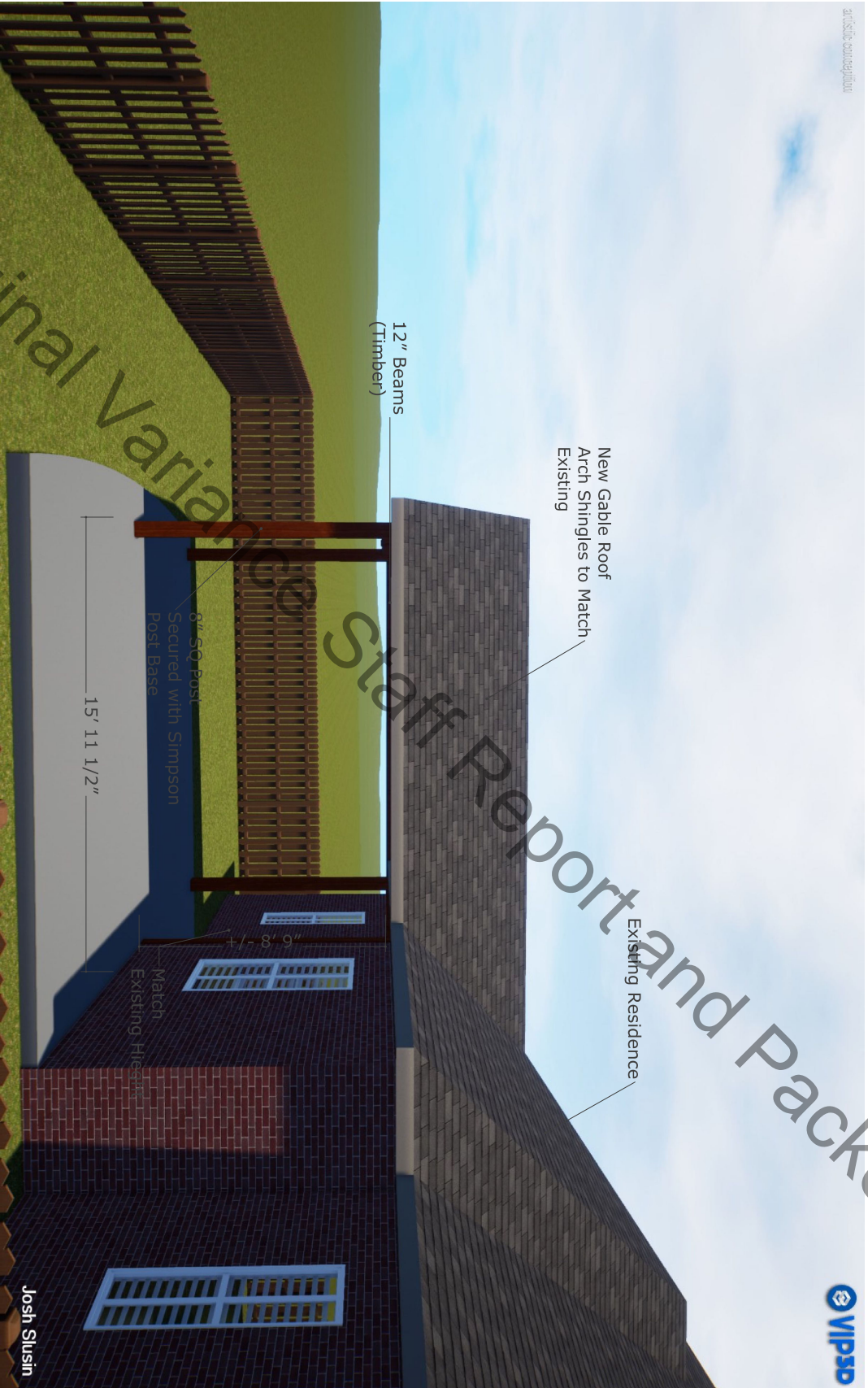
Original Variance Staff Report and Packet



