



**Board of Adjustments
Meeting Agenda
February 28, 2024
Bentonville City Hall
Meeting Time: 4:00 PM**

Registration Link: <https://us06web.zoom.us/j/83375982320>

- I. Call to Order**
- II. Approval of Minutes**
 - 1. January 24th Meeting Minutes** **Approval of Meeting Minutes**
- III. New Business**
 - 1. Brittenum Construction** **Variance***
Southwest Adams and Southwest Anglin Roads ([VAR24-0002](#))
- IV. Old Business**
 - 1. Review and approval of By-Laws** **Informational**
- V. Other Business**
- VI. Adjournment**

- Mr. Burris also states the lots would meet the minimum lot size requirement, and the variance would only grant the applicant relief from the required minimum lot width.
- April Seggebruch, the applicant speaks to the reason for a north south orientation being that she wanted to face the townhomes onto SW 5th Street, away from neighboring single-family homes.
- Mr. Burris discusses details around the required right of way to be dedicated to the city upon redevelopment of the property in question.
- Mrs. Swanson states she believes the applicant can build on the property in question without the variance being granted.
- Discussion between staff and board members around DN-2 zoning regulations and required setbacks, and similar townhome developments nearby.
- Motion to approve the request by Pearson, second by Haynie
- Variance request approved 3-1 with Mrs. Swanson voting No, and Mr. Phillips abstaining from the vote.

2. Review and approval of By-Laws

Informational

- Discussion between staff and board members regarding 2024 By-Laws, to include public hearing guidelines and time limits, corrected typos, and general updates for clarity.
- Staff will make necessary edits to the By-Laws and bring back a final version for approval at the next regularly scheduled meeting.
- Motion to table the By-Laws by Kruithof, second by Swanson.
- By-Laws tabled 5-0

V. Other Business

- N/A - No other business for the Board

VI. Adjournment

- Meeting is adjourned by Chairman Kruithof at 4:36 PM.



Brittenum Construction

Southwest Adams and Southwest Anglin Roads

BOA Date: 2/28/2024

Staff Report Details

Project Number	VAR24-0002
Applicant / Current Owner	Brittenum Construction/Adams Road LLC
Site Area	+/- 49.47 Acres
Current Zoning	R-1, Low-Density Single-Family Residential
Variance Request	Sec. 401.07(c)(1) and Sec. 401.07(c)(2)a
Related projects	Osage Hills Subdivision

Property Description

The subject property is almost 50 acres located at the southeast corner of Southwest Adams Road and Southwest Anglin Road. The property is presently vacant, save for some preliminary street grading and is zoned R-1, Low-Density Single-Family Residential. The property has direct access to both Adams and Anglin Roads, as well as the stubs of Southwest Culture Street and Southwest Bison Street. The property is a part of the approved preliminary plat for Osage Hills Subdivision, approved by the Planning Commission in January of 2017.

Regulation

Sec. 401.07(c)(1):

The interior side setback for all building types in the R-1, Low-Density Single-Family Residential district is 7 feet.

Sec. 401.07(c)(2)a

Street facing garage. The minimum front setback for street facing garages shall be 30 feet from the property line that the garage faces.

Variance Request

Variance Request

The applicant is seeking a variance from two codes in Sec. 401.07. First, the applicant is seeking a variance of 2 feet from the required 7-foot interior side yard setback to allow for a minimum 5-foot setback. Second, the applicant is seeking a variance of 10 feet from the required 30-foot setback for front facing garages to allow for a minimum 20-foot setback.

Background

The applicant states in their narrative that they are seeking the variance request in order to build and provide starter homes priced below \$400,000. The applicant states that approval of the variance request would allow them to build 4-bedroom homes and avoid building flat-facade homes. They further state that upon approval, the builder would commit to not building flat-facade homes. Lastly, the applicant states that existing neighborhoods in other NWA cities were built to the requirements that they are requesting, and they include a breakdown of home sales across those NWA cities. Sample floor and site plans are also included.

This report will consider and analyze this request based upon the six conditions of approval from the Zoning Code. Said conditions of approval will be bolded to differentiate from staff commentary.

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;

The applicant does not identify in their application any unique conditions that apply to the subject property. The property appears to generally gradually slope down eastward toward Little Osage Creek, following similar topography to the first phases of Osage Hills to the north. The lots indicated on the approved preliminary plat are typical for R-1 zoning, at roughly 60' wide and 100' deep. Corner lots are larger, and cul-de-sac lots fan out from the street to the rear lot line. There do not appear to be any special topographical features, nor any extraordinarily shaped lots. In fact, the proposed lots are nearly identical to the lots developed in the first phases of this subdivision, and are exceedingly similar to other lots in the R-1, Low-Density Single-Family Residential districts, especially in the southwest portion of Bentonville.

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;

Given that the first phases of the subdivision were successfully developed under the terms of these ordinances, it would not appear that the applicant is being deprived of rights commonly enjoyed by other properties zoned R-1, Low-Density Single-Family Residential. The applicant has provided at the end of their materials, images of two homes that were constructed under the existing code.

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

The applicant not taken action to cause the need for this variance request.

Background

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.

