

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 Board of Adjustment. 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
July 8, 2020**

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

1. Fitzgerald

2503 SW 8th Street (VAR20-0013)

- Accessory Dwelling Unit Regulations

Variance*

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

**Denotes public hearing*

Board of Adjustment
Minutes
June 10, 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

Motion by Mr. Pearson, seconded by Mr. Haynie to approve the minutes of May 27, 2020 as written.
Approved 5-0

Item #1

Prater: Variance request for 916 NW 7th Street, Interior Side Setback, VAR20-0016

Mr. Chrisco recuses himself.

Ms. Worley reads the staff report.

Opened public hearing

William Oldham, part owner of Suite Spaces, located next door, speaks his approval of the variance request.

Closed public hearing

Approved 5-0

Item #2

Fitzgerald: Variance request for 2503 SW 8th Street, Accessory Dwelling Unit Regulations, VAR20-0012

Ms. Worley reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Will Kellstrom, representative, Mike Fitzgerald, owner, and Jeff Scott, contractor, explain the variance request.

There is discussion between the Board, staff, and representatives.

The applicant requests to table the item.

Tabled 5-0

Item #3

Blue Crane: Variance request for 301 NE Blake Avenue, Sign Regulations, VAR20-0014

Ms. Worley reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Suzana Annable, representative, explains the request to the Board.

There is some discussion between the Board and staff.

Sign Regulations, Freestanding Sign Allowed in DE

Denied 5-0

Sign Regulations, Freestanding Sign Type to be a Pole Sign

Denied 5-0

Item #4

Martin: Variance request for 703 NW D Street, Fence Height, VAR20-0017

Ms. Worley reads the staff report.

Opened public hearing

No public comments

Closed public hearing

Nancy Martin, owner, explains the request to the Board.

There is some discussion between the Board and staff. Ms. Martin clarifies that the fence will not extend past the front of the existing homes.

Approved 5-0

Meeting adjourned

Ali Worley

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

BOARD OF ADJUSTMENT STAFF REPORT



Fitzgerald

2503 SW 8th Street

BOA Date: 7/8/2020

Reviewer: Ali Worley, Planning Technician

Project Number	VAR20-0012
Applicant / Current Owner	Michael & Sandra Fitzgerald PO Box 36 Bentonville, Arkansas 72712
Site Area	+/- 0.46 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 8th Street and east of Tunbridge Drive. The site is currently zoned R-1, Single Family Residential. Adjacent zonings are R-1, Single Family Residential, on all sides.

Regulation

Regulation: The maximum footprint of a detached accessory dwelling unit (ADU) shall be 720 square feet or 50% of the floor area of the primary structure.

Variance Request

Request: The applicant is requesting the footprint of their accessory dwelling unit be 640 square feet, which is approximately 89% of the floor area of the primary residence. The primary residence is 835 square feet.

Background

There is a drainage easement, drainage ditch, and utility easements that impact the buildable area of this property. However, the property owners have devised a way to still be able to utilize the property by building an 835-square-foot tree house to be used as the primary residence. According to the applicant's narrative, the intent of building the ADU is to compliment the tree house and make it more livable.

It is important to note that the total combined area of both structures are approximately 1,475 square feet. The lot coverage is significantly lower than most in the vicinity. In addition, while the ADU may be over the maximum percentage, it is still less than the maximum footprint of 720 square feet and still smaller than the primary residence. Chapter 5 of the 2018 Bentonville Community Plan encourages developers and property owners to consider allowing alternative forms of density, such as accessory dwelling units, that would support housing affordability.

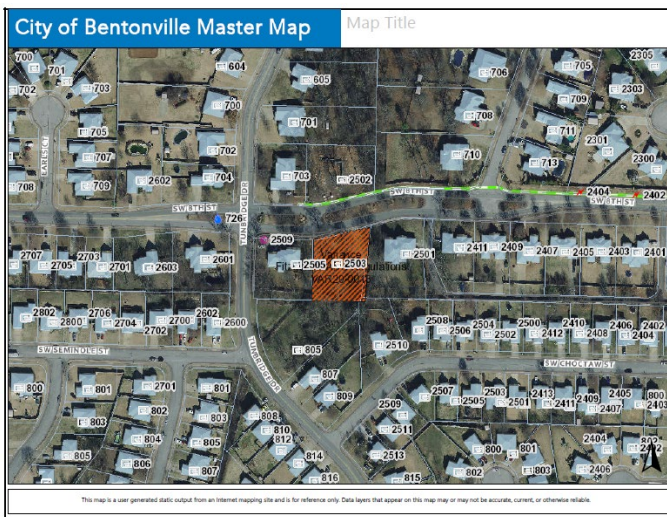
Public Comment

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.

