

Note – Due to health concerns related to COVID-19, and the current Federal recommendations to avoid gatherings of 10 or more people, some of the members of the Planning Commission, as well as City staff members, may attend this meeting by phone or other remote means. That being said, the Community Development Building will be open for the public to attend. Those that do attend will be asked to watch the meeting from the building’s lobby. Attendees will only be allowed into the chambers to make a public comment or to speak during any public hearing on the agenda. Those who do attend should observe the CDC recommendations concerning hygiene and social distancing (keeping at least 6 feet away from other persons present at the meeting). Moreover, no one should attend this meeting if they are experiencing any type of illness involving a fever, sneezing or coughing. Those wishing to make public comments who do not want to attend the meeting may do so in written form, submitted to planning@bentonvillear.com before 3:00 p.m. on the day of the meeting. Those comments will be communicated to the members of the Planning Commission. While email comments are encouraged, accommodation has also been made to allow Bentonville citizens to make “live” public comments orally in the event they cannot or do not feel comfortable attending the meeting in person. To do so, please send an email indicating a desire to make “live” oral public comments to Ali Worley at aworley@bentonvillear.com by at least 3:00pm on the day of the meeting and a reply email will be sent with instructions about how your comments can be made. Making comments will require you to register with your name, address, phone number, and email address. Procedures with respect to oral public comments still apply.



**BOARD OF ADJUSTMENT
AGENDA
May 27, 2020**

- I. Call to Order**
- II. Approval of Minutes**
- III. New Business:**

- 1. Almeida** **Variance***
 - Mayflower Road ([VAR20-0012](#))
 - Accessory Building Regulations
- 2. Kirkland** **Variance***
 - 4303 SW Plumley Avenue ([VAR20-0015](#))
 - Fence Height

- IV. Other Business**
- V. Adjournment**

**Denotes public hearing*

Board of Adjustment
Minutes
May 13, 2020

Meeting called to order by Rick Rogers, Chairman. Applicants and representatives were in attendance via Zoom.

Present: Rustin Chrisco, Joe Haynie, Jan Holland, Sam Pearson, and Rick Rogers
Staff: Ali Worley and Peter Farmer

Motion by Mr. Haynie, seconded by Ms. Holland to approve the minutes of April 22, 2020 as written.
Approved 5-0

Item #1

Engleman: Variance request for 202 SW C Street, Fence Adjacent to Public Right-of-Way, VAR20-0010

Ms. Worley reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Jacob Tankersley, representative, and Jeff Engleman, applicant, explain the request for the variance. Mr.

Tankersley confirms the request is for both SW C Street and SW 2nd Street.

There is discussion amongst staff and Board members in regards to safety.

Motion by Mr. Rogers, seconded by Mr. Haynie to amend the variance request to 2.5 feet from face of column on SW 2nd Street.

Approved 5-0

SW C Street

Approved 5-0

Item #2

Dark Star Investments, LLC: Variance request for 406 Razorback Drive, Fence Height, VAR20-0011

Ms. Worley reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Aaron Crawley, representative, explains the variance request.

Peter Farmer, Staff Engineer, discusses the fence materials, location, and height in relation to the floodway.

There is some discussion amongst staff and Board members.

Approved 5-0

Motion by Mr. Pearson, seconded by Ms. Holland to adjourn.

Meeting adjourned

Ali Worley

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

BOARD OF ADJUSTMENT STAFF REPORT



Almeida

Mayflower Road

BOA Date: 5/27/2020

Reviewer: Ali Worley, Planning Technician

Project Number	VAR20-0012
Applicant / Current Owner	Ted & Jenibel Almeida PO Box 2863 Bentonville, Arkansas 72712
Site Area	+/- 0.62 acres
Current Zoning	R-1, Single Family Residential
Variance Request	Article 601.01.b.1, Accessory Buildings, Size, Standards, of the Zoning Code

Property Description

This property is located south of SW 14th Street and east of Mayflower Road. The site is currently zoned R-1, Single Family Residential. Adjacent zonings are R-1, Single Family Residential, to the north, south, and west, and A-1, Agricultural, to the east.