The applicant is seeking a variance that would allow for a larger buildable area on these lots than other lots zoned R-1 and that are similarly shaped or sized. The granting of this variance request, in which the applicant is silent to the hardship that current code imposes, could be seen as a privilege as this applicant would be given additional buildable area where other R-1 property owners would be required to meet the code as written.

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.

The applicant makes no reference to any nonconformities or properties not zoned R-1, Low-Density Single-Family Residential. The applicant does make mention of development in nearby cities. Staff would urge the board to disregard these comparisons as these neighborhoods lie outside the jurisdiction of the Board and the Zoning Code of the City of Bentonville.

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.

With the inclusion of the example photos of the homes constructed in the first phases of this subdivision, the applicant demonstrates that development is possible within the constraints of the code as written. This begs the question, if the lots are buildable as they are proposed on the preliminary plat, and demonstrated through the completion of the first phases of the subdivision, would the minimum variance in this situation be no variance at all?

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

The variance to the front garage setback would likely have little impact to the neighborhood or public welfare as side-loaded garages are permitted at a 20' front yard setback, as well as the house itself. Therefore, having the buildings up at the 20' building line would not be out of the ordinary. The 5' side yard setback would also likely have little impact. While the homes would be closer together, the fire department will likely require that the soffits and eaves of any roof that overhang the 5' setback be property fire rated due to the potential distance from eave to eave.

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.

The Board has the authority to attach any conditions to a variance request that it deems appropriate. Any conditions proposed with a variance approval should be clearly stated into the

Background

record in the approval motion.

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.

The applicant's request does not include a variance to use.

Conclusion

This variance request faces two key issues - first, there is no hardship argument provided by the applicant, nor an easily identifiable hardship borne by the applicant. This request seems to arise from the applicant's preference or desire for a specific floorplan or architectural style rather than any undue hardship. Consider that the property as it exists is composed of legally platted lots, all of which meet the size and area requirements of the R-1 district and possess no topographical or shape abnormalities. The applicant has requested the variance to allow development of the property in line with their preferences. Preferences are not equivalent to a hardship, and it would not be sensible for the Board to consider such preferences. Second, the existence of the first phases of the subdivision, which are completed and built under the same ordinances, seems to complicate calculating any minimum variance. If these almost identical lots were able to be built upon by the same developer requesting this variance, is there a need for any variance at all?

The applicant does state in their narrative that the current requirements force them to build a flat facade. This is not an accurate assessment of the code requirement. Front-facing garages are required to be setback 30' from the front property line, while the remaining portion of the home may be setback only 20'. This could result in a home design where the garage is 10' or more behind the front of the home, and thereby not a flat facade.

While not part of the review criteria, it also seems that the applicant has not yet exhausted other opportunities to achieve their goal. Among other strategies, the applicant could attempt to replat the property to more suitable lot dimensions, pursue Planned Residential Zoning where they could set different setback requirements, or choose or design alternative floorplans and facades.

Ultimately, all six standards of approval in the Zoning Code must be met in order for the Board to grant approval of the variance. This request appears to be deficient in several of the standards of approval.

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.

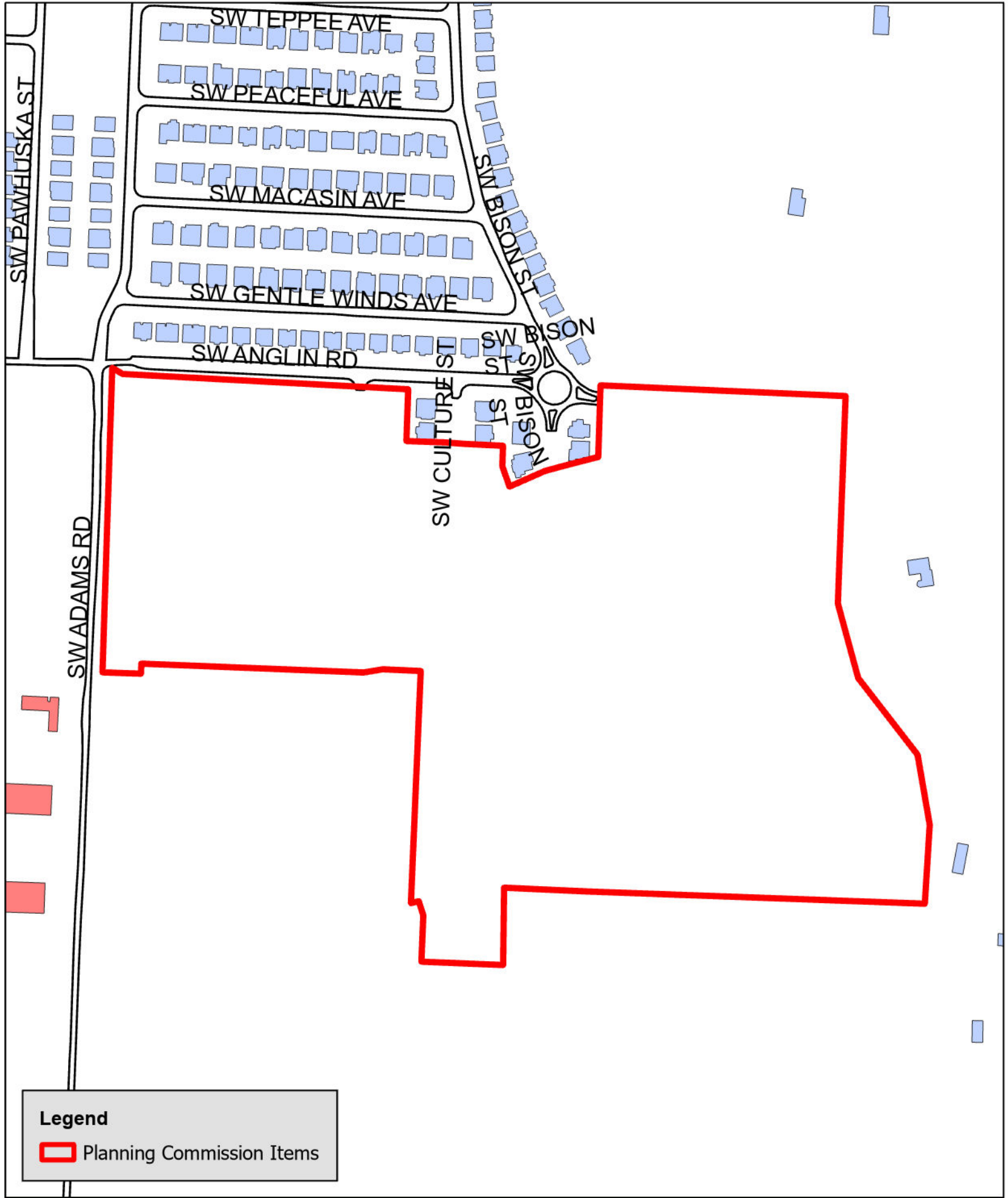
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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

