



**Board of Adjustments
Meeting Agenda
November 8, 2023
Bentonville City Hall
Public Hearing: 5:00 PM**

Registration Link: <https://us06web.zoom.us/j/85049292386>

- I. Call to Order**
- II. Approval of Minutes**

1. Minutes - October 25th Board of Adjustments

III. New Business

- 1. **Dream Structures Residential LLC** **Variance***
3303 SW Sandalwood Ave
Request for setback variance of 8'-7" from the required 30' front garage setback.
- 2. **HamHane LLC** **Variance***
409 & 411 Northwest 5th Street
*Variance request of 18 feet from the minimum rear setback of 25 feet required by:
Zoning Code Section 401.07-B Downtown Neighborhood (DN) Districts Regulations,
(c) DN districts setback standards.*

IV. Old Business

V. Other Business

- 1. **Discussion on the BOA schedule for November and December** **Informational**

VI. Adjournment



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

Zoom Recording Link:

<https://us06web.zoom.us/rec/share/IQhGIUKE5JznVEMeLmV6GPfFtbk5bXN6MNQcpyZ48-OJsZDux7oxcuNyGHT1YzaA.xTIHzjvY73Ft-ZKK>

I. Call to Order

- Meeting called to order at 4:00PM by Chairman Kruithof
- Members present: BJ Phillips, Celia Swanson, Dean Kruithof, Joe Haynie
- Members absent: Sam Pearson
- Staff present: Tom Adler, Tyler Overstreet, Luke Aitken

II. Approval of Minutes

- September 13th Meeting Minutes** **Approval of Meeting Minutes**
 - Motion by Haynie to approve the minutes as presented, Second by Phillips.
 - September 13th meeting minutes are approved by a vote of 4-0.

III. New Business

- Vaz & Oliveira (VAR23-0029)** **Variance***

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.

 - Chairman Kruithof briefs those present on the public hearing and voting procedures of the board.
 - Mr. Aitken provides an overview of the staff report on the request.
 - Chairman Kruithof opens the public hearing for this item.
 - Hollie Paul, of 405 Trails End Ln, is a next-door neighbor of the applicants and states she has no issues with the new car port in question, as it has improved a past issue of rodents and pests around both properties, is adequately separated from her home, and has improved the appearance of the applicants existing home from the street.
 - Marina Oliveira and Bruno Vaz, the applicants, speak to their reasoning for the request, including their lack of knowledge around permitting requirements for the car port compared to their recently finished dormer addition which was permitted through the City.
 - Mrs. Oliveira and Mr. Vaz state they thought the carport would be allowable without further permitting as it was replacing an existing

attached shed, with walls, with an unenclosed structure on the same existing concrete pad.

- Mrs. Oliveira and Mr. Vaz also speak to their needs for an additional parking space on the property, citing the widths of NW C St and Trails End Ln, and the home's lack of a two-car garage or sizeable driveway when they initially purchased it.
- Seeing no other members of the public present for comment, Chairman Kruithof closes the public hearing for this item and opens the floor for discussion amongst the board.
- Mr. Phillips speaks to the request being reasonable, as the carport looks and functions better than what was there before, for both the applicant and their neighbor.
- Mr. Phillips also states there would be no way for the applicant to provide a second covered parking area on their property without encroaching into the side setback in question.
- Ms. Swanson also speaks to the circumstances outside of the applicants control contributing to the need for this request, including the original design, age of the home, and the size of the lot and width of the streets surrounding it.
- Chairman Kruithof states that he believes much of the applicant's narrative and speaks to the circumstances outside of the applicants control which exist on the site and necessitate the variance request.
- Mr. Haynie speaks in agreement with Mr. Phillips and other board members, that this is a reasonable variance request.
- Variance request is approved by a vote of 4-0

IV. Old Business

V. Other Business

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

- Discussion between Board of Adjustments and staff around the basis and purpose of the variance criteria at both the state and local government level.
- Mr. Overstreet provides an overview of "Plan Bentonville" the city's Future Land Use Plan Update.
- Discussion between the Board and staff around the "Plan Bentonville" process and timeline.
- Discussion between the Board and staff on upcoming meeting dates and any schedule conflicts going into the winter holiday season

VI. Adjournment

- Meeting is adjourned by Chairman Kruithof at 4:51 PM

**Dream Structures Residential LLC**

3303 SW Sandalwood Ave

BOA Date:**Staff Report Details**

Project Number	VAR23-0030
Applicant / Current Owner	Dream Structures Residential LLC
Site Area	+/- 0.16 Acres
Current Zoning	R-1. Low Density Single Family Residential
Variance Request	Variance from Zoning Code Section 401.07 Residential (R) Districts Regulations (C) (2) Residential Districts Setback Standards - Garages: Setback variance of 8'-7" from the required 30' front garage setback.
Related projects	VAR20-0008, RES23-0338

Property Description

The subject property is located in Southwest Bentonville at 3303 SW Sandalwood Ave. It is currently zoned R-1, Single Family Residential with one newly built single family home existing on the property. Adjacent zoning districts include R-1 to the east, north, and west and Benton County to the south. This property is part of a recently developed single family subdivision - Woodlands Crossing Phase 1, which received a 5' rear setback variance in April of 2020, due to an increased right of way width along SW Sandalwood Ave (VAR20-0008). This property did not take advantage of the approved 5' rear yard setback.

Regulation

Zoning Code Section 401.07 Residential (R) Districts Regulations (C) (2) Residential Districts Setback Standards - Garages:
Requiring a minimum front setback of 30' for street facing garages.

Variance Request

Variance Request

Setback variance of 8'-7" from the required 30' front garage setback, resulting in the garage being 21 foot 5 inches from the right of way line.

Background

The footings for this new single family home were field surveyed incorrectly (the whole house was shifted north 9') and this was not discovered until the home was already framed and electrical and plumbing were being installed. The structure in question was built by the applicant who applied for a new residential building permit on 6/13/2023 through the City's Building & Fire Safety Department. The permit application, (RES23-0338) showing the garage with a 30' setback, was reviewed and approved by staff. On 6/21/2023 city staff approved the on-site footing inspection. On 7/11/2023, city staff approved an on-site underslab inspection and setback verification. On 7/13/2023, city staff approved an on-site slab inspection and on 9/7/2023 an on-site framing inspection was approved. The non-compliant footing location went unnoticed by the applicant and city staff throughout these inspections. City staff were unaware of this non-compliant setback until the applicant himself brought the situation to our attention. The applicant stated in a phone conversation with staff that the home being built to the west by the same team, at 3305 SW Sandalwood, features a side loaded garage, which only requires a 20' front setback. The applicants' narrative also states they believe this was an honest mistake made on the job site, their first of this kind on 20 years, and they hope this will never happen again.

Public Comment

Has Staff received Public Comment at the time of this report?: **No**

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 modified building permit with the correct plot plan.

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, structures 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.