Regulation

Regulation 1: The maximum footprint of a detached nonresidential building shall be 720 square feet.

Variance Request

Request 1: The applicant is requesting the footprint of their shop be 1500 square feet, which is a variance of 780 square feet.

Background

According to the applicant's narrative, the lots in this area are generally larger than those in other R-1-zoned areas. They state that many other properties on this street have large shops. The applicants intend to use the shop to house extra vehicles, a boat, gardening and landscaping equipment, as well as space for hobby wood-working.

Public Comment

Staff has **NOT** received 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 and setbacks, as provided by the applicant within this application.
2. The applicant shall be required to obtain approved building permits prior to construction.
3. The proposed accessory building shall meet all setbacks as set forth in Article 601.01.c, Accessory Buildings, Setbacks, of the Zoning Code.



BOARD OF ADJUSTMENT STAFF REPORT

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.

Request for Variance on Shop Size and Materials for:

Parcel 01-01826-002, Mayflower Rd, Bentonville AR 72712
Ted & Jenibel Almeida, Owners
Phone: 425-891-2843

Narrative:

(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;

At 27,000+ SF, the lot we are building on is approximately three times the size of most residential lots in Bentonville. These smaller lots do not afford the ability to install a metal shop any larger than a three car garage. The Colony West Subdivision is made up of parcels that are .5 to 2 acres in size and a good many of them have large shops, 1200 sf or more, located on the back of their properties, with a residential house on the front of the property. This is the best use for these size lots in a residential (R1 Zoning) neighborhood.

As this subdivision has no POA or HOA governing the size or composition of utility buildings, most, if not all, are standard metal shops with one or two over head doors. The subject parcel is .62 acres. Our shop would be approximately 1500 sf. It's use is non-commercial. When finished, we intend to power our residence with a solar array on the top of the shop. Part of it will be used as a garage for extra vehicles and a boat. We will need to use part of it for gardening and landscaping equipment and supplies. About half will be used for hobby wood working.

Without being able to make this shop, we will be forced to sell the property and move to county land where we can own a shop like this. I am a disabled veteran, unable to work a full time job, and it is my desire to have a shop where I can create woodworking pieces and be able to tend a garden with the few hours per day that I can work.

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;

Sec. 601.01.b states that a detached, nonresidential accessory building can only be 720 sq. ft. There are many other lots in my subdivision that have shops much larger than this.

Sec 601.01.h.3 States:

Architectural design. The addition of an ADU shall be allowed only if the appearance and character of the lot and neighborhood are maintained.

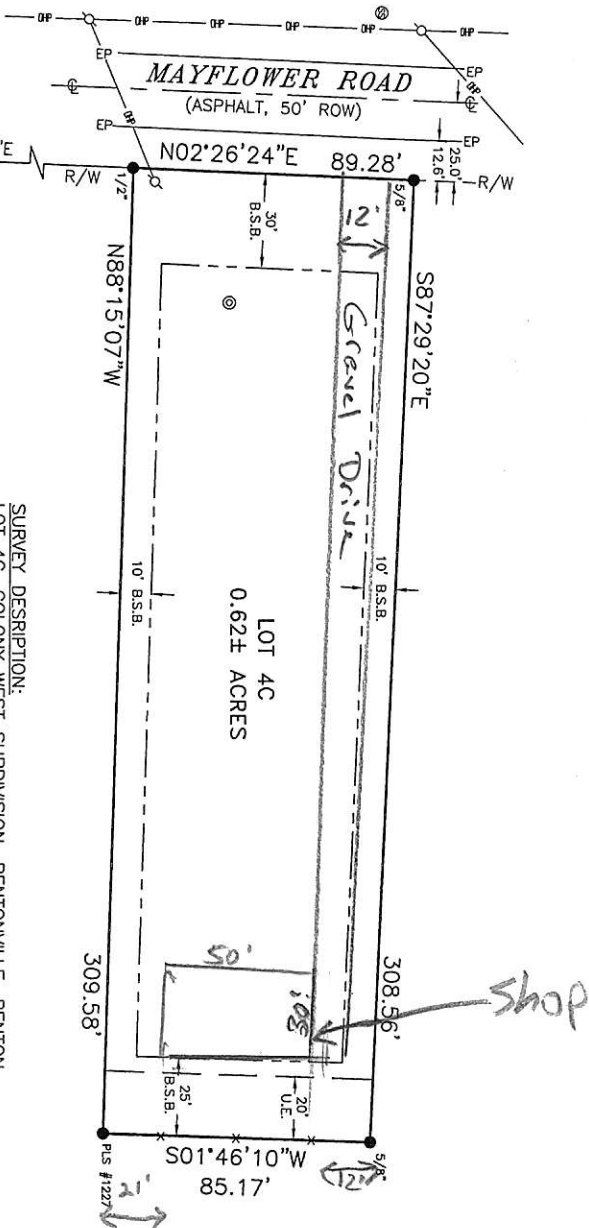
Since the neighborhood has metal shop buildings with predominately brick/wood residences, this would contradict the rest of the section about using the same materials, roof appearance, etc.