**WATKINS, BOYER,
GRAY & CURRY, PLLC**

ATTORNEYS AT LAW

WRITER'S DIRECT E-MAIL
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* ALSO LICENSED IN MISSOURI

DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

July 2, 2020

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

RE: Project #VAR20-0013, Fitzgerald Pool House

Dear Commissioners:

Our law firm represents Michael Fitzgerald in connection to his home under construction at 2503 SW 8th St. This letter is being sent as a supplement to the narrative letter already submitted in connection with this variance request.

Section 301.10 on Variances provides as follows:

(c) *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.

My client respectfully contends that he has demonstrated the above requirements.

There are special circumstances which exist which are peculiar to this lot and do not apply to the other homes in the area. The lot has a large drainage ditch running through the middle of it and is subject to wider utility easements than other lots in the subdivision.

To enforce the literal provisions of the accessory dwelling code here would deprive Mr. Fitzgerald of rights commonly enjoyed by others in the subdivision. Almost all other lots in the subdivision would have space for a home and maximum-size accessory structure under the code—i.e. a 1440 square foot home with a 720 square foot accessory structure. This lot simply does not allow for that.

The special circumstances on this lot do not result from the actions of Mr. Fitzgerald. This lot was platted and situated with a drainage ditch long before my client bought it. While my client did have knowledge of these conditions before he purchased the lot, the standard asks whether the applicant *caused* the circumstances—not whether he knew of them.

Moreover, granting this variance would not confer on my client any special privilege denied to other lands in the same district. Based on square footage, almost all other homes in the subdivision are large enough (i.e. at least 1280 square feet) to be eligible to build an accessory structure of the size we have requested. (648 square feet).

Lastly, the variance code also provides that the Board of Adjustments shall not grant a variance unless it is “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 size restrictions of the accessory structure code is clearly intended to ensure that accessory dwellings indeed are just that—*accessory*. It is designed to ensure that homeowners are not able to use accessory structure code section as a loophole through which to build two full-sized homes on one lot. Here, we are not requesting to do that; instead, we are simply asking to build one full-sized home through two separate structures.

In short, my client is of the position that he is entitled to a variance under the code as written, and that granting such a variance would be harmonious with the purpose and intent Bentonville Zoning Code as a whole.

If you have any questions, please contact me at 479-636-2168.

Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC



Will A. Kellstrom

WK:
pc:

**WATKINS, BOYER,
GRAY & CURRY, PLLC**

ATTORNEYS AT LAW

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DELYNN HALE, SECRETARY
AMY BENSON, PARALEGAL
WHITNEY DUCKER, OFFICE MANAGER

June 1, 2020

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

RE: Project #VAR20-0013, Fitzgerald Pool House

Dear Commissioners:

Our law firm represents Michael Fitzgerald in connection to his home under construction at 2503 SW 8th St. This letter is being sent as part of the abovementioned variance request. My client is requesting a variance from the size limitations imposed on Accessory buildings under Section 601.01 of the Bentonville Zoning Code for the purpose of building an accessory dwelling on his property. Section 601.01 provides that the maximum floor area of any Detached Accessory Dwelling shall be fifty percent (50%) of the floor area of the primary structure, and that the maximum footprint shall be less than 720 square feet. My client is requesting a variance from the fifty percent requirement.

The home under construction on Mr. Fitzgerald's property is one of a kind project for a one of a kind piece of land. The land in question is subject to a drainage easement that runs across nearly the middle of the property. What this amounts to is a steep drainage ditch that effectively consumes about a third of the lot. In addition, the lot is also subject to the sewer and drainage easements and setbacks of the Tunbridge subdivision—all told, only around a third of the lot can actually be built upon. To counter this, my client is currently building a 835 square foot tree home which will be suspended above a portion of the drainage ditch, which otherwise would be unbuildable land

In an attempt to make that home more livable, my client wishes to build an accessory dwelling to compliment the tree home. As planned, the accessory dwelling will be 640 square feet. While this is under the maximum footprint limitation of 720 square feet, it does not satisfy the fifty percent limitation, as the primary residence is only 835 square feet.

Due to the abovementioned special conditions and circumstances that exist on this property, my client was forced to build a smaller, specialized home. To enforce the limitation strictly here would deprive him of the right to enjoy the same sort of square footage which would be allowed on all other lots in the neighborhood. Moreover, granting this variance would not confer any special privilege upon my client, as the proposed accessory dwelling complies with the 720 square feet footprint limitation and is well under fifty percent of the square footage of most homes in the area.

Finally, granting this variance would be in harmony with the general intent of the accessory

Fitzgerald Variance

Page 2

dwelling statute. The purpose of the two limitations on the size of accessory dwellings, presumably, are: (1) to prevent homeowners with larger homes from being allowed to build substantially larger accessory dwellings than those with smaller homes, and (2) to prevent homeowners from essentially building a second full sized home on the same lot. Here, my client is doing neither—he is simply trying to achieve the square footage of normal sized home while working around the dimensional limitations of his lot.