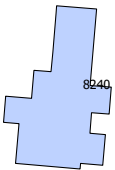
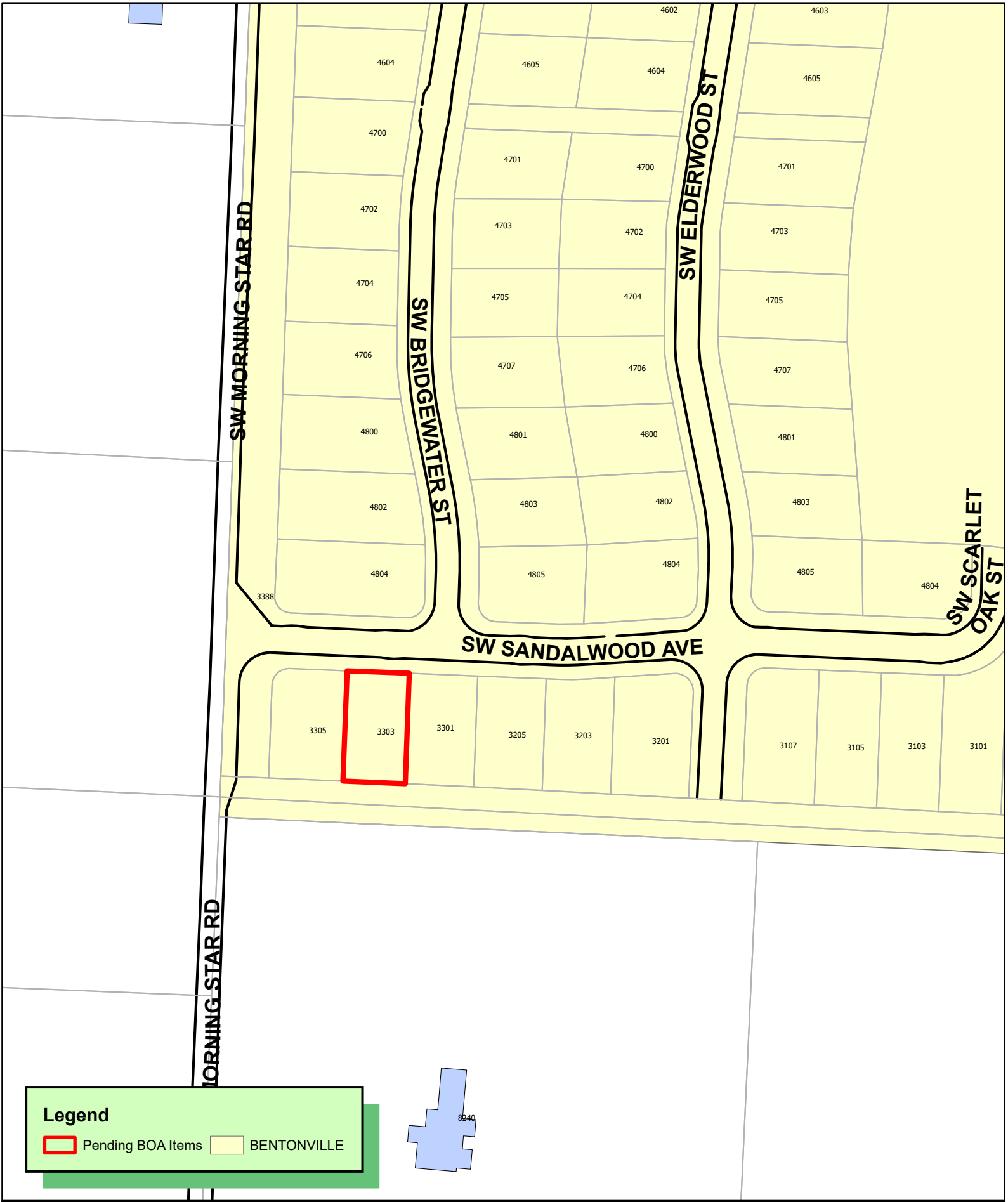
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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.

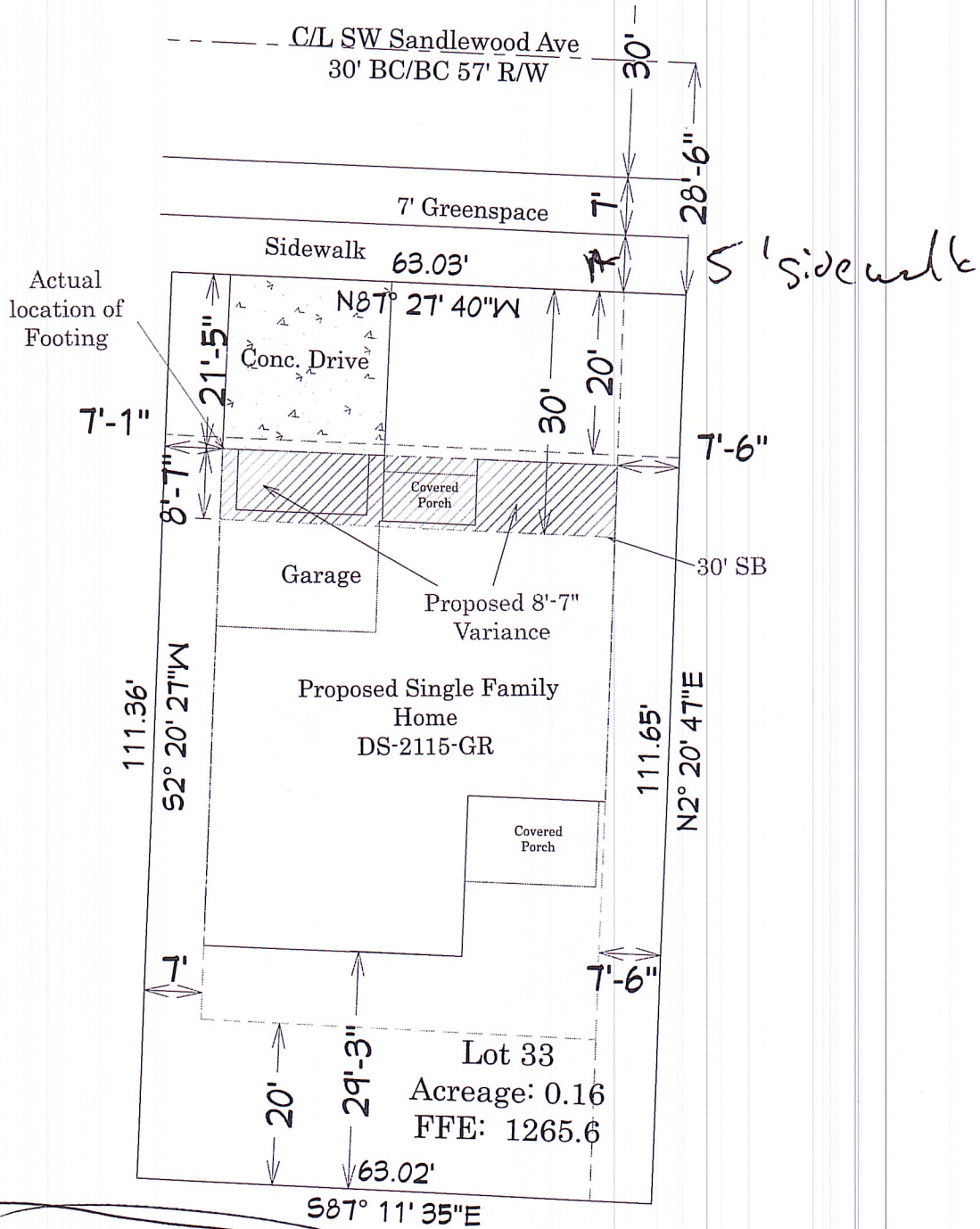
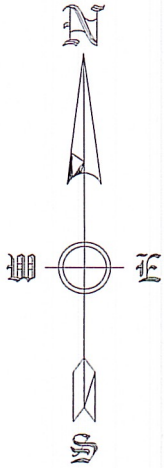


