



**Board of Adjustments
Meeting Agenda
October 25, 2023
Bentonville City Hall
Tech Review: 4:00 PM
Public Hearing: 4:00 PM**

Zoom Registration Link: <https://us06web.zoom.us/j/82115619850>

I. Call to Order

II. Approval of Minutes

- | | |
|--|------------------------------------|
| 1. September 13th Meeting Minutes | Approval of Meeting Minutes |
|--|------------------------------------|

III. New Business

- | | |
|--|------------------|
| 1. Vaz & Oliveira (VAR23-0029) | Variance* |
| <i>Variance request of 4' 4" from the minimum side setback of 7' required by:
Zoning Code Section 401.07- Residential (R) Districts Regulations, part
(c) (1) Residential (R) districts setback standards.</i> | |

IV. Old Business

V. Other Business

- | | |
|--|----------------------|
| 1. Discussion - Variance criteria, Decision
checklist document, General updates | Informational |
|--|----------------------|

VI. Adjournment



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

Recording Link: https://us06web.zoom.us/rec/share/b783AEXXkop87G8M8JhzGV5TElnsl-oGJ43bmXGehZ168A0o72vNnX91jJxgza4.xzV7GWhicg5fu_zi?startTime=1694638802000

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

Board Members Absent: N/A

City Staff Present: Tom Adler, Tyler Overstreet, Bonnie Bridges (Legal) Luke Aitken, Lance Blasi (Building and Fire Safety)

I. Call to Order

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

II. Approval of Minutes

1. August 23rd Meeting Minutes

Approval of Meeting Minutes

- Motion by Pearson to approve the meeting minutes as presented, Second by Haynie.
- August 23rd meeting minutes are approved 5-0 via voice vote.

III. New Business

1. Randall

Variance*

703 NW 6th Street (VAR23-0027)

- Front Garage Setback
- Mr. Aitken provides an overview of the staff report on the request.
- Chairman Kruithof opens the public hearing for this item.
- Dave Burris, the applicant, speaks to the hardship necessitating the variance request, stating the existing structure creates a peculiar circumstance preventing the homeowner from enclosing their carport, converting it into a garage.
- Public hearing is closed.

- Discussion between the Board, Staff, and the applicant on the design specifics of the older existing home in relation to the homeowner's hardship.
- Motion by Pearson to approve the variance request as presented, second by Haynie.
- Variance request is approved by a vote of 5-0

IV. Old Business

1. Susin

Variance*

4600 SW Barton Street (VAR22-0035)

- Rear Setback Variance Re-Evaluation
- Mr. Adler provides an overview of the staff report on the request, also stating a correction to the report, that the structure does not encroach into the 10' easement.
- Chairman Kruithof clarifies details of the circuit court case Lynn v. Board of Adjustments. The variance request is to be reconsidered by the Board and their decision submitted to the judge along with findings of fact in writing.
- Chairman Kruithof opens the public hearing for this item
- Kyle Lynn of 4603 SW Barton St speaks in opposition to the request, stating his concerns over the City allowing the structure in question to remain.
- Meredith Brown of 1804 SW Edinburgh Ave speaks in support of the request stating she has also made improvements in her own rear yard to increase privacy.
- Rohit Chaturvedi of 4607 SW Crossbow Circle speaks in opposition to the request stating he believes the applicant's hardship was self-inflicted.
- Ryan Remar of 1806 SW Nottingham Ave speaks in support of the applicant, stating that there is a need for increased privacy in the rear yard due to lights and cameras mounted at 4607 SW Crossbow Circle.
- Emily Blair of 1815 SW Nottingham Ave speaks in support of the request, stating the opposition by some neighbors does not reflect her views.
- Rita McClary of 1805 SW Edinburgh Ave speaks in support of the request stating the opposition by some neighbors does not reflect the views of the neighborhood.
- Joshua Slusin, the applicant, speaks to his request, stating the structure should be considered an "Open Porch" and by definition the structure should be allowed to remain as it is allowed to encroach into the rear yard setback without a variance.
- Chairman Kruithof asks for clarification on staff's interpretation of the zoning code which required a variance be requested to bring the structure into compliance.
- Mr. Overstreet states that staff's interpretation of Zoning Code Section 401.07 is that accessory structures attached to the primary structure must meet the same setback standards as the primary structure.
- Discussion between Board Members and staff around residential setbacks and

the specific definitions of accessory structures and open porches.