Original Variance Staff Report and Packet

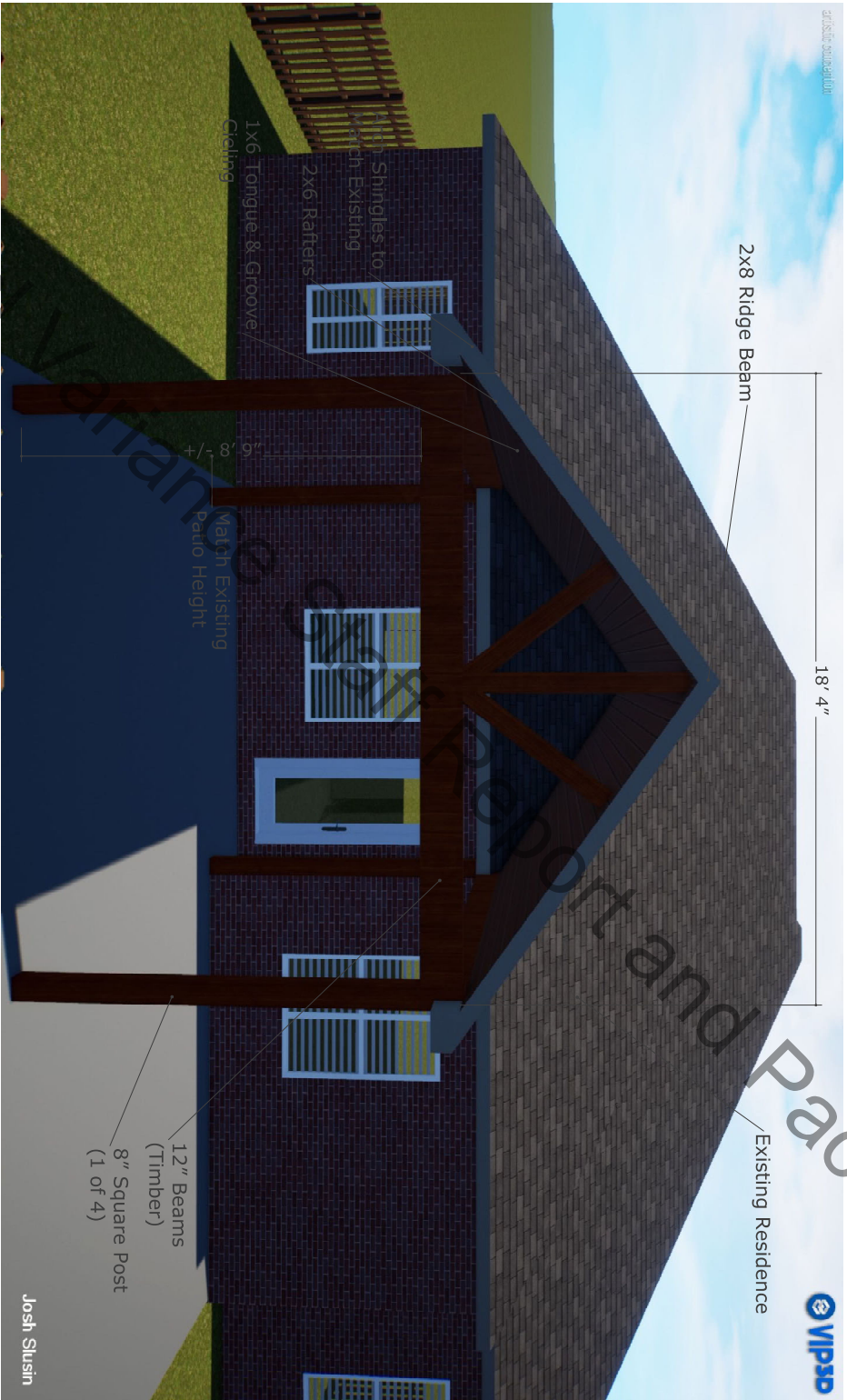
Floor Plan





Side (East) Elevation
(West Elevation Similar)

Josh Silusin



Rear (South) Elevation

[REDACTED]

[REDACTED]

[REDACTED]