1:1,477

VAR23-0030
10/23/2023
VARIANCE - BOARD OF ADJUSTMENT
3303 SW SANDALWOOD AVE



WOODLANDS CROSSING PHASE 1 BENTONVILLE, ARKANSAS



Variance Request

Address: 3303 SW Sandlwood Ave

Property Line
Foundation Line
Building Setback
Utility Easement
Road Center Line
Water

Drawn By:

MLS2020

Marks Layout Services LLC

PLOT PLANS • HOUSE PLANS • LAYOUTS

Scale: 1"=20'

Date:

10/12/2023

Plot Plan

Drawn For:



DREAM STRUCTURES LLC
QUALITY HOME BUILDERS SINCE 1991

LOT:

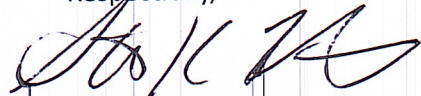
33

October 6, 2023

To Whom it may concern % City of Bentonville Planning Dept.,

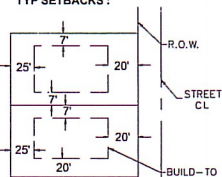
We have a new home being constructed on lot #33 Woodlands Crossing also known as 3303 SW Sandalwood Ave. We had hired a new site layout person, he had produced a plot plan which I turned in at the time of the building permit application. The plot plan was drawn correctly with the building setbacks all meeting the requirements of which. The home was actually pinned for footings to be dug incorrectly and the mistake remained unnoticed until such time the home had been framed. The front load garage required to be built at a 30' setback from the front, however a mistake was made upon pinning the corners and the building is built closer to the street by a few feet. I'm asking for this variance for this reason. This has never happened to us since we started building 20 plus years ago. I'm in hope that it never happens again. We appreciate your understanding in this matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Steve K Fisher', written over a horizontal line.

Steve K Fisher

Dream Structures LLC



NOTE:
1.) DISTANCE SHOWN WILL YIELD TO UTILITY EASEMENTS.

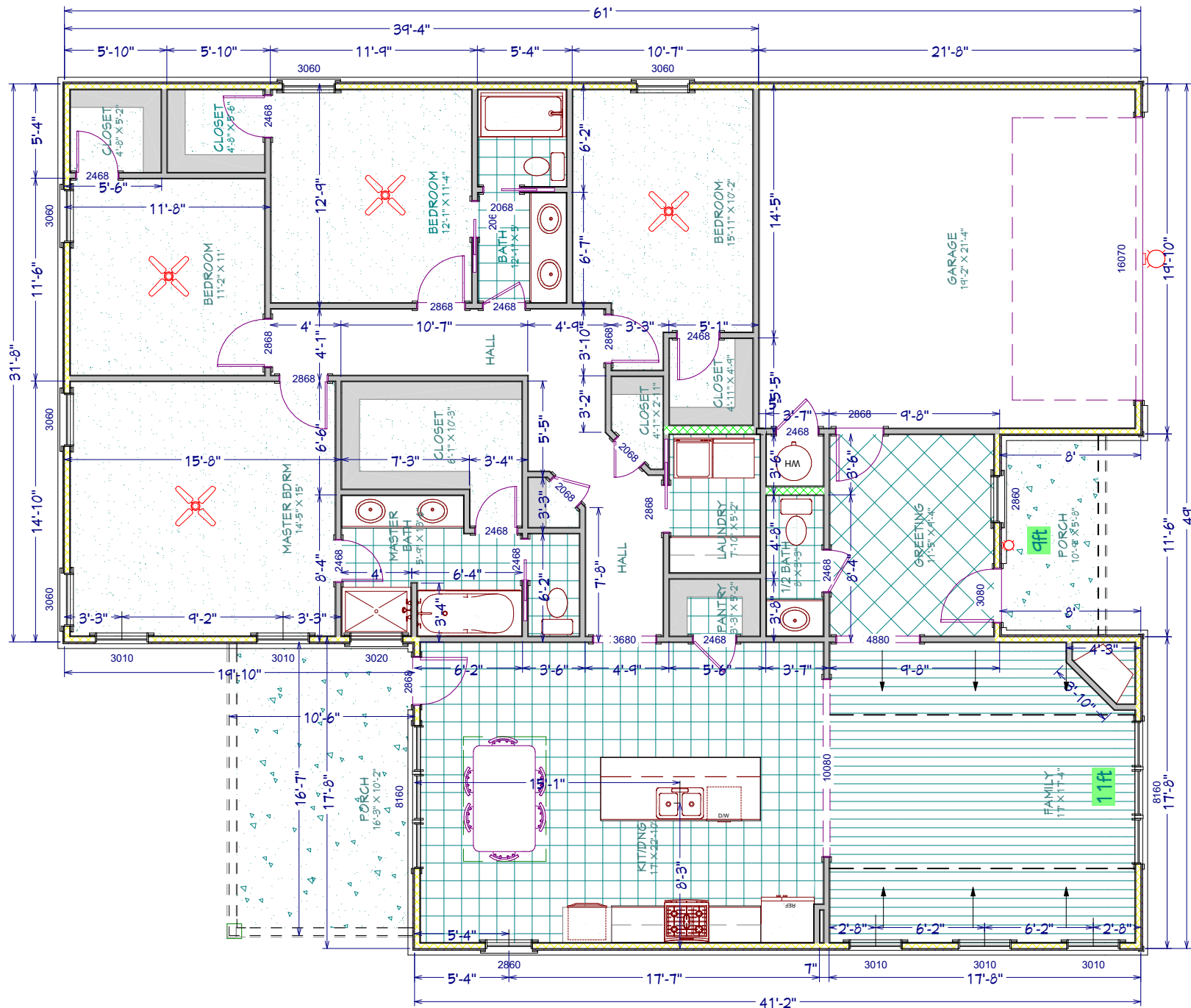
The diagram illustrates a property plat with several horizontal lines and labels. From top to bottom, the lines are labeled: Property Line, Foundation Line, Building Setback, Utility Easement, Road Center Line, and Water. The lines are represented by solid horizontal lines, with the Water line at the bottom being a dashed line. The labels are positioned to the right of their respective lines.