- Mr. Slusin speaks to the hardship he faces due to concerns over privacy from his neighbors due to windows, lights, and cameras that face his rear yard.
- Discussion between staff and Board Members around the definition of “structure” in the zoning code, and whether rear setbacks for primary structures should be enforced on open porches as currently interpreted by staff.
- Bonnie Bridges. Staff Attorney clarifies that encroachments into easements are not permitted by code, but the board does have the ability to disagree with staff’s interpretation of the zoning code.
- Motion to vacate the proposed variance and hold that an open porch may encroach into a setback by right, and that the applicants open porch meets code, by Phillips, Second by Kruithof
- Motion is approved 5-0
- Motion that staff shall correct the staff report for VAR22-0035 reflecting that no encroachments are present in the platted 10 ft rear yard easement, by Haynie, Second by Kruithof
- Motion is approved 5-0

V. Adjournment

- Meeting is adjourned at 5:31PM by Chairman Kruithof



Vaz & Oliveira (VAR23-0029)

PC Date:

Reviewer: Luke Aitken, Planning Technician

Staff Report Details

A Variance Request of 4' 4" from the minimum side setback of 7' required by: Zoning Code Section 401.07- Residential (R) Districts Regulations, part (c) (1) Residential (R) districts setback standards.

Property Description

The property in question is located in northeast Bentonville at 401 Trails End Lane, just east of NW C Street. It is currently zoned R-1, Low Density Single Family Residential, with a future land use map designation of Medium Density Residential. The property contains one single family residence which has existed since the early 2000's although the date of initial construction is unclear.

Project Details

The applicant has constructed a carport 2' 8" from their western property boundary, in place of a previously existing non-conforming attached shed. It should be noted that the original shed was already encroaching into the 7 foot side setback required by code by 1' 3" and the existing slab is within 2' of the western property boundary. The applicant is the newest owner of this structure as of June 2021 and has remodeled the residence extensively over the past two years. This work was permitted and inspected by the City of Bentonville under RALT21-0098, but the carport in question was not within the scope of this permit and appears to have been built without any further permits. The applicants narrative claims there would have been no way for this site to accommodate parking for more than one personal vehicle without a garage or structure encroaching into the required R-1 setbacks.

The applicant states that given the existing nonconformities on site, they chose to build the carport in a location (on the existing pad) that would have required the least additional setback encroachment. They claim to have made a deliberate choice to minimize the need for variances and instead substitute one structure for another. They also state in their narrative that a unique and peculiar condition exists which is not applicable to other homes nearby, also zoned R-1. Because of the age of the home, only a 1-car garage exists on site and the 20' wide street does not allow for safe onstreet parking of a private vehicle. This car port grants the property and its owners the ability to park a 2nd car on site, which is an amenity commonly enjoyed by many other homeowners throughout the City. In conclusion, the applicant states this request is solely aimed at addressing the existing conditions and ensuring reasonable use of their property.