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

None.

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.

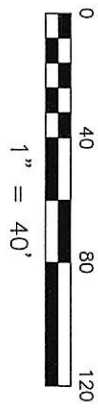
All other building, utilities, landscaping, etc on this land will meet or exceed Bentonville zoning and code enforcement.



LEGEND

These standard symbols will be found in the drawing.

- ⊗ SANITARY SEWER MANHOLE
- ⊙ SEWER CLEANOUT
- EXISTING IRON REBAR
- ⚡ POWER POLE
- CENTERLINE ROAD
- RIGHT-OF-WAY LINE
- BARBED-WIRE FENCE
- EASEMENT LINE
- BUILDING SETBACK LINE
- OVERHEAD ELECTRIC LINE
- PROPERTY LINE



PLAT NOTES:

EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE:

EASEMENTS, OTHER THAN POSSIBLE EASEMENTS WHICH WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS OR OTHER LAND USE REGULATIONS; AND ANY OTHER FACTS WHICH AN ACCURATE TITLE SEARCH MAY DISCLOSE.

THIS SURVEY IS VALID ONLY IF THE DRAWING INCLUDED THE SEAL AND SIGNATURE OF THE SURVEYOR.

THIS SURVEY MEETS OR EXCEEDS THE CURRENT "ARKANSAS MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS AND PLATS".

DECLARATION IS MADE TO THE ORIGINAL PURCHASER OF THE SURVEY, IT IS NOT TRANSFERABLE TO ADDITIONAL INSTITUTIONS OR SUBSEQUENT OWNERS. SUBSURFACE AND ENVIRONMENTAL CONDITIONS WERE NOT EXAMINED OR CONSIDERED AS A PART OF THIS SURVEY.

SURVEY DESCRIPTION:
LOT 4C, COLONY WEST SUBDIVISION, BENTONVILLE, BENTON COUNTY, ARKANSAS, AS SHOWN IN PLAT RECORD "0" AT PAGE 306 AND AS REPLATED IN PLAT RECORD 29 AT PAGE 87 AND IN PLAT RECORD P1 AT PAGE 510.

BUYER: TED & JENIBEL ALMEIDA

SELLER: REYES MANUEL HUMBERTO JR

ADDRESS: MAYFLOWER ROAD
BENTONVILLE, ARKANSAS

Alan Reid & Associates
118 South College Avenue
Fayetteville, Arkansas 72701
(479) 444-8784

DATE: 09/10/18	REVISED:	PROJECT NO.
SCALE: 1" = 40'	DRAWN BY: JP	18196
LOT SURVEY		

BOARD OF ADJUSTMENT STAFF REPORT



Kirkland

4303 SW Plumley Avenue

BOA Date: 5/27/2020

Reviewer: Ali Worley, Planning Technician

Project Number	VAR20-0015
Applicant / Current Owner	Spencer Kirkland 4303 SW Plumley Avenue Bentonville, Arkansas 72712
Site Area	+/- 0.26 acres
Current Zoning	R-1, Single Family Residential
Variance Request	Article 1100.06.h.1, Fence Height, of the Land Development Code

Property Description

This property is located at the southeast corner of SW Plumley Avenue and SW Lucretia Road. The site is currently zoned R-1, Single Family Residential. Adjacent zonings are R-1, Single Family Residential, on all sides.