PLOT PLANS • HOUSE PLANS • LAYOUTS

6/8/2023

DREAM STRUCTURES LLC.
QUALITY HOME BUILDERS SINCE 1991

33



9FT PLATELINE



Frame 2116 sqft
Porch 240 sqft
Garage 437 sqft
Under Roof 2793 sqft
Heated Area 2135 sqft

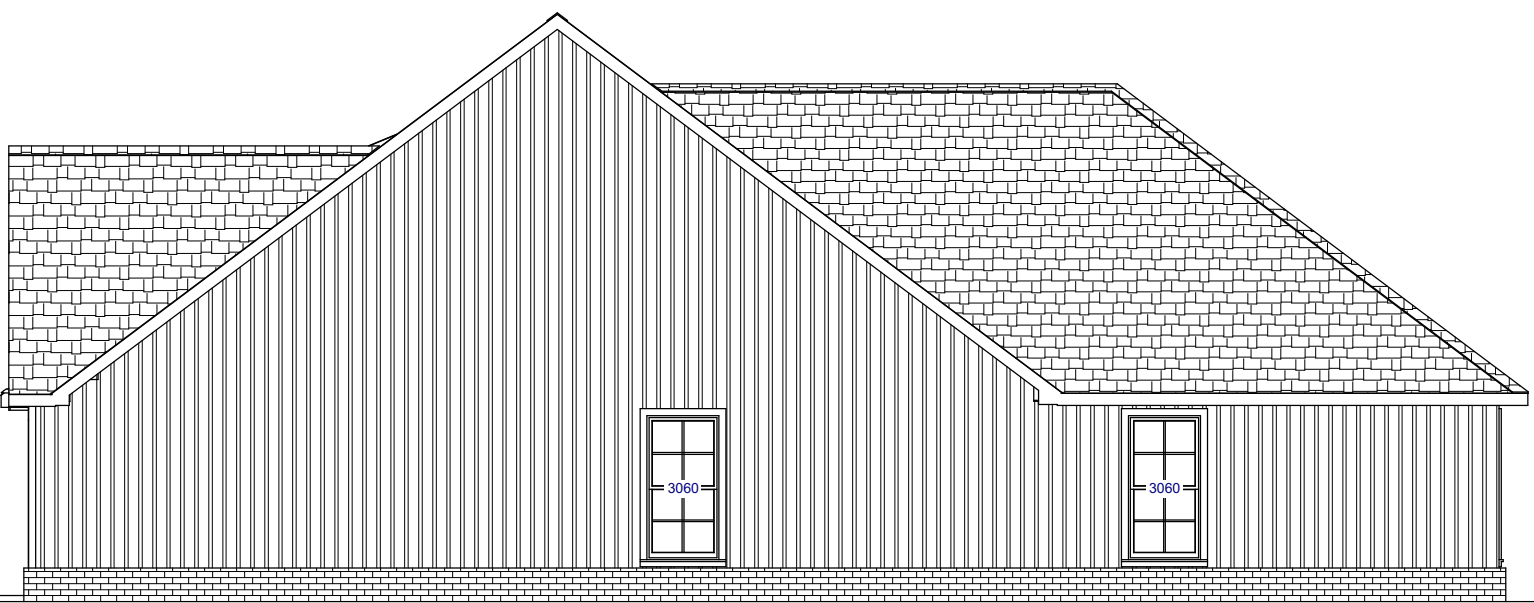
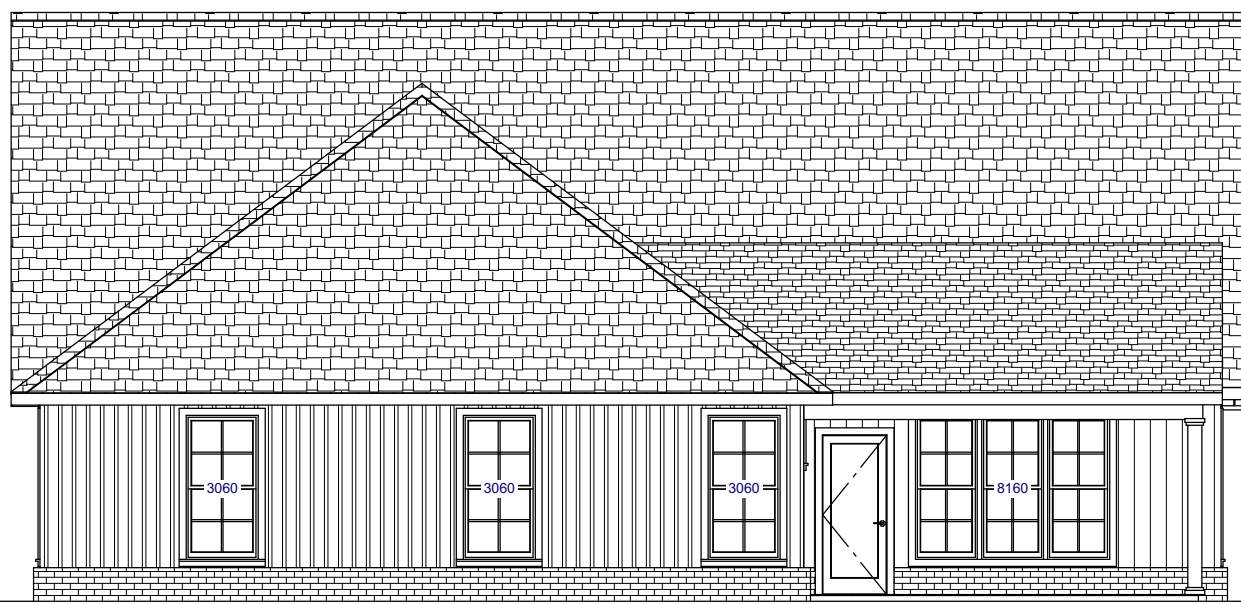
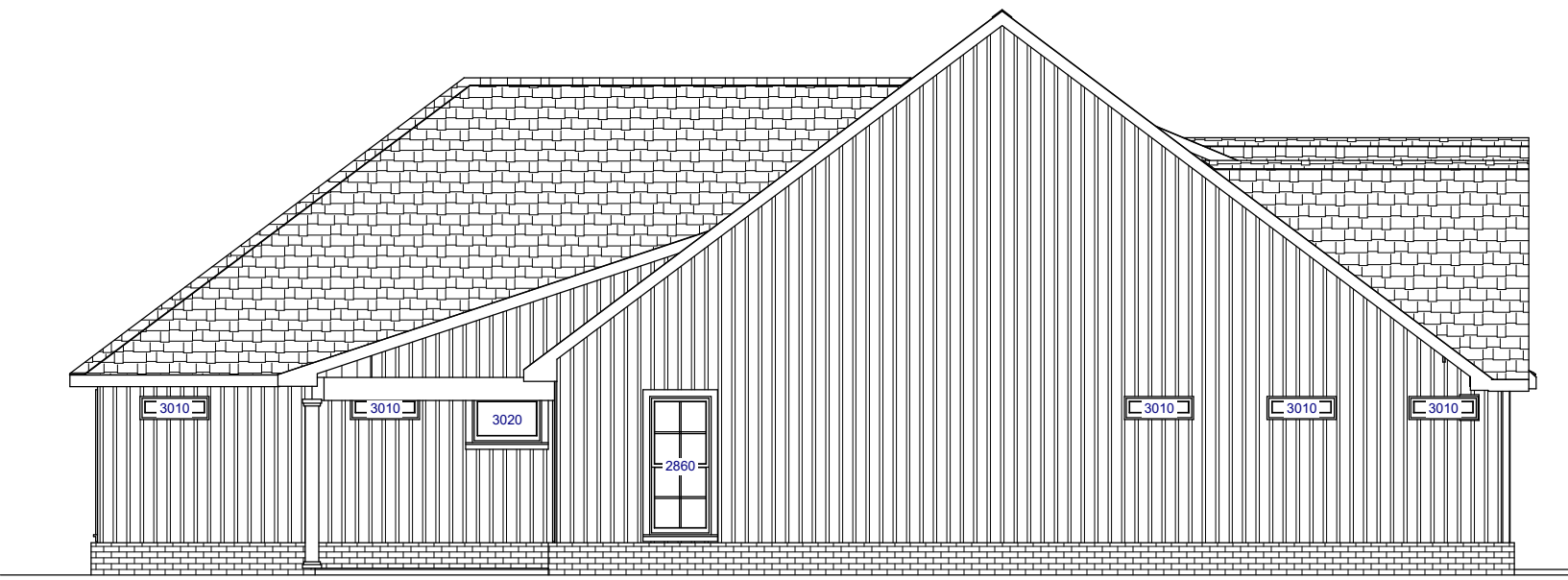
THESE DRAWINGS ARE THE PROPRIETARY
WORK PRODUCT AND PROPERTY OF:
DREAM STRUCTURES LLC. THESE
DRAWINGS AND CONCEPTS CONTAINED
THEREIN WITHOUT THE PERMISSION IS
PROHIBITED AND MAY SUBJECT YOU TO A CLAIM
FOR DAMAGES.