 Planning Commission Items



VAR24-0002

Variance

Osage Hills Phase III Setback Variance



Variance Proposal

To: Board of Adjustment

Re: Osage Hills Phase III - Parcel 01-18728-000

Builder: Brittenum Construction Inc.

Location: SW Adams Rd / SW Anglin Rd, Bentonville

Average Lot Size: 60' x 100'

Number of Lots: 146

Objective: Obtain approval for a modification concerning the 30-foot street-setback requirement for garages. Seeking permission for a garage setback of 20 feet and side setbacks of 5 feet.

Rational: The existing regulations create a barrier to designing affordable/desirable homes priced below \$400,000, which are essential for Bentonville residents. These crucial "starter" homes are needed, but the current requirements restrict the implementation of various floor plans. In addition, the current requirements force us to build "flat façade" that lack in curb appeal. This will also allow us to build much needed four bedroom homes. The requested variations are all within the guidelines of surrounding municipalities; Rogers, Springdale and Fayetteville.

Compromise: The builder commits to avoiding flat elevation style homes and ensuring that garages do not protrude prominently by more than 8 feet.

The specified cities/neighborhoods share requirements that align with our current request.

Centerton Planning (utilities), Bentonville City Limits

- **Brookside Neighborhood**
- **Edgewood Estates**

Rogers Planning

- Willow Creek Neighborhood
- Cottonwood Neighborhood

Springdale

- Summer view Neighborhood
- Sundance Neighborhood

Fayetteville

- Crystal Springs Neighborhood

Current Bentonville Home Stats

- City of Bentonville (last 6 months) Average SOLD price: **\$557,627**

698 Sold homes

- Homes sold under \$400,000

254 Homes Sold

46 of the 254 homes were 4 Bedrooms

91 including Bentonville City, Centerton Planning

- Available homes on Market - Bentonville, Under \$400,000

25 Homes

35 including Bentonville City, Centerton Planning

City	Sold Homes under \$400K Last 6 months	4 Bed homes under \$400K Last 6 months	Average Price Sold homes under \$400K Last 6 months
Bentonville	254	46 (91 with adjustment for City of Centerton plan-	\$326,154
Rogers	387	85	\$283,281
Springdale	347	75	\$291,786
Fayetteville	491	59	\$299,373
Centerton	243	96 (45 home adjustment for	\$291,773
Bella Vista	441	22	\$306,009