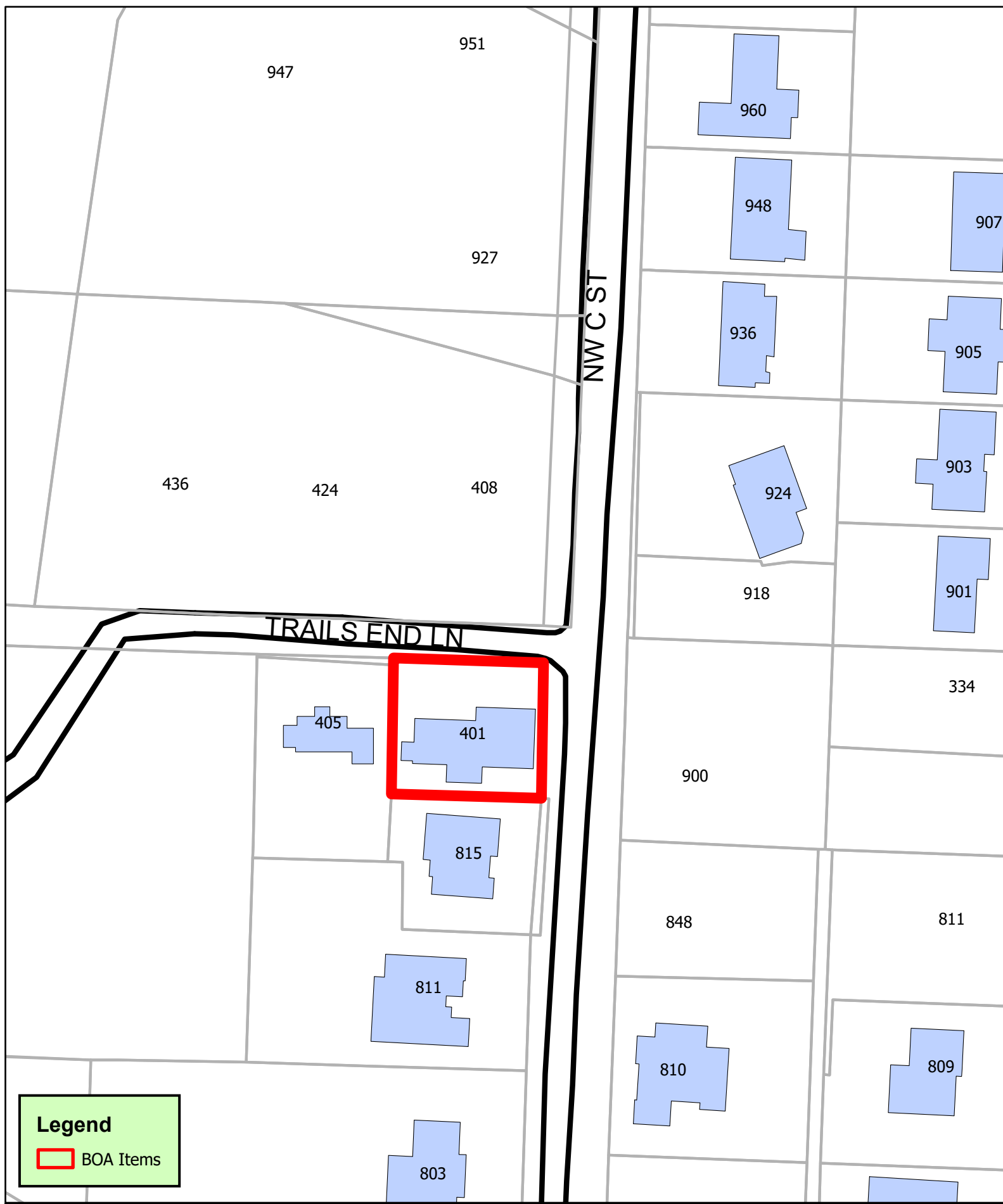
Relationship to the General Plan / Projected Traffic Impact

Public Comment
Has Staff Received Public Comment regarding this request? : No

Analysis / Waivers

Conclusion

Additional Details



Legend

 BOA Items



1:1,068

VAR 23-0029 10/12/2023
SETBACK VARIANCE
401 Trails End Lane



Bruno Vaz & Marina Oliveira

401 Trails End Ln

Bentonville, AR, 72712

October 4th, 2023

To the Bentonville City Board of Adjustment

305 SW A St, Bentonville, AR, 72712

Subject: Request for Variance Approval for existent Carport location

Dear Members of the Board of Adjustment,

I am writing to respectfully request the approval of a variance for the location of the existing carport at our property, 401 Trails End Ln, in accordance with the provisions of the city's zoning ordinance, summarizing:

- We replaced an existent shed for this new car port.
- To our ignorance the car port is in less than 7 feet from the property sideline (the old shed was either)
- Our home was already a legal nonconforming structure prior to any work we had done. The home had already been encroaching into both the side and rear setbacks. Given that, we chose to build the carport in the location that would have required the least variance where there was already a nonconformity.
- The structure will solely be used to park a car on the side of the house.
- The property in question was in a unique and peculiar condition with only a 1-car garage. This car port is granting the property the in-site parking of a 2nd car which is common to other buildings in the same district.
- The existent car port structure was built on the same spot as the previous shed that was demolished. This space was in poor sanitary condition causing complaints from our neighbors, which are very pleased with the change and the new structure architecture and space usage.
- We will be describing in the following pages the situation and all measures and drawings from the previous and new structures.
- Also, we will reference the cost of this carport and the commitment we had to make sure it would be aligned with the city architecture.