4/29/2023

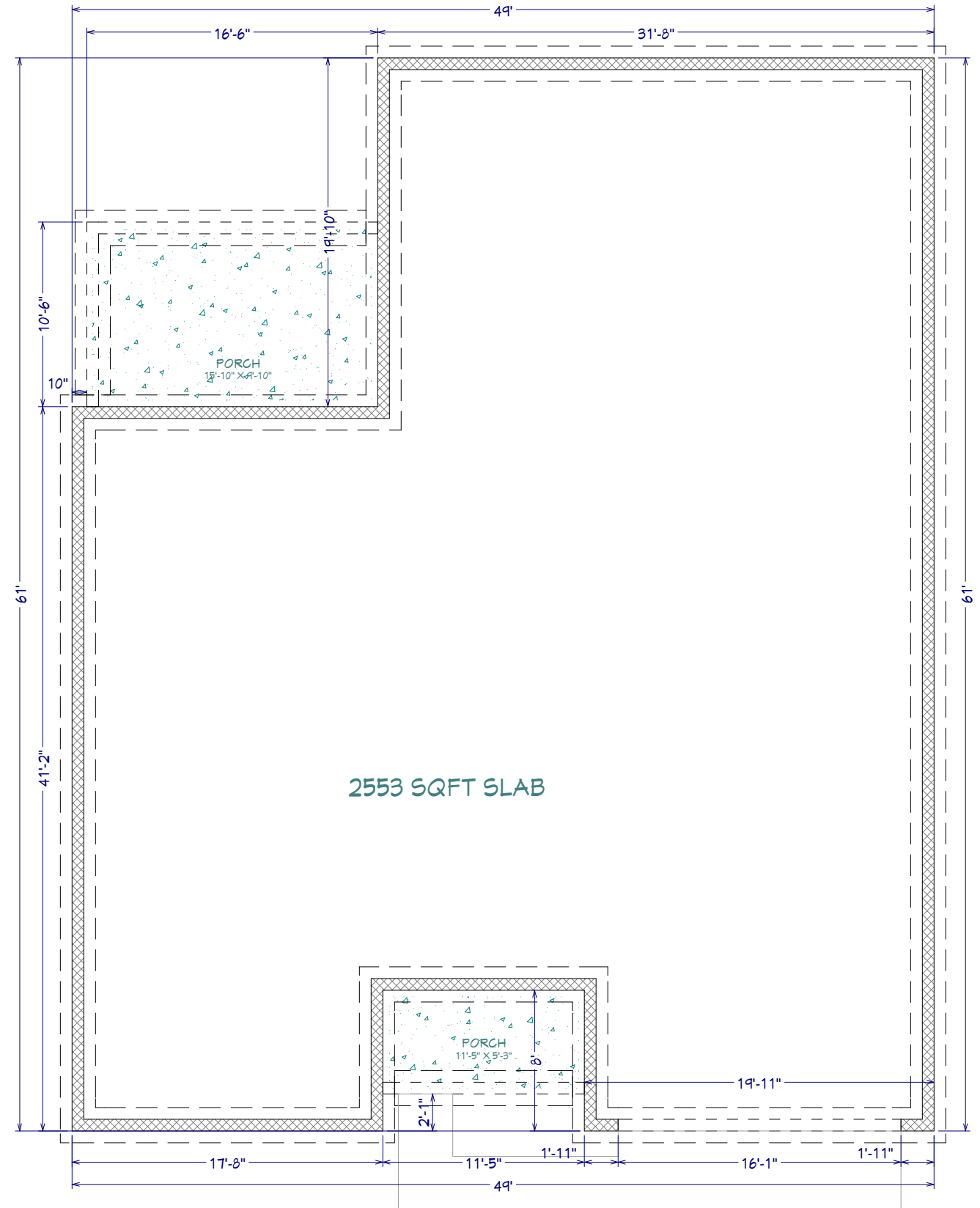
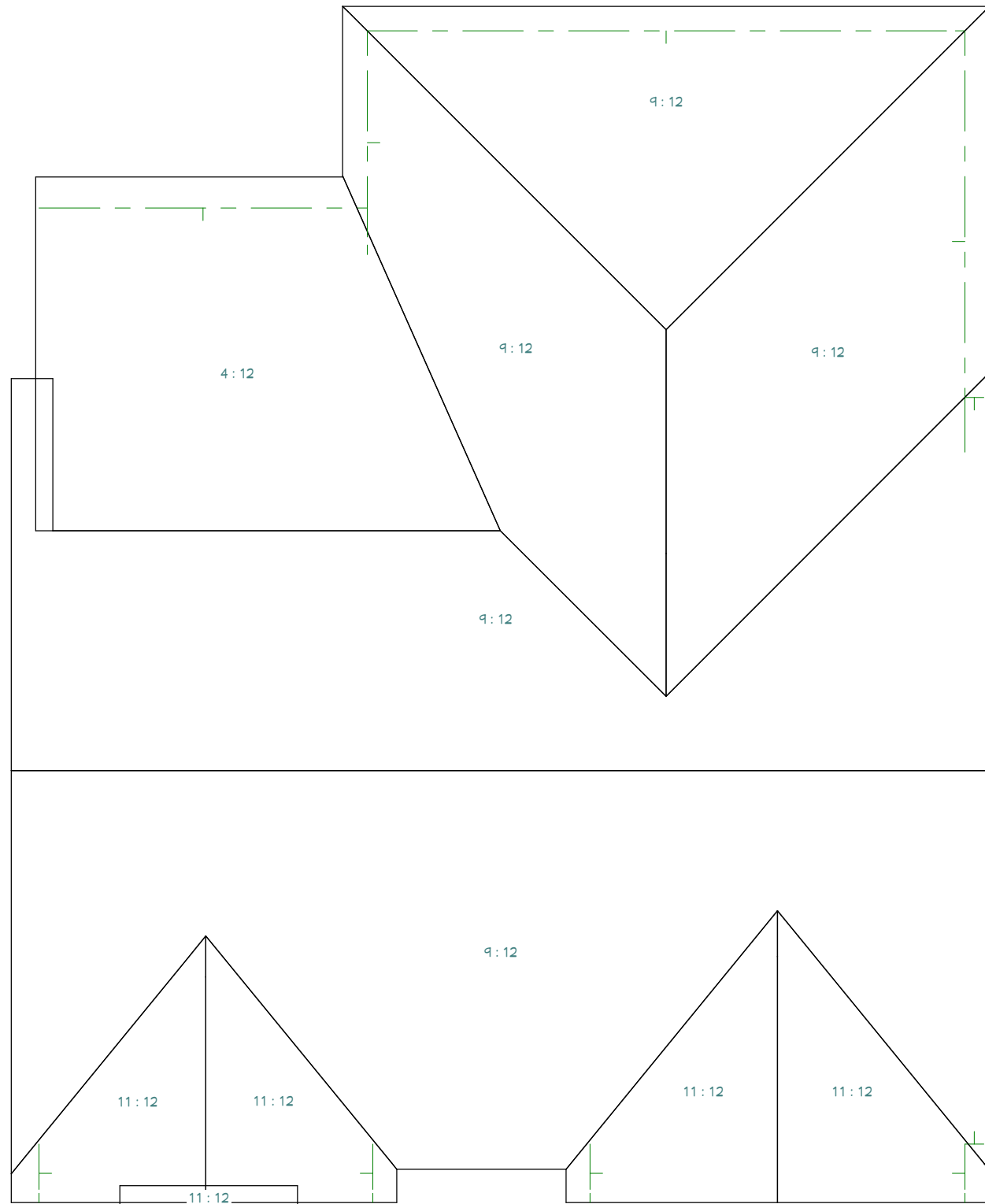
SCALE:1/8"