In short, Mr. Fitzgerald is proposing a creative solution for utilizing a lot that would otherwise be unusable, but is doing so in a manner which is not addressed by the code—namely, achieving the square footage of an average home with two structures. If you have any questions, please contact me at 479-636-2168.

Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

W. 

Will A. Kellstrom

WK:

pc:

2503 SW 8TH ST
BENTONVILLE, AR



1 SITE PLAN
3/32" = 1'-0"



2 CONCEPT

1. TAKE TEMPORARY MEASURES TO PREVENT BREACHES TO SHEET PILE WALLS OR SPRAK OR MAY BE LIES, BUT PENONS OR WALLS SHALL BE AS NECESSARY TO MINIMIZE ALL ADJACENT EASE OF PROPERTY.
2. CONTRACTOR SHALL BARGE GRADE SITE SO AS TO DIVERT FLOOD FROM BUILDING STRUCTURE.
3. ALL FILL SHALL BE CONTRACTED TO MEET STANDARD OVER PROPOSED DENSITY (NATH 2.48) AND IN 3000 P.A.R. BEARING CAPACITY.
4. MEET DIRTING GRADE AT 4' FROM LINES AND PROPERTY LINES.
5. GENERAL CONTRACTOR TO PROVIDE GRADING TO BE DESIGN FLOOD GRADE, IF TOP SOIL TO BE REUSED OR PROVIDED FOR FILL.
6. PROVIDE CONTROL LINES AND EXPANSION JOINTS IN CONCRETE DIRTING SHOW (SEE PLAN AND DETAILS)
7. INSTALL DIRTING FENCE AND LAGGING
EXPANSION JOINTS AT 50 G.G. MAX
CONCRETE JOINTS AT 4' ON G.G. AT BULKHEADS
8. ALL UTILITY LOCATIONS ARE APPROXIMATE, FIELD VERIFY BATH LOCATIONS.
9. ALL PIPES/AREAS TO BE REEDED.
10. CONTRACTOR TO VERIFY ALL SITE CONDITIONS PRIOR TO WORK, VERIFY LOCATIONS IF CONDITIONS NOT FROM PLAN #2 SHOWN.
11. SITE PLAN TO DRAINAGE/INLET TO NATURE BOUNDARIES, UTILITIES AND OTHER SITE FEATURES SHOULD BE REFERENCED FROM A SURVEYOR. CONTRACTOR SHALL COMPLY ALL SETBACKS AND CLEARANCE REQUIREMENTS FROM SITE PRIOR TO BEGINNING CONSTRUCTION.
12. GO TO COORDINATE ALL UTILITY CONNECTIONS WITH APPROPRIATE GOVERNING BODY.
13. SITE PLAN MUST BE APPROVED BY THE BUILDING OFFICE AND THE PLANNING DEPARTMENT PRIOR TO BEGINNING CONSTRUCTION.
14. GENERAL CONTRACTOR IS TO SUBMIT DRAWINGS TO THE BUILDING INSPECTOR AND OBTAIN A BUILDING PERMIT PRIOR TO BEGINNING WORK.
15. GENERAL CONTRACTOR SHALL LOCATE ALL PROPERTY LINE AND CLEARLY MARKED ALL BOUNDARIES FROM ONLY.
16. ALL DIMENSIONS ARE SHOWN FOR BIDDING PURPOSES ONLY. ACTUAL FIELD MEASUREMENTS SHALL BE USED FOR CONSTRUCTION.

SHEET INDEX			
#	SHEET NAME	ISSUE DATE	REVISION
A0.0	COVER SHEET	10-1-14	1-22-20
A1.0	TREE HOUSE PLAN	9-7-14	
A1.1	LOFT PLAN	9-7-14	
A1.2	REFLECTED CEILING PLAN	9-7-14	
A2.0	EXTERIOR ELEVATIONS	9-7-14	
A3.0	BUILDING SECTIONS	9-7-14	

[illegible]

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 A NEW BUILDING ON AN EXISTING DEVELOPMENTS SITE. SITE PLANS HAVE BEEN DEVELOPED AND SUBMITTED BY A CIVIL ENGINEER UNDER A SEPARATE COVER.

BUILDING DATA:

PROPOSED USE: SINGLE FAMILY DWELLING UNIT
R-3

CONSTRUCTION TYPE: 5B

ACTUAL AREA :
111.115.000 - 84.1.00

1. THESE DRAWINGS OUTLINE A GENERAL FLOOR PLAN AND ELEVATIONS FOR A DRINKING UNIT LOCATED ON AN ELEVATED PLATFORM. ALL STRUCTURAL INFORMATION AS IT PERTAINS TO THE EXISTING TREES, CONNECTIONS, AND PLATFORM FRAMING AND BRACING, IS DESIGNED BY OTHERS.



TREEHOUSE
2503 SW 8TH ST
BENTONVILLE, AR

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

DATE 3-7-19
JCB NO. 18020
REVISIONS 1-22-20

A0.0
COVER SHEET