Osage Hills - Phase 3

SW ADAMS RD
ROADWAY 4
SW TRIBE ROAD
ROADWAY 3
SW WAKANDA ST
ROADWAY 2
SW CROWN ST
ROADWAY 1
SW ADAMS RD

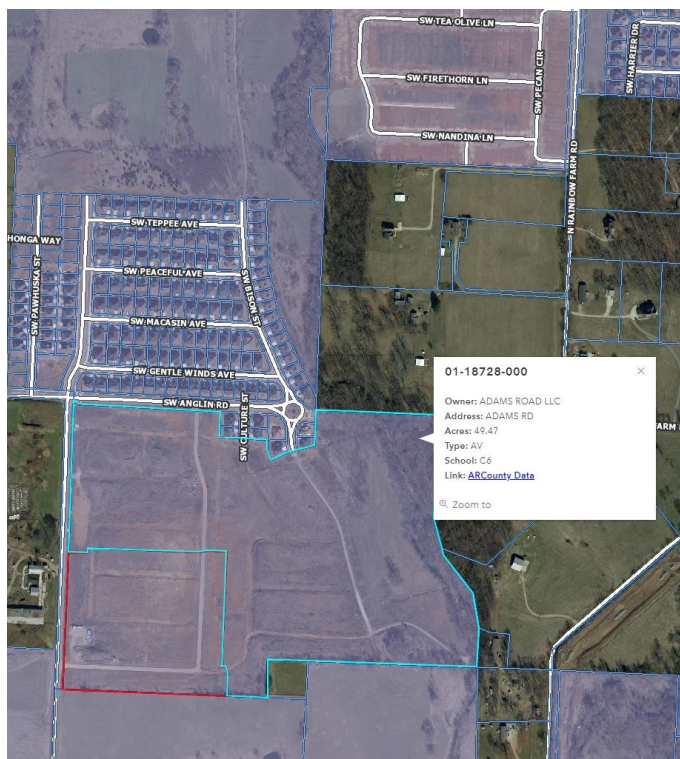
PHASE 3
PHASE 2
PHASE 1

GRAPHIC SCALE
1 inch = 60 feet

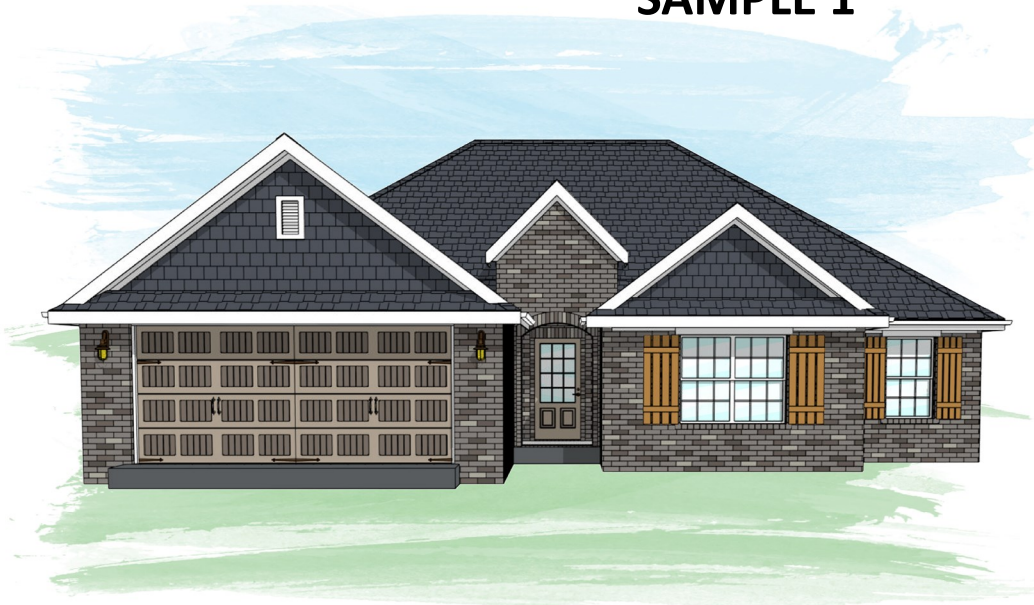
CITY PROJECT No.
PP22-0001

R-1 SETBACKS
FRONT 20 Feet
GARAGE 30 Feet
INTERIOR SIDE 7 Feet
EXTERIOR SIDE 20 Feet
REAR 25 Feet

ALL LOTS HAVE A 20' UTILITY EASEMENT ALONG THE FRONT. ALL STREET DIMENSIONS ARE 60'-0" WIDE.