SHEET:

A-1



Frame 2116 sqft
Porch 240 sqft
Garage 437 sqft
Under Roof 2793 sqft
Heated Area 2135 sqft



Frame 2116 sqft
 Porch 240 sqft
 Garage 437 sqft
 Under Roof 2793 sqft
 Heated Area 2135 sqft



HamHane LLC

409 & 411 Northwest 5th Street

BOA Date:

Staff Report Details

Project Number	VAR23-0031
Applicant / Current Owner	HamHane, LLC
Site Area	+/- 0.78 Acres
Current Zoning	DN-3, Downtown High Density Residential
Variance Request	Variance request of 18 feet from the minimum rear setback of 25 feet required by: Zoning Code Section 401.07-B Downtown Neighborhood (DN) Districts Regulations, (c) DN districts setback standards.
Related projects	LSD23-0039; RZ23-0044; RZ23-0045; WAV23-0015

Property Description

The subject property is composed to two separate lots (Lots 4 & 5 Block 6 of Deming's Addition) bisected by a roughly 13-foot-wide alley. The alley continues at a T-intersection to run east-west along the southern boundary of both lots. The property is presently zoned DN-3, Downtown High Density Residential with a land use classification of High Density Residential (HDR). Both lots were the subject of recent rezoning requests that were approved to the DN-3, Downtown High Density Residential zoning in projects RZ23-0044 and RZ23-0045 on June 6, 2023.

A waiver request was also approved on October 3, 2023 that permitted future proposed structures to front the alley as opposed to the public street. The waiver approval required an 18-foot-wide public paved street be provided for access to such structures, and that the buildings with elevations visible to Northwest 5th Street be designed in such a way that the 5th Street side of the structure have architectural features or character that resemble primary facades.

A large scale development is presently under review to extend a water main to service the future proposed structures and lots.

The applicant is proposing to subdivide each of the existing lots into three each, for a total of six lots in the development with primary entrance coming off of an 18-foot-wide public paved street. The applicant has proposed that single-family attached units would be constructed as part of the

Property Description

development.

Regulation

Section 401.07-B Downtown Neighborhood (DN) Districts Regulations, (c) DN districts setback standards. For two-family building type, which is what is proposed by the applicant, a 25-foot rear yard is the minimum setback required by the ordinance.

Variance Request

The applicant has requested a variance of 18 feet from the minimum rear setback of 25 feet required by: Zoning Code Section 401.07-B Downtown Neighborhood (DN) Districts Regulations, (c) DN districts setback standards.

Background

The applicant is requesting a variance of the rear setback of each lot to allow for a 7-foot rear setback, which is in line with the existing 7-foot side setback. Additionally, the applicant has stated that the location of current and future utility services and extensions intrudes beyond the right-of-way line and into the front yards of each lot, which, coupled with the required easements, decreases the space close to the 18-foot street in which to build.

The applicant further states that the proposed future building orientation may create a situation where what portion of each lot is interpreted to be front, side, or rear may be unclear due to the units being attached, and thus requests that interpretation be made with this variance request. As the need for such variance has not yet arisen, nor have any lot splits been recorded, it would be premature for the Board to consider such an interpretation at this time. Further, the code is clear on how to determine front, side, and rear, so no interpretation outside of the code is likely warranted prior to any staff interpretation.

As noted, there is presently a water main extension that is going through review with the City to extend water service to the future potential lots and structures. From the Water Department, there is ongoing concern that the plans that are submitted with this request do not meet current standards adopted by the City for the location of the water main. Without final plans for that approved, it would be challenging to know with any certainty the location of any easement, which in turn could affect this variance request and the desire to grant a minimum variance according to the standards of review.

Lastly, as noted, a previous waiver request has been approved by the Planning Commission in October. In this request that permitted the units to face inwards toward the proposed street, the applicant stated a desire to use the alley as a means to "develop attractive back yards." By this variance request, the applicant offers a contradictory development proposal than what was presented to Planning Commission last month. Furthermore, the need for this variance arises entirely from the applicant's own actions. But for the applicant's proposed subdivision of these

Background

two existing platted lots, the property would be buildable within the regulations of the DN-3 district. The applicant states as such in their narrative that "without a variance, construction is still possible," which may negate all other justification for this variance.

Public Comment

Has Staff received Public Comment at the time of this report?: **No**

Conditions of Approval

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, structures 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.

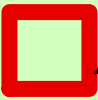
(4) The board of adjustment shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this chapter, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

(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.