Regulation

The maximum fence height for a fence or wall located in the side exterior yard shall not exceed four feet in height.

Variance Request

The applicant is requesting a maximum height of 6 feet, which is a variance of 2 feet.

Background

According to the applicant's narrative, they are requesting to build a six-foot fence along the western and southern portions of the property. They state that safety is their primary concern, as SW Plumley Avenue is a main road into the neighborhood with an elevated level of traffic, as well as the close proximity to the Little Osage Creek tributary. The applicant also states that privacy is a concern because cars have a direct line of sight into their house and backyard. The applicant states that the fence will be set back 15 feet from the curb to alleviate any sight triangle concerns.

Public Comment

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

Conditions of Approval

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed fence height, location, and materials as provided by the applicant within the application.
2. The applicant shall be required to obtain an approved fence permit prior to constructing the fence.
3. The applicant shall be required to install the fence five feet from all public utilities when running parallel to the right-of-way.

City of Bentonville Master Map VAR20-0015 Kirkland



BOARD OF ADJUSTMENT STAFF REPORT

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- 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.

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(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.

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(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.

Spencer and Bentley Kirkland
4303 SW Plumley Drive
Bentonville, AR 72713

May 10, 2020

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

RE: 4303 SW Plumley Drive – Fence Variance Request

Dear Board of Adjustment members,

We have recently moved from Fayetteville to Bentonville and purchased the home at 4303 SW Plumley Avenue. Our family is eager to make Bentonville our home and for our kids to be part of a thriving community in which they can safely play and grow.

Our property is situated such that according to the development code, only a four-foot fence is permitted on our exterior side lot. We request a variance of two feet to install a six-foot fence along the western and southern portion of our property (attachment 1). We believe an undue hardship would be caused due to unique circumstances of the property and an allowance should be made for the following reasons:

Health and Safety

- Our primary concern is the safety of our four-year-old and two-year old children. Plumley Avenue is one of the main roads into the neighborhood and has an elevated level of traffic. This elevated level of traffic combined with a four-foot fence gives us great concern that our kids could easily get out of the yard and be injured in the street. It could also allow outsiders with ill intent easy access into our yard (attachment 2 and 3).
- Additionally, the house is located close to the Little Osage Creek tributary where there is nothing preventing children from entering the deep pools of the creek. A four-foot fence would not provide adequate safety to prevent an accident in the water (attachment 2).
- Finally, in the past year both of our dogs have passed away. Our kids are excited to have dogs in the family again. However, we would be concerned for the animals' safety being close to the road with only a four-foot fence.