SAMPLE 1



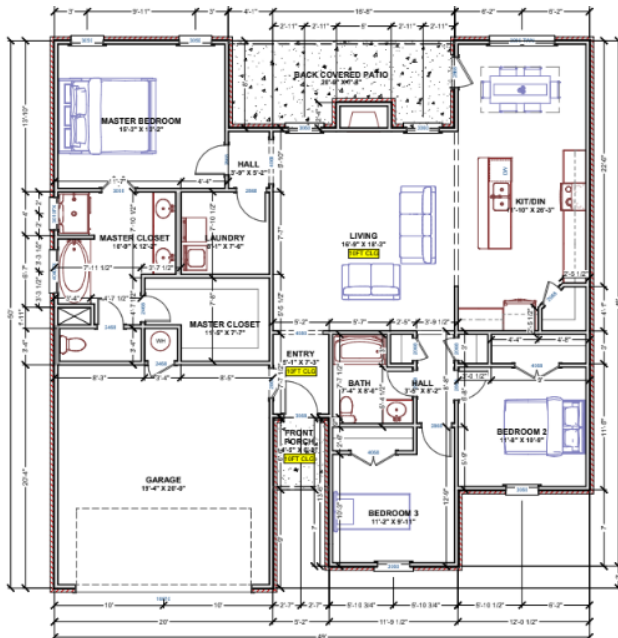
Veronica

1739 Sq Foot

3 Bedroom

2 Bath

\$356,495



Side Setback

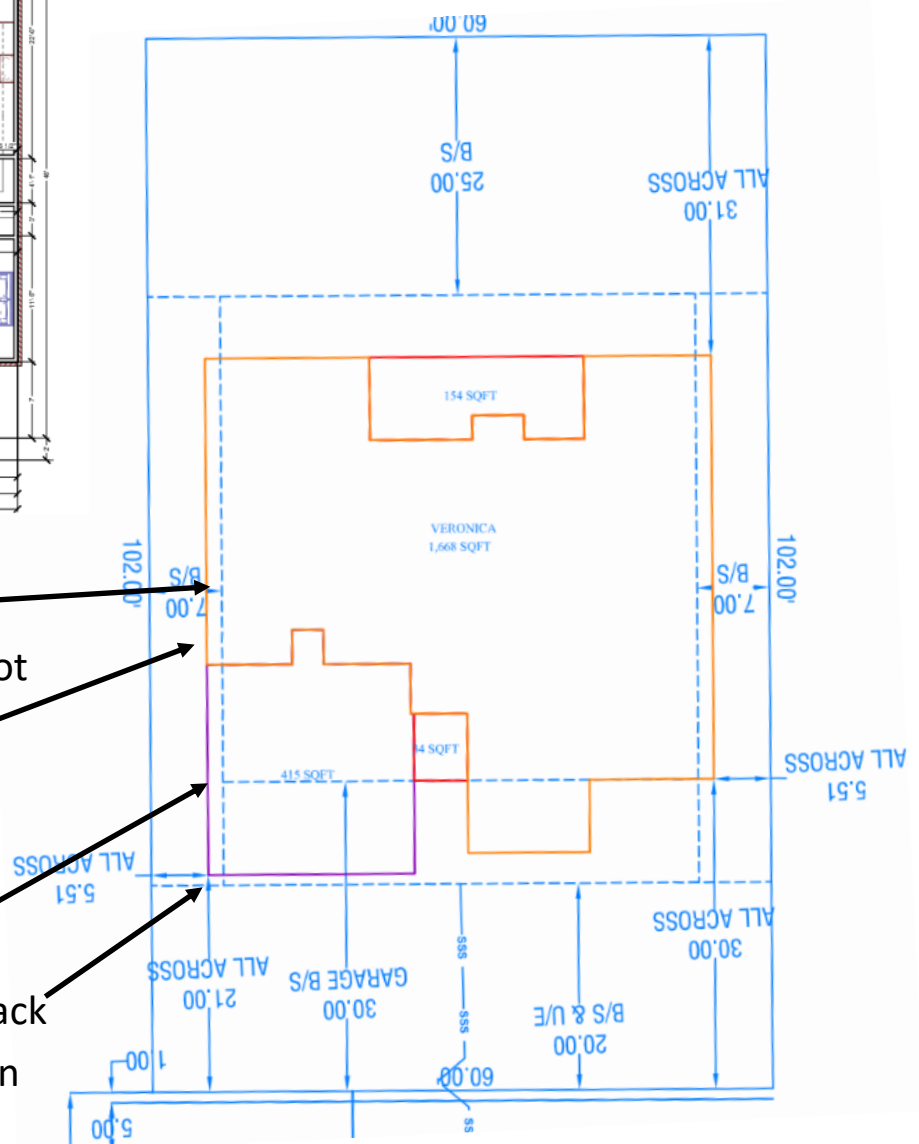
Current Setback

Request - Change from a 7 foot setback to a 5 foot setback

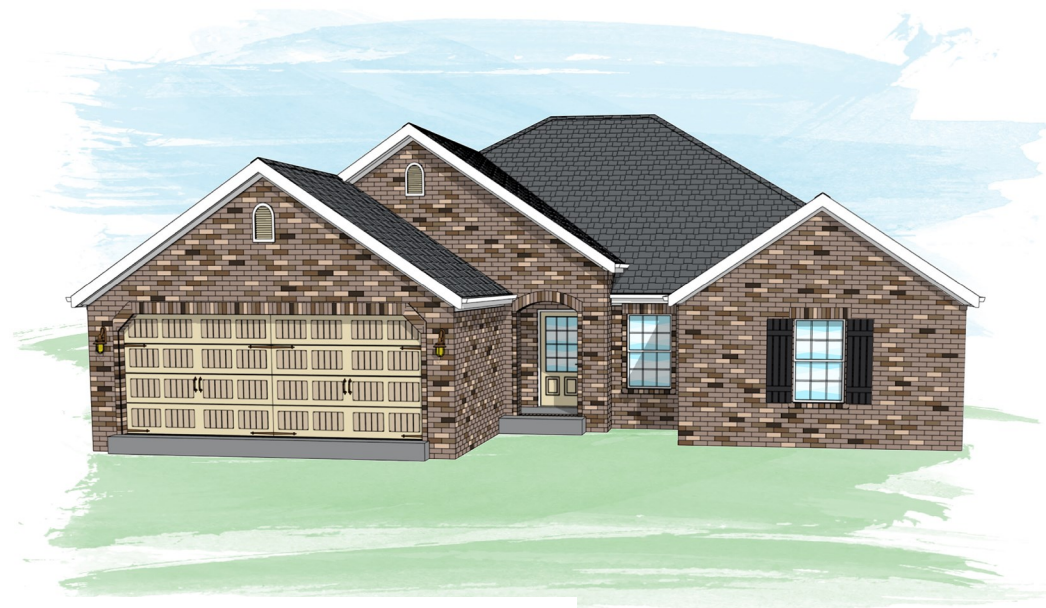
Front Setback

Current Setback

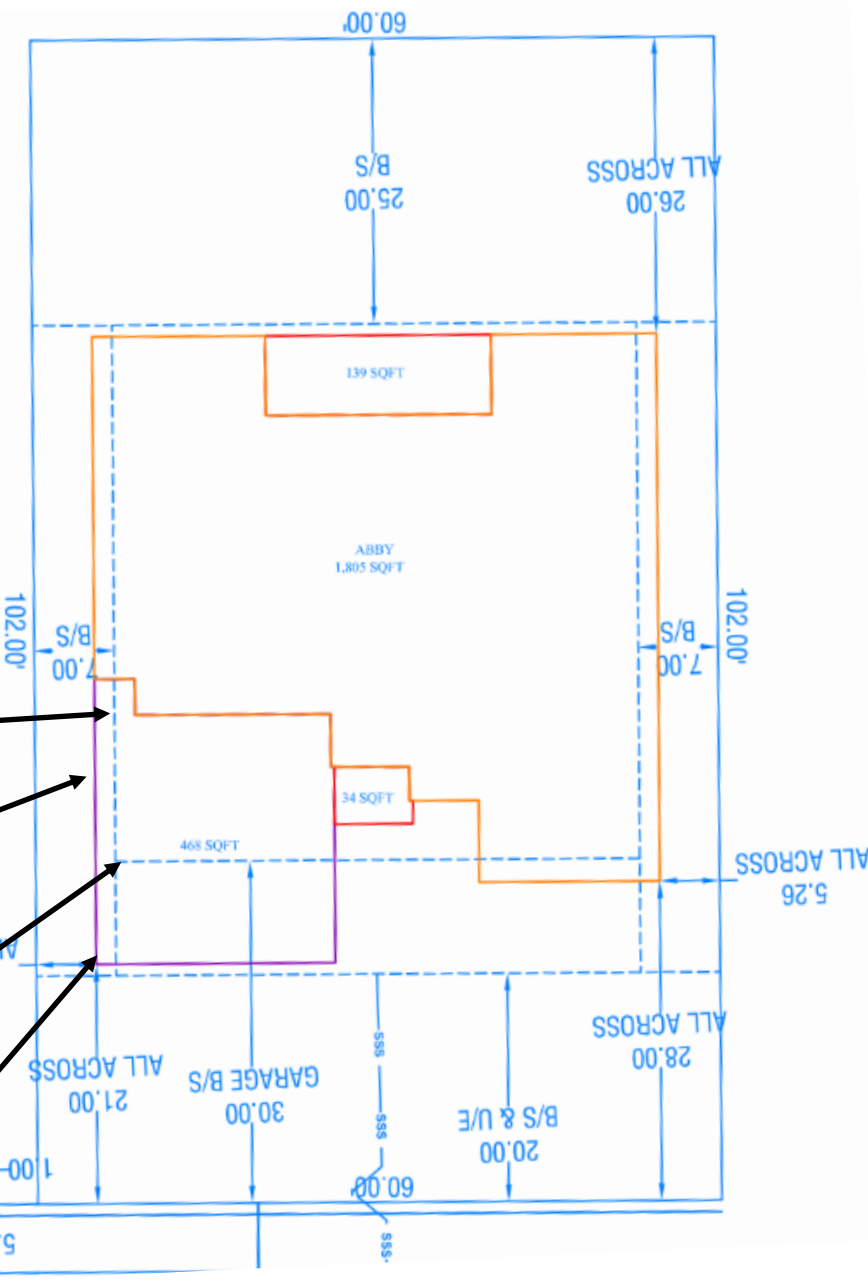