We went through some remodel work at our house over the last 2 years for which we requested permit for the extension of our dorm. At the time there was an existent shed on the side of the house which we demolished and built a carport. By our ignorance, unfortunately, we replaced the existent shed for a car port and since there was no walls just the car port poles, we thought we could replace one for another (Pic 1 & Pic 2)



Pic1. Old shed (already demolished)



Pic2. New carport on the same existent slab

There was already an existent slab that was not being used for parking but rather was being used for a water filtration system and the shed (picture 1) that occupied more than half of the overall space (picture 3 below):



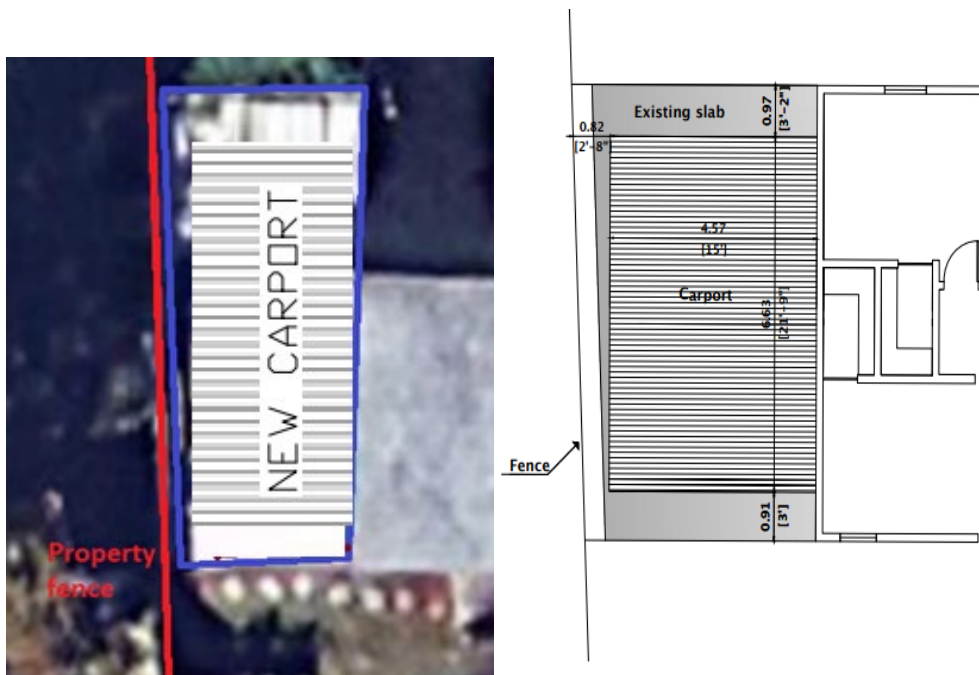
Pic.3 Old shed implantation from google earth and site plan drawing with distances.

We have tried our best to create an appealing space for a car, going in the same line as the other structures being built in the city. The car port was built with cedar wood and a grove and tongue ceiling to become a good integration into the city's architecture.

Although the new car port distance to the property line is less than 7 feet (2'8") the distance to our neighbor structure is more than 15 feet (Pic 4 & 5 and See Attachment B & C)



Pic.4 Distance from the fence/Property line to the neighbor building (405 Trails end Ln)



Pic.5 New Car Port implantation from google earth and site plan drawing with distances.

The decision to build the carport in the particular location was made after careful consideration of the existing conditions on the property. It was observed that the property had already been encroaching into both the side and rear setbacks prior to any construction or modifications. This pre-existing nonconformity meant that certain portions of the property we would not be able to execute the structure.