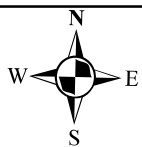
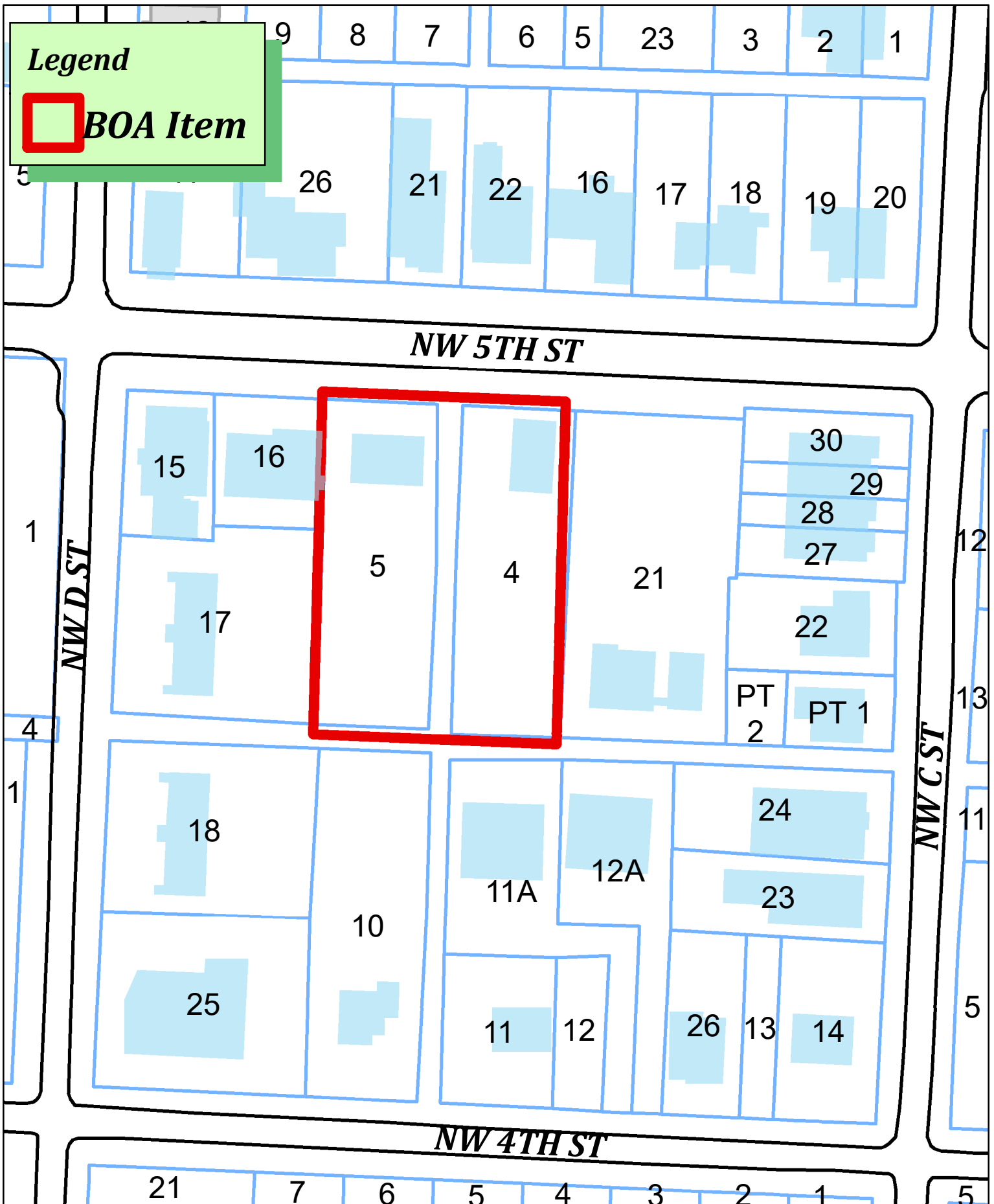
(6) *Uses.* Under no circumstances shall the board of adjustment grant a variance to allow a use not

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.

Legend



BOA Item



VAR23-0031

Mark Haney

409 NW 5th St-Rear Setback Variance





Oct 11, 2023

Dear Bentonville Board of Adjustments,

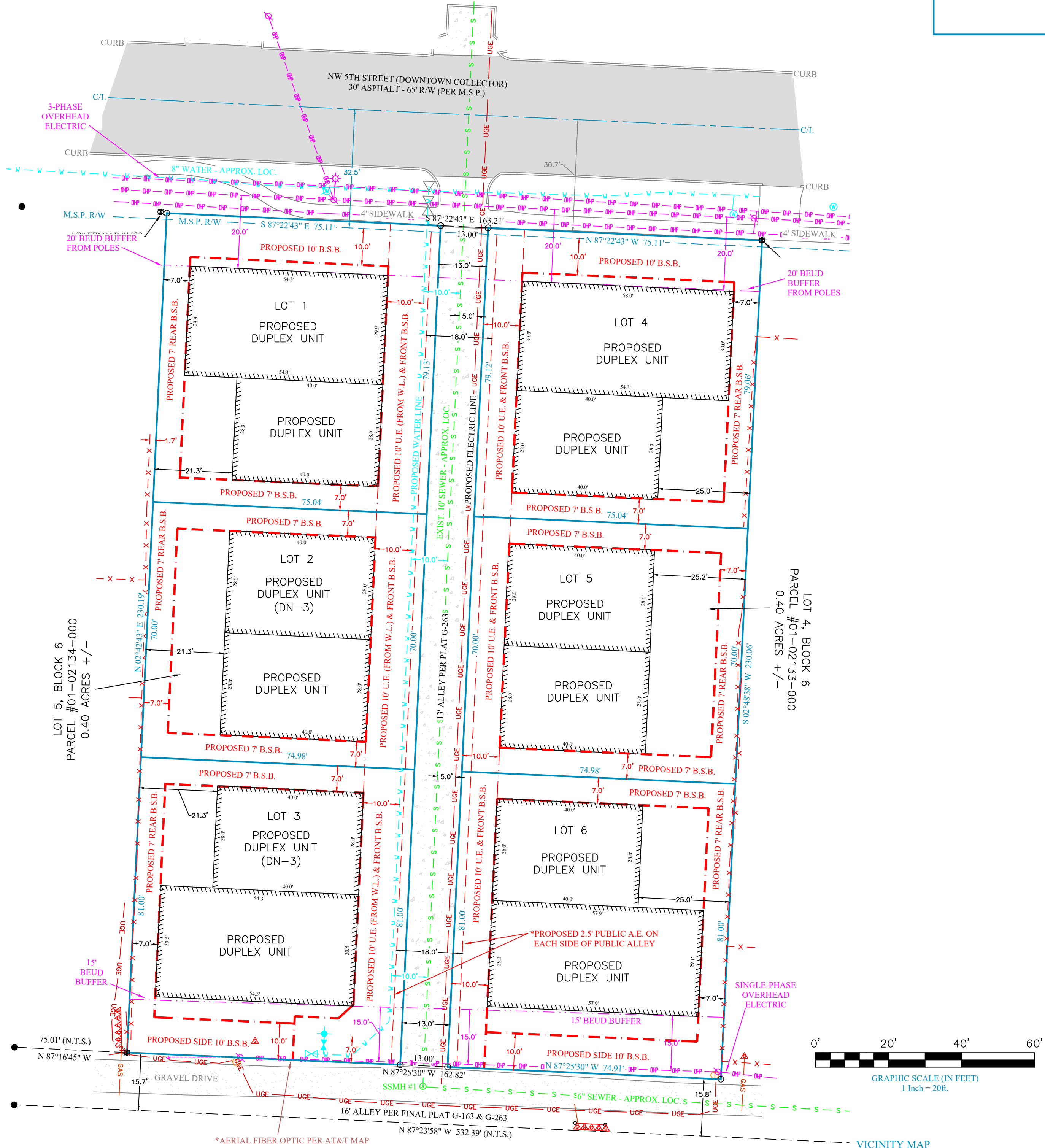
We are requesting a rear setback variance for 409 and 411 NW 5th St parcels 01-02133-000 and 01-02134-000 in order to construct attractive new single family home attached units. The lot presents some unique hardships due to the limited depth of 75', and encroachments into setbacks by utilities on 3 sides that limit the buildable area. On the north and south sides of the lots, overhead power lines require 20' clearance from any buildings. The alley in between the lots currently holds a city sewer line, and we are proposing to run both water and electric in the alley as well, but with the required utility and access easements, the front yards are pushed back beyond the allowed 10' front setback in the DN-3 zone (exact dimensions pending engineer's design and approval from city departments, in progress now).