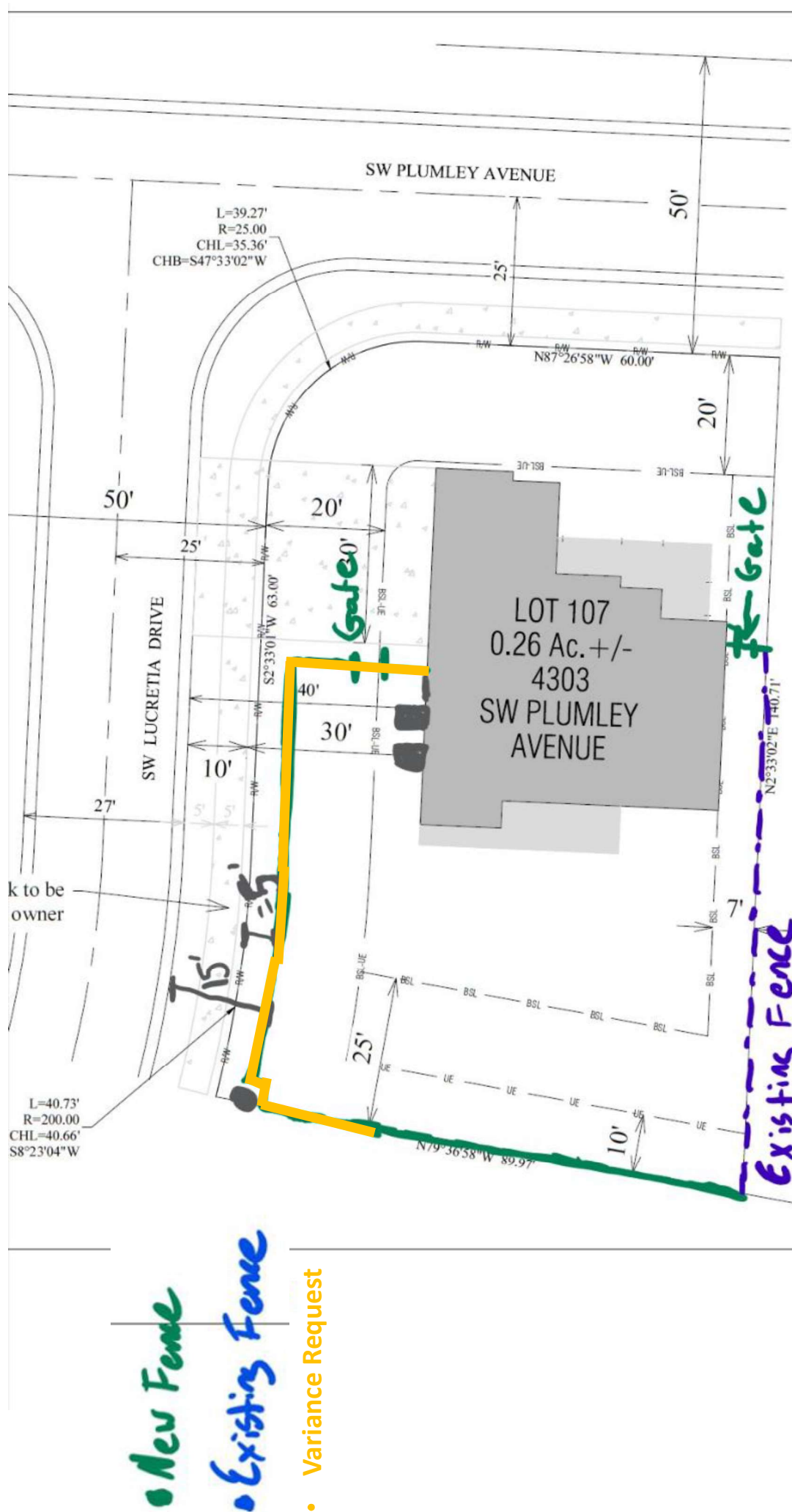
Additionally, there are other items we believe this variance addresses:

- The position of the road and house is such that cars driving north on Plumley have direct line of sight into our master bedroom, living room, dining room, and back yard and patio, leaving little to no privacy (attachment 4).
- We feel that a four-foot fence would not allow us to experience the same safety and privacy that is enjoyed by other properties in our area.
- We believe if the board grants this variance, it will be in keeping with the spirit and intent of the provisions of the zoning ordinance. Through discussions with the planning team, it is our understanding that the intent of the ordinance is to ensure the safety of vehicles and occupants backing out of their driveway. Our particular lot is not perpendicular to the lot behind us. With the slight curve in the road, this more acute angle allows for better visibility. In addition, our fence will be set back 15 feet from the curb. We think these two things would alleviate the sight triangle concern to those pulling out of the driveway in a future home to the south of ours. (attachment 2 and 4)