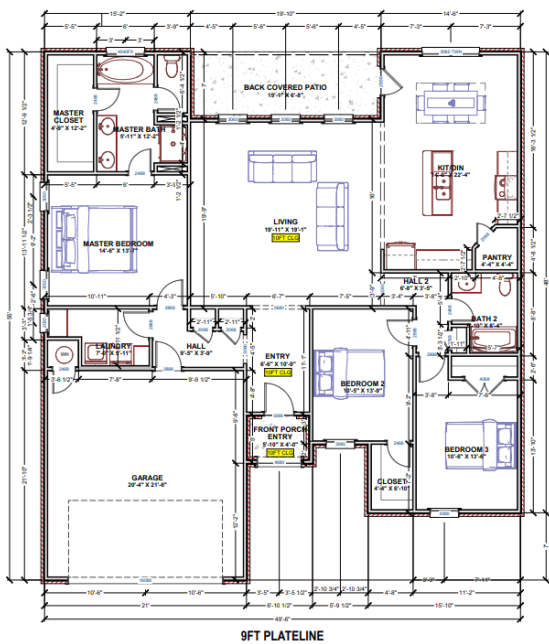
Request - Garage setback to be 20 feet. Elevation would still be offset.



SAMPLE 2



Abby
1872 Sq Foot
3 Bedroom
2 Bath
\$383,760



Side Setback

Current Setback

Request - Change from a 7 foot setback to a 5 foot setback

Front Setback

Current Setback

Request - Garage setback to be 20 feet. Elevation would still be offset.