Considering this situation, and since there was an existent shed already non-conformant, it was essential to approach the new carport construction with the minimal impact. Rather than exacerbating the nonconformity issue by placing the carport in an area that would require substantial variances and potentially create further legal or regulatory challenges, we made a deliberate choice to minimize the need for variances and just substitute one structure for another.

Ultimately, the goal was to strike a balance between meeting the practical needs of the property for parking needs and adhering to the regulatory framework governing property use. By choosing the location that required the least impact and worked within the existing nonconformity

We come here to kindly request your acceptance for this implementation since we believe that the circumstances surrounding our request meet the criteria outlined in the ordinance for granting a variance, as follows:

Special Conditions Exist: The property in question has a unique and peculiar condition that is not applicable to other buildings in the same district. Specifically, our property has only a 1-car garage, which does not provide any other option to have a second car park. The alternative is to park at the 401 Trails End St which is very narrow and has been through additional works to build 3 more houses in front of our property. Those 3 additional properties would cause even more impact if street parking were necessary.

You can see in the following picture the only option for our property (1 car garage) and the street parking implications (Picture 6)



Pic.6 The only existent car parking for the entire property was the one on the corner with C St

This condition, of only having 1 parking and with limited and narrowed street parking space available is not common in our neighborhood, making it unique to our property.

Deprivation of Common Rights: A literal interpretation of the zoning ordinance would deprive us of rights commonly enjoyed by other properties in the same district. Many neighboring properties have larger garages or carports that meet their parking needs adequately. Or as an alternative they can securely park on the street. Granting this variance would ensure that our property can enjoy the same rights as others in the area in a safe way.

No Result from Applicant's Actions: The special conditions and circumstances leading to this request are not a result of our own actions. We bought this property with the existing 1-car garage, and the limited parking space is beyond our control.

No Special Privilege: Granting the variance will not confer any special privilege upon us. It is important to note that nearby nonconformities cannot be used as a justification for granting a variance. This request is solely aimed at addressing the existing condition and ensuring reasonable use of our property.

Minimum Variance for Reasonable Use: The requested variance represents the minimum variance necessary to allow for the reasonable use of our building. It is not excessive or disproportionate to the situation and will enhance the functionality of our property without adversely impacting neighboring properties.

In Harmony with General Purpose: Granting this variance will be in harmony with the general purpose and intent of the city's zoning code. It will enable us to provide safe and adequate parking for our family's vehicles, which aligns with the broader goal of ensuring residents' comfort and safety.

No Detriment to Public Welfare: The construction of the carport was not detrimental to the public welfare or the aesthetic quality of the neighborhood. The neighbor on the side where the carport is located is in conformity with its location, distances, and execution, ensuring compatibility with the surrounding properties. As stated above the confining neighbors are happy with the solution since in the past, we had sanitary issues with the old structures (Shed).

We kindly request that you consider our application for a variance in light of these circumstances and criteria. We are committed to ensuring that the carport's usage adheres to all safety and aesthetic standards required by the city, and we are thankful for the help the city gave us to express our unfortunate situation and to navigate us throughout the entire process.

We have tried to the best of our ability to explain the situation by adding drawings and other attachments to help you navigate through the request. If you require any additional information or documentation to facilitate your decision-making process, please do not hesitate to contact us at 4792505569 or brunoalmeidavaz@gmail.com. Your attention to this matter is greatly appreciated.

Thank you for your time and consideration.