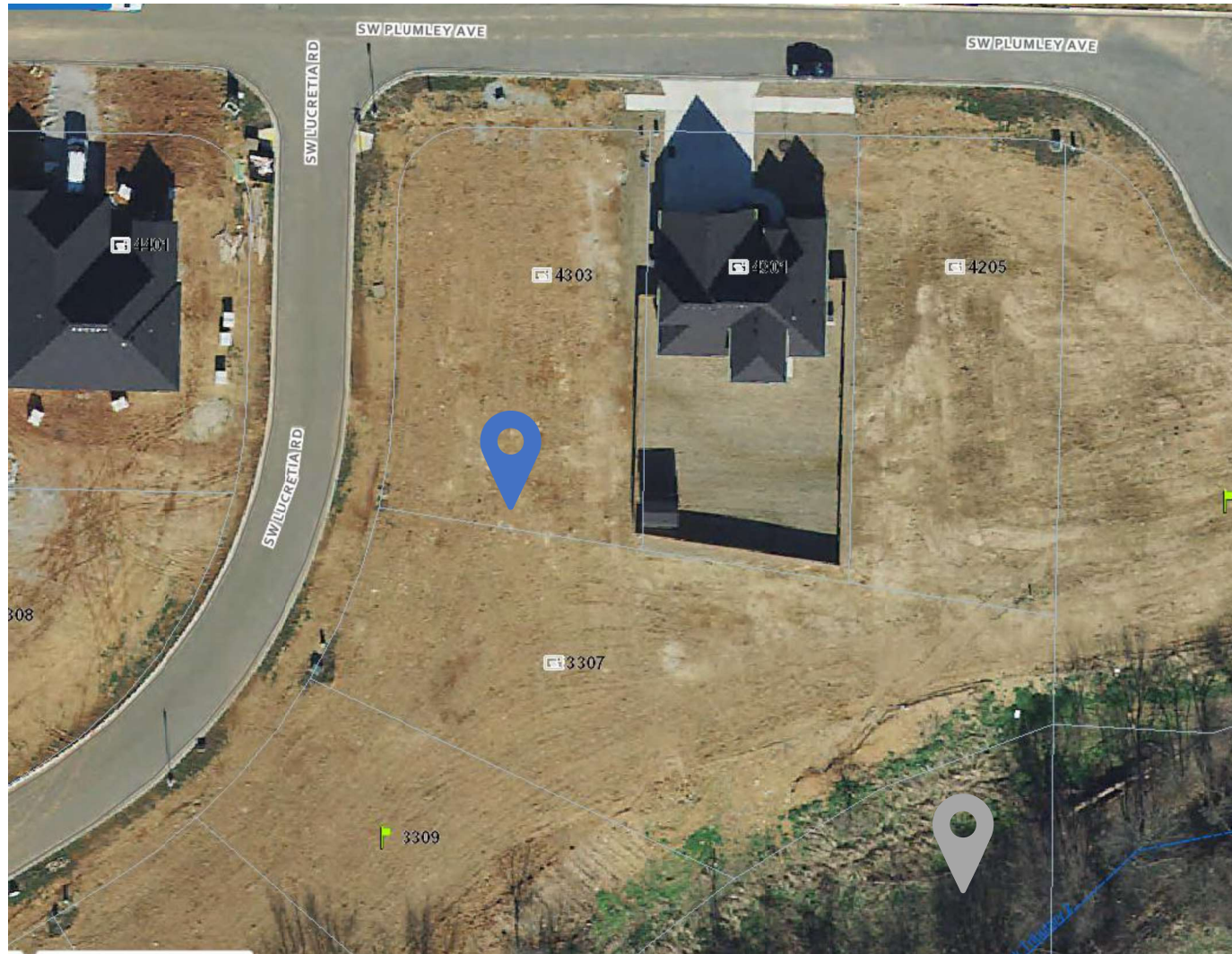
Thank you for your time and consideration,

Spencer and Bentley Kirkland

Attachment 1 | Proposed fenced area



Attachment 2 | street and creek proximity



Attachment 3 | view south



Attachment 4 | Adjacent road view north