SAMPLE 3



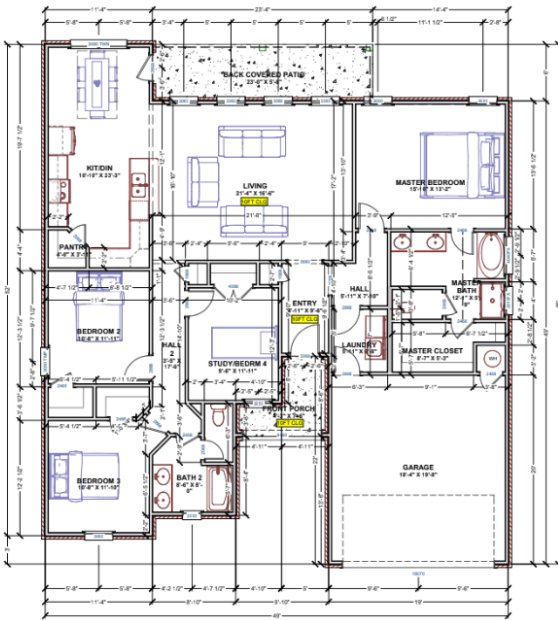
Clifford

1875 Sq Foot

4 Bedroom

2 Bath

\$384,375



Side Setback

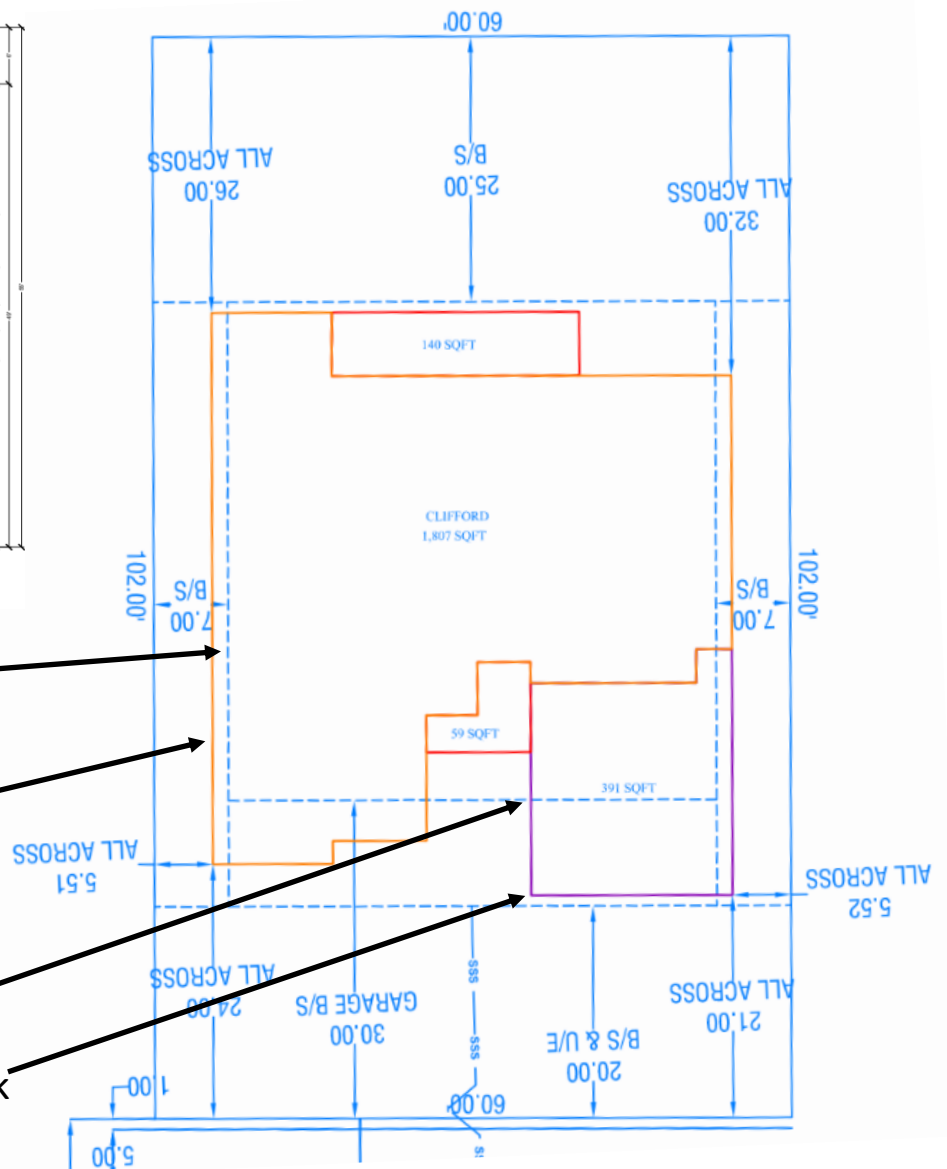
Current Setback

Request - Change from a 7 foot setback to a 5 foot setback

Front Setback

Current Setback

Request - Garage setback to be 20 feet. Elevation would still be offset.



Sample Brittenum Construction home elevation WITH VARIANCE

Summer View Subdivision in Springdale



Sample Brittenum Construction home elevation WITHOUT VARIANCE

Osage Hills Phase 1, Bentonville



BY-LAWS

BENTONVILLE BOARD OF ~~ZONING~~-ADJUSTMENT

ARTICLE 1. Members, Term, Attendance

- 1.1. The members and terms of office shall be as stipulated by Municipal Code Section 301.04~~City Ordinance No. 84-31~~, as amended.
- 1.2. When a new member is appointed to the Board, the position number he or she is filling will be so designated at the time of appointment.
- 1.3. Missing three consecutive regular meetings or a total of six meetings in a one ~~calendar~~-year period, except in extraordinary cases, may, at the recommendation of the Board constitute cause for removal by the City Council.
- 1.4. Members should advise the Secretary ~~or~~ Staff before the meeting date if they expect to be absent or late.