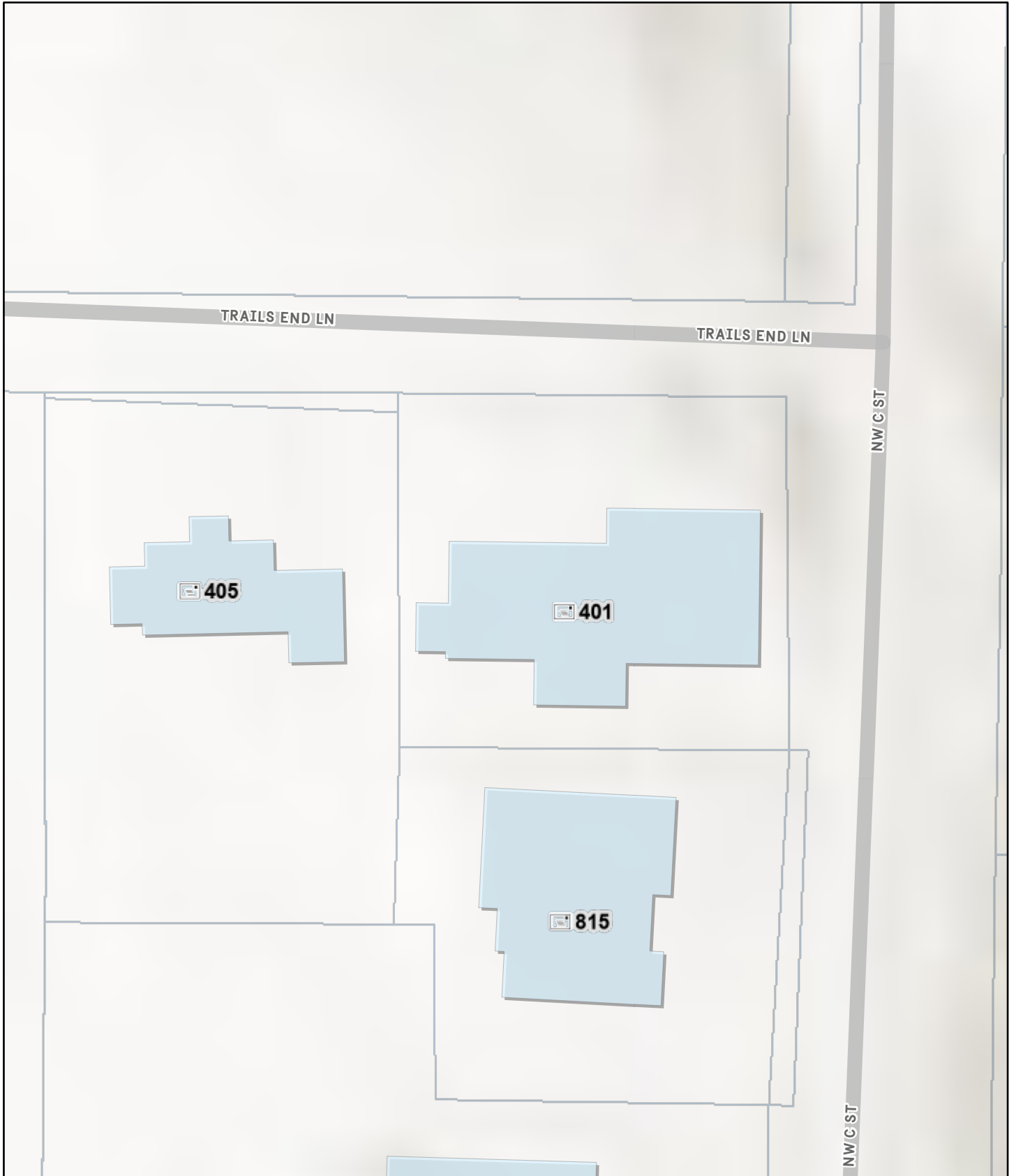
Sincerely,

The image shows two handwritten signatures in blue ink. The first signature on the left is 'Bruno Vaz' and the second signature on the right is 'Marina Oliveira'. Below the signatures, the names 'Bruno Vaz & Marina Oliveira' are printed in a standard black font.