Additionally, since both lots are block ends with street frontage on three sides, what we are calling the "rear" for the purposes of this request could actually be considered the "side" depending on the orientation of the new buildings. Our intention is for most or all to front the alley, but we will have architectural features addressing or potentially fronting the sides, to be determined in consultation with the architect when we begin design work. Since the units are attached, this could create a murky area of interpretation around building/unit orientation and for the sake of transparency and clarity, we respectfully request this variance to avoid any surprises or disagreements on interpretation later in the design process. Without a variance, construction is still possible, but would likely require a 3 level building instead of a 2 level building, and we believe a 2 level design would fit the neighborhood character more cohesively.

Considering the site's unique constraints, and our desire to preserve the traditional home proportions of the neighborhood, we request a rear setback of 7' (a variance of 18' from the standard 25') on both lots. Thank you for your thoughtful consideration.

Respectfully,
Mark Haney

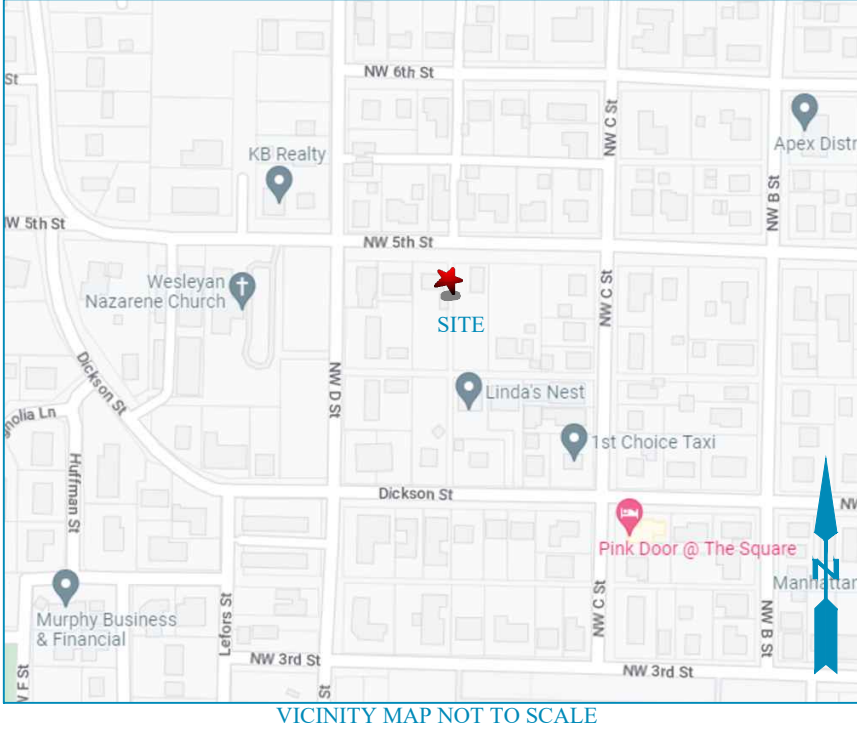
BUILDING SETBACK VARIANCE EXHIBIT



Setback Standards:

PROPERTY ZONED:
DN-3

District	Building type	Front Yard		Side Yard				Rear Yard
		Min.	Max.	Exterior Side Yard		Interior Side Yard		
				Min.	Max.	Detached Yard	Attached Yard	
DN-3	Single-family and Two-family	10'	20'	10'	20'	7'	0'	25'
	Townhouse	10'	20'	10'	20'	10'	0'	25'
	Multi-family block-end and others not listed	10'	20'	10'	20'	10'	0'	15'



FOR USE AND BENEFIT OF:
MARK HANEY
ADDRESS:
409 & 411 NW 5TH STREET
BENTONVILLE, ARKANSAS
DATE: 10/19/23 SCALE: 1"=20'
LOCATION: SURVEYED: DRAFTED:
LOTS 4 & 5 JRICH AH, JCR
BLOCK 6 REVIEWED: DT
DEMINGS ADDITION COA #1335

BATES
Engineers - Surveyors
7230 S. Pleasant Ridge Dr. - Fayetteville, Arkansas 72704 - 479.442.9350
BATES & ASSOCIATES, INC. Copyright 2023
This survey was conducted for the person or persons whose name(s) appear on this plat. This plat is protected by copyright. No one including the person(s) named may reproduce this plat without the express written consent of Bates & Associates, Inc. Surveyor has made no independent investigation for easements of record, encroachments, restrictive covenants, ownership title evidence, or any other fact which a complete and accurate title search may disclose. Any flood statement provided on this plat is for information only and Bates & Associates, Inc. assumes no liability for the correctness of the herein cited maps. Furthermore the above statement does not represent the opinion of Bates & Associates, Inc. of the probability of flooding.

LEGEND:
THESE STANDARD SYMBOLS WILL BE FOUND IN THE DRAWING.
● FOUND 5/8" REBAR
● FOUND 1/2" REBAR
● FOUND AXLE
● SET 5/8" REBAR/CAP
● FOOD ELEVATION BENCHMARK
● FINISHED FLOOR ELEVATION (FFE)
● SPOT ELEVATION
○ SANITARY SEWER MH
○ TELEPHONE PEDESTAL
□ AC CONDENSER UNIT
○ WATER METER
○ GAS METER
○ POWER POLE
○ GUY ANCHOR
○ LIGHT
○ BOLLARD
— BOUNDARY LINE (MEASURED)
--- TIE LINE
--- CENTERLINE OF ROAD
--- RIGHT-OF-WAY
--- WATER LINE
--- SEWER LINE
--- GAS LINE
--- OVERHEAD POWER LINE
--- BEUD BUFFER ZONE
--- FENCE
--- BUILDING SETBACK





October 17, 2023

Mr. Mark Haney
848 NW C Street
Bentonville, AR, 72712
RE: Waiver Request WAV23-0015

To whom it may concern,

We are pleased to inform you that the Bentonville Planning Commissioners approved your waiver requests for the properties at 409 and 411 Northwest 5th Street during their October 3, 2023 meeting. Please see below for more information on the approved waivers.

1. Waiver from Land Development Code, Article 1100 - Development Standards, Section 1100.10 Lot Standards, Subsection (a) Access: "Every lot shall have direct access to a public street except where private streets are explicitly approved by the Planning Commission in Planned Developments".

This waiver allows homes to face the public street with a paved roadway width of 18'.

2. Waiver from Article 1100 Development Standards, Section 1100.22 Downtown Residential Design Standards, Subsection (d) General residential site access and parking, (1) Parking Location: "a. Prohibited in front yards. Garages, parking lots, or designated parking spaces are prohibited in the front yard. b. Attached garages. Garages may be attached to the primary structure. However, if the garage is attached, it must be located and oriented in such a way that it does not protrude from the side façade of the primary building in order to be visible from the public street."

This waiver allows garages to face the 18' wide street, provided that the northerly two structures along NW 5th Street will address the NW 5th Street frontage with an architectural treatment that appears more as the front of a house.

Please retain a copy of this for your records. If you have any questions do not hesitate to call the Planning Department at (479) 271-3122 ext. 2 or email planning@bentonvillear.com.

Sincerely,

Luke Aitken
Planning Technician

DUPLEX DEVELOPMENT CONCEPT