ARTICLE 2. Officers, Election and Term, Duties, Chairing the Meeting, Signing for the Board

- 2.1. The members shall elect a chairman, vice-chairman and a secretary at the first regular meeting in January, and the term of office shall be until the next officers have been elected.
- 2.2. The chairman shall preside at meetings and hearings and shall decide point of order or procedure, following Robert's Rules of Order.
- 2.3. In case the chairman is absent, the vice-chairman shall assume the duties as Chair; in the absent of both the Chair and the Vice-Chair; the Secretary shall preside.
- 2.4. The Secretary shall be responsible for the following tasks; however, ~~they~~ may delegate authority for performing them to another member of the Board or an employee of the City of Bentonville.
 - 2.4.1. Furnish a current copy of the by-laws and appointing orders at meetings as required.
 - 2.4.2. Prepare the minutes of meetings and public hearings.
 - 2.4.3. Distribute the proposed order of business items and notice of regular and special meetings.
 - 2.4.4. Distribute the proposed order of business items and notice of regular and special meetings.

- 2.4.5. Maintain correspondence a filed and place notices of public hearings and advertisements.
- 2.5. When the certifying signature is required, the Chair's signature shall be utilized unless such authority has been designated by the Chair to another Board member or to a Board employee.

Article 3 Meeting, Scheduling, Quorum, Majority, Order of Business, Public Hearings

- 3.1. Board meetings shall be open to the public as provided by the Arkansas Freedom of Information Act.
- 3.1.1. The regular meetings of the Board of Adjustment shall be on the second and fourth Wednesday of each month at 5:00 p.m. at City Hall, the Technical Services Building.
- 3.1.2. Special meetings may be called at any time by the Chair ~~or~~ any three members.
- 3.2. No formal business shall be conducted without a quorum and no member may vote by proxy.
- 3.2.1. A quorum shall exist when a majority of the appointive members are present.
- 3.2.2. The affirmative vote of a simple majority of the full membership of the Board shall carry any motion or resolution.
- 3.2.3. The Mayor shall be an ex-officio member and shall have no vote. The Mayor shall not be counted in arriving at a quorum.
- 3.3. The order of business shall follow the distributed agenda unless otherwise agreed to by the members.
- 3.4. Public hearings shall be conducted informally, and the Chair shall make all rulings and determinations regarding the scope of the inquiry, the admissibility of evidence, the order in which evidence, objection, and arguments will be heard, and other like matters, except that other members shall be privileged to make inquiries personally and to call for a vote on any ruling of the Chair to expedite the hearing, confining the participants to the presentation of only essential matters, but entertaining the presentation of sufficient matter to do substantial justice to all concerned parties to the proceedings. Each speaker shall be limited to a total of three minutes. Additional time may be granted by a majority of the Board. No speaker shall speak twice on the same subject at a single meeting; however the Board may call any speaker to answer additional questions. Final or official action

shall be taken only in regular meetings unless the public hearing is continued to a special session of the Board after the hearing.

Article 4 Committees

- 4.1. The Chairman may establish standing, special, or advisory committees. Committee members may be persons other than members of the Board, but a board member shall be named as either active or ex-officio Chair of each committee.
- 4.2. Meetings shall be called by the chairman of the committee, or a majority of the membership of the committee, notifying the others.

Article 5 Records, Actions, Studies, Recommendation, Public Access

- 5.1. The Board Shall keep a file including all official documents of the Board including, but not limited to reports, records of decisions, recommendations, and studies made by the Board or its employees in the discharge of its duties and responsibilities.
- 5.2. Records shall be kept open to the public, available without fees or delays, subject only to the necessity for good order in the office of the Board.

Article 6 Amendments to These By-Laws, Timing, Majority

- 6.1. These by-laws shall be adopted, and later suspended, changed, or canceled only after an affirmative vote of a majority of the membership of the Board, Amendments shall be proposed in writing at a regular meetings and moved for action at a following meeting, unless ten-days -notice and the written amendment itself have been given to all members, in which case motion may be made at a special meeting ten days after all the members have received the proposed change to these by-laws. Records shall be kept open to the public, available without fees or delays, subject only to the necessity for good order in the office of the Board.

Board Action:

by majority of the appointed members so voting, these by-laws for the Bentonville Board of Adjustment are hereby approved the ~~23rd~~ 10th day of January, 2024~~08~~.

ATTEST:

Secretary

Chair

BY-LAWS
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ARTICLE 1. Members, Term, Attendance

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- 3.2. No formal business shall be conducted without a quorum and no member may vote by proxy.
 - 3.2.1. A quorum shall exist when a majority of the appointive members are present.
 - 3.2.2. The affirmative vote of a simple majority of the full membership of the Board shall carry any motion or resolution.
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Board Action:

by majority of the appointed members so voting, these by-laws for the Bentonville Board of Adjustment are hereby approved the 10th day of January, 2024.

ATTEST:

Secretary

Chair