Bruno Vaz & Marina Oliveira

Attachment A – City of Bentonville GIS

City of Bentonville GIS



4/10/2023, 19:21:37

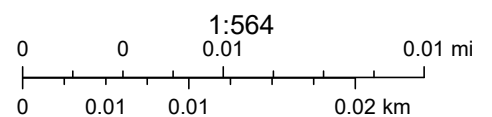
Address



Main address

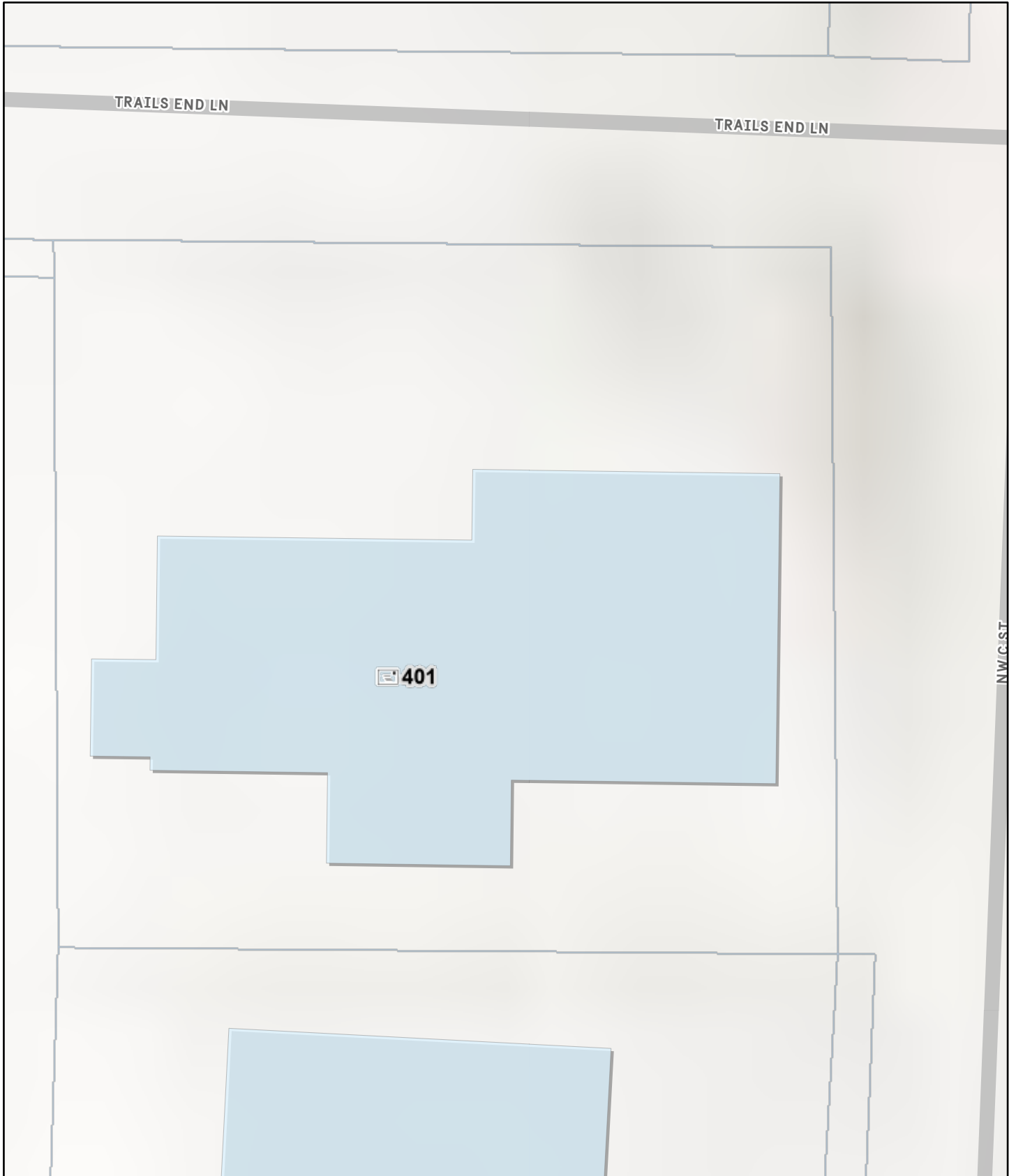


Tax Parcels



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, COBGIS

City of Bentonville GIS



4/10/2023, 19:18:51

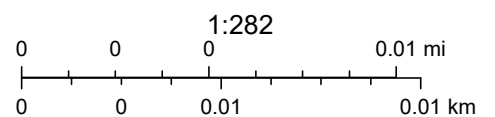
Address



Main address



Tax Parcels



Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, COBGIS

Attachment B – Site Plan



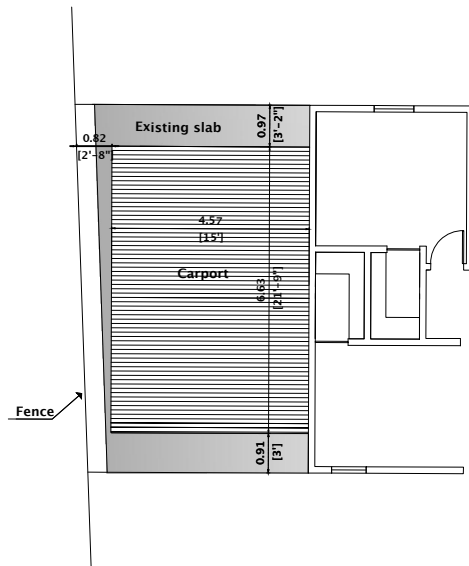
Special Conditions Exist:

The property in **question** has a **unique and peculiar condition** that is not applicable to other buildings in the same district. Specifically, our property has only a 1-car garage, which does not provide any other option to have a second car park. The alternative is to park at the 401 Trails End St which is very narrow.

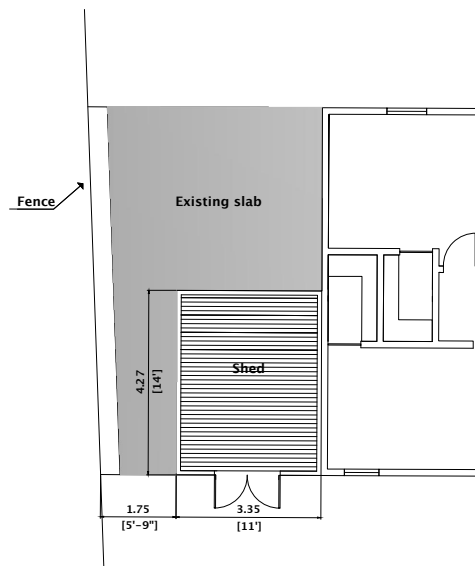
Attachment C – Before and After Drawings

401 TRAILS END LANE
BENTONVILLE, AR

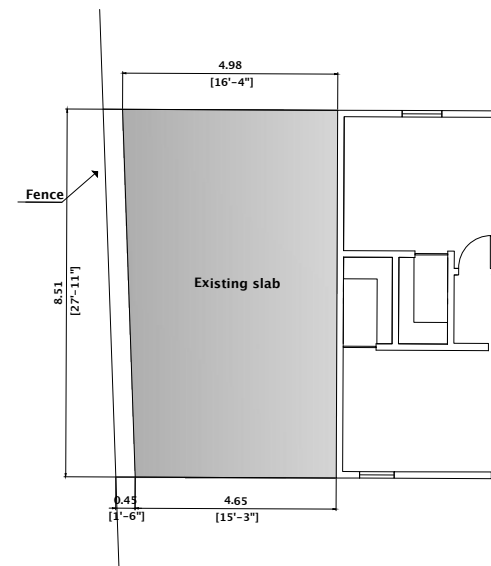
New Carport



Old shed implantation



Existing slab



Scale:1/4

Attachment D – Before and After Pictures



To Members of the Board of Adjustment,

I am the owner of 405 TRAILS END Lane in Bentonville. My neighbors at 401 TRAILS END Lane are seeking a variance for their carport. I am submitting this letter to inform you that I have no objection to your granting them their variance.

Thank you,

Hollie Paul
HOLLIE PAUL

(917) 734-3544
tay88Lor@yahoo.com



Board of Adjustment Record of Findings

Board Member _____

Dissapproval _____

Approval _____

Project Number: _____ Project Name: _____

Yes	No	
		<i>Muni Code Se. 301.10(c)1 requires applicant to demonstrate:</i>
		That special conditions and circumstances exist, peculiar to the land, structure or building involved and not applicable to other areas in the same district.
		That a literal interpretation of the code deprives the applicant of rights commonly enjoyed by other properties in the same district.
		That the special conditions / circumstances do not result from actions of the applicant.
		That granting the variance requested will not confer on the applicant any special privilege that is denied to other lands, structures, or buildings in the same district.
		<i>Muni Code Se. 301.10(c)2-6 further states that:</i>
		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
		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.
		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.

Addintional notes:

In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. 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.

Signature of Board Member _____

Date _____

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.