Sent: Friday, September 9, 2022 11:42 AM

To: Thomas Adler <tadler@bentonvillear.com>

Subject: Concern regarding variance request - 4600 SW Barton, Bentonville

1. The development at 4600 SW Barton was done without taking any permit, it was done secretly/illegally.
2. They knew they won't get approval if they would have applied for permit for such a wrong thing, they extended the patio to within 12-14 feet of fence line.
3. The variance request now has no strong reasoning. Every home around has cameras for security. This is a fact for everyone. Most camera installers don't install camera to look into someone else house, but to watch own house.
4. By bringing their patio within 10-12 feet of fence they have not left any space for them, they step out of patio into yard onto the fence line.
5. By making a covered patio attached to house and extending so further towards the fence line they are invading other's privacy.
6. If this is approved, city would need to approve any other illegal improvement/development on the same basis.
7. There is no financial hardship here, just excuses to continue to keep something that was not rightly done.
8. Their backyard is facing someone's side yard (cul-de-sac house side is behind their backyard), side setback requirement is 7 feet. They are invading other's privacy by bringing patio so close to
9. This will impact price and selling for the house immediate next to this structure as no one would like to have a house where someone's backyard is so close to fence line and invading privacy.
10. This is a new neighborhood with every house built with permitted easements. Most of the lots are same size averaging little over .2 acres, and most have covered patios including the house at 4600 SW Barton. If they need, they should make the patio to follow the easements everyone has followed.

August 18, 2022

Michael & Kelsey Tisher
4506 SW Barton St
Bentonville, AR 72713

To the City of Bentonville Board of Adjustments:

I am aware of the house plans and variance request on the west side of the property that Joshua and Vanessa Slusin are presenting for 4600 SW Barton Street in Bentonville. I am the owner of 4506 SW Barton Street which is on the north side of the property requesting the variance. This variance will allow the property owner to maintain their current house structure, which I support.



Date

8-22-22

Michael or Kelsey Tisher

August 18, 2022

Benin Chellamthara Job
4605 SW Crossbow Circle
Bentonville, AR 72713

To the City of Bentonville Board of Adjustments:

I am aware of the house plans and variance request on the west side of the property that Joshua and Vanessa Slusin are presenting for 4600 SW Barton Street in Bentonville. I am the owner of 4605 SW Crossbow Circle which is on the west side of the property requesting the variance. This variance will allow the property owner to maintain their current house structure, which I support.



Date 08/20/2022

Benin Chellamthara Job

August 18, 2022

Sudheer Babu Uppala
4602 SW Barton St
Bentonville, AR 72713

To the City of Bentonville Board of Adjustments:

I am aware of the house plans and variance request on the west side of the property that Joshua and Vanessa Slusin are presenting for 4600 SW Barton Street in Bentonville. I am the owner of 4602 SW Barton Street which is on the south side of the property requesting the variance. This variance will allow the property owner to maintain their current house structure, which I support.


Date 08/20/22

Sudheer Babu Uppala

RE: concern regarding variance request at 4600 SW BARTON - VAR22-0035

To whom it may concern:

- I read the homeowners variance application narrative online as well of his three letters of support that were submitted to this Board of Adjustments. After reading them, I feel that the homeowner has taken no responsibility for his actions and placed blamed on everyone except himself as reasons why this variance should be approved. (the construction company, the proximity of the neighbors, the neighbor's security lights and cameras)
- There are no documents posted online showing that the POA at the time of the construction, RLP, approved the plans for the addition to the house. Per the Edgar Estates covenants that were filed on 08/11/2017, given to the homeowner upon purchase, and that are still in effect, the homeowner must get approval first before construction begins.
 - Covenants p3, section 5, "Before commencing construction, must get approval from the Developer in writing."
 - Covenants p5, section 7, "No building shall be located on any lot nearer to the minimum building setback lines shown on the anticipated final recorded plat. Porches, steps, chimneys, window boxes and other portions of a permitted structure shall not project beyond the minimum setback line,"
 - Had the homeowner submitted his plans to RLP before construction began, RLP, a construction company, would have had the opportunity to speak with the homeowner regarding any violations to the covenants and Bentonville city codes.
- The homeowner's letter states that it would create a financial hardship if he were required to deconstruct the back porch that is in violation of city code setback requirement of 25 feet.
 - Not only did the homeowner not get approval from the Edgar Estates POA before construction, the homeowner did not get approval or construction permits from the city of Bentonville during the process. The homeowner would not be having this hearing if he would have followed these procedures, and his addition would not be in violation.
 - Also, he would not be having this hearing if he would have made sure that the construction company that he hired retained all the necessary permits. The possible financial hardship was directly brought upon by the homeowner himself by not reaching out to the POA and the city to get approval.
 - If this was indeed the construction company's fault, for not pulling permits, the homeowner should be getting the construction company or the construction company's insurance to fix the addition in question to alleviate a possible financial hardship on him.

- Ultimately, it was the homeowner's responsibility to make sure the construction company retained all of the necessary permits to ensure that the addition to his home was within the building codes. Therefore, the homeowner should be held responsible financially for fixing the structure so that it is not out of the guidelines of the city requirements.
 - No homeowner should be allowed to not follow the POA covenants and the city of Bentonville's codes, and no homeowner should be awarded a variance after the fact because they felt like they could do the changes without getting caught.
 - Awarding the homeowner, a variance would show the Edgar Estates neighborhood they don't have to follow the rules of the POA or the city of Bentonville. This could bring down the property values for the neighborhood and the surrounding areas.
- The homeowner states that the addition was done to create backyard privacy from his neighbors. However, the homeowner told me recently, after attending a board meeting on the porch in question, that the fast-growing trees that he planted were to provide privacy from his neighbors for his porch. While I was sitting on the porch, I could still see all the neighbor's yards and could notice no privacy that it would provide to him. I could see where this outdoor living space could be considered a nuisance to the surrounding neighbors since it extends over the easement and it is set-up for use as an entertainment area.
- The homeowner purchased the residence in March of 2018 when there were only a few houses built. The homeowner knew that his property was surrounded by lots in which 2 story structures would be built. If the homeowner wanted backyard privacy, he should have selected a lot that would have provided him that privacy when the subdivision was completed or not selected a house in a neighborhood. Very few of the lots in the subdivision have backyard privacy and the homeowner's expectation is unreasonable based on the lot location that he selected.
 - My fiancée and I also purchased our residence in March of 2018 and purposely didn't select his house for that issue. There were several similar houses available at that time that would have provided the homeowner backyard privacy if that was important to him.
- The scale and aesthetic of the addition that is in question is irrelevant because it is still in violation of the Edgar Estates covenants and the city code no matter how it looks.
- Granting this variance to the homeowner, who is the current Edgar Estates POA President, will show the other homeowners of the subdivision that they don't need the POA's approval or building permits from the city of Bentonville to make changes to their property. It sets the standard that any homeowner can be non-compliant and just ask for forgiveness later because that is what the POA President was able to do and get away with. Although the board members are in a position of power, they are also homeowners and are not exempt from

following POA rules and regulations. They should even be held to higher standards due to their fiduciary duty to the POA.

- Also, since he took office in September 2021, the POA President has advised homeowners of the changes that they can and cannot make to their property based on the covenants of the POA. Therefore, he should have been fully aware that his home was in violation, even before the city of Bentonville found the violation and issued him a citation.
 - For example, on May 24, 2022, the homeowner, as POA President, denied a request from a fellow homeowner for a concrete pad to be poured on their property with the reasoning via text message to his fellow board members, "We took place of the developers. We are the architectural control committee. The last line states our power. 'The developer (now us) shall have full power to enforced the Provisions and restrictions herein by any action.'"
- Just like he never asked for approval of the addition from the POA before construction, he also never mentioned his violation to his fellow board members. He only mentioned it to his three surrounding neighbors, none of which are board members. Although it was considerate of him to reach out to his three surrounding neighbors, this variance doesn't just affect his three surrounding neighbors, it effects the future of the entire neighborhood and could have detrimental long-term effects to the property values of all homeowners.
- I feel that the homeowner should have reached out to the current POA board, for which I am a member, when he received the citation, and been required to submit the response and voting results from the POA board members as a whole to this violation as well. However, there are no documents submitted by the homeowner showing that he did so, and I was never contacted to vote on the issue.
- When I found out about the violation that led to the homeowner's citation, I tried to inform the property owners of Edgar Estates of his violation via the neighborhood Facebook group to get their input, and my post was removed within minutes and mine and my family's access to the community neighborhood Facebook group was revoked without any explanation. When I contacted one of the ADMIN of the group, who is one of the homeowners that is applying for this variance, Vanessa Slusin, she reported me to the police for direct messaging her and told them that I had been voted out of the community. This shows me that the homeowners are trying to hide this violation from the entire neighborhood as well as fellow board members and do not care what long-term effects it has on the neighborhood as a whole.