

Note – Some of the members of the Board of Adjustment, as well as City staff members, may attend this meeting virtually. For public health reasons, those who attend in person should consider personal hygiene, the use of facial coverings, and social distancing.



**BOARD OF ADJUSTMENT
AGENDA
May 11th, 2022**

Registration Link: https://us06web.zoom.us/webinar/register/WN_Jq_8cmWlSZOhdNU_zsTYiA

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

- 1. Matthew and Alexandra Hesse** **Variance***
201 SW D St ([VAR22-0020](#))
 - Minimum Setback Variance
- 2. Fariba Izadi** **Variance***
3704 SW Homestead Ave ([VAR22-0023](#))
 - Minimum Setback Variance

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**BOARD OF ADJUSTMENT
MINUTES
April 27th, 2022**

Meeting Recording:

https://us06web.zoom.us/rec/share/iQEEZi7FTv2xSTCDdFmKp7kG0VKXqjUs-sgY_rZkKCukKzcmb6C2UmuQMstnjW4V.iDOrXhguVnN013Ix

I. Call to Order

II. Approval of Minutes

- Motion by Pearson to approve the meeting minutes, seconded by Haynie
- Approved 5-0

III. Old Business

1. Flintlock LTD Co. – New Construction

Variance*

1402 Dogwood Drive ([VAR22-0012](#))

- Front Garage & Side Setback Variance

- Tyler reads staff report
- This item was tabled in a past Board of Adjustment meeting
- Public hearing was previously held
- Applicant, Mark Haney, applicant discussed possible compromises with the board and staff
- Hunter Atkins, from Flintlock lab spoke to the sidewalk issue
- Jesse Weigens of 1404 Dogwood (Neighbor) Spoke on his concerns around having a clear sight triangle while backing out of his driveway
- Discussion amongst commissioners and staff
- Kruithof motions, seconded by Pearson, to amend the request to a 7.5 ft front setback variance for the west side of the property and a 4.5 ft front setback variance for the west side.
- Board voted to table the item until a more detailed site plan can be provided addressing the site triangle from the driveway of 1404, East to Dogwood
- Withdrew motion to amend per discussion
- Tables 5-0

2. Schuber Mitchell Homes – New Construction

Variance*

808 NW 13th Street ([VAR22-0019](#))

- Rear Setback Variance

- Tyler reads staff report
- Public hearing opened
- Gena Wallus, of 806 NW 13th, Neighbor spoke of their concerns
- Public hearing closed
- Applicant, spoke to the concerns that Gena had and gave more details for the project
- Discussion amongst commissioners

Note – Some of the members of the Board of Adjustment, as well as City staff members, may attend this meeting virtually. For public health reasons, those who attend in person should consider personal hygiene, the use of facial coverings, and social distancing.

- Approved 5-0

IV. New Business

1. Mercy Health Northwest Arkansas Communities

Variance*

797 SW 41st St ([VAR22-0021](#))

- Minimum Lot Size Variance

- Tyler reads staff report
- Public hearing opened
- Public hearing closed
- Representative, Taylor Lindley who spoke on behalf of the developer and applicant. Taylor gave more details about the project
- Approved 5-0

Motion by Rogers, seconded by Pearson to Adjourn the meeting

Meeting adjourned

Jana Snyder
Community Development Coordinator

BOARD OF ADJUSTMENT STAFF REPORT



Hesse

201 SW D St

BOA Date: 5/11/2022

Reviewer: Christopher Hyatt, Planning Technician

Project Number	VAR22-0020
Applicant / Current Owner	Matthew and Alexandra Hesse
Site Area	+/- 0.26 Acres
Current Zoning	R-1, Low Density Single Family Residential
Variance Request	Zoning Code Article: Section 401.07 (c) (1)

Property Description

This property is located at 201 SW D Street and is currently zoned R-1, Low Density Single Family Residential.

Regulation

According to Zoning Code Article Section 401.07 (c) (1), the minimum rear setback is 25 feet.

Variance Request

The applicant is requesting a variance of 15 feet from the minimum 25-foot rear setback requirement to allow for an addition to the existing home.

Background

According to the applicant's narrative, this home was built in 2007 and most recently purchased in 2021. In that time, the future land use designation has been identified for the area as Medium Density Residential, making the property eligible for a DN-2, Medium Density Residential zoning.

With a DN-2 zoning, the property is subject to a minimum 12-foot front setback and a 25-foot rear setback. This home was originally designed to the R-1 zoning standards, with the exception that the front setback currently sits at 27 feet instead of the minimum of 25 feet, meaning that when adding on, the applicant has 15 feet less build-able depth than they would if they were building a new home on a properly zoned lot.

The applicant concludes that granting this variance would allow the applicant the same privilege they would have if they were building a new home. A special circumstance is claimed at this location due to the fact that a rezoning would not correct the issue, as the physical location of the front of the home cannot be altered.

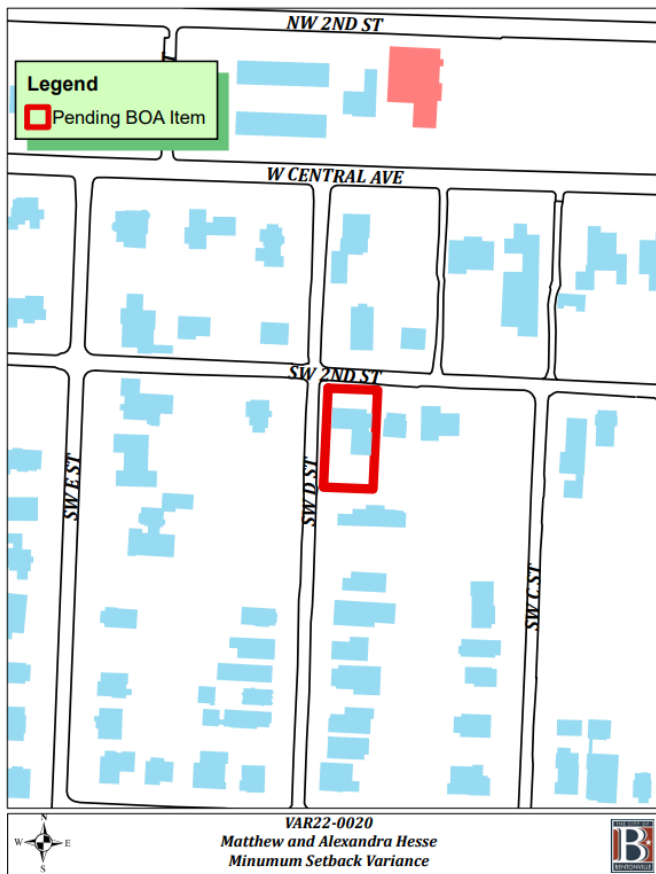
Public Comment

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, as provided by the applicant within this application.
2. The applicant must obtain a building permit before construction begins.



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.

NW 2ND ST

Legend

 Pending BOA Item

W CENTRAL AVE

SW 2ND ST

SW E ST

SW D ST

SW C ST

VAR22-0020

*Matthew and Alexandra Hesse
Minumum Setback Variance*



WATKINS, BOYER, GRAY & CURRY, PLLC

ATTORNEYS AT LAW

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ANDREW T. CURRY, P.A.
WILLIAM A. KELLSTROM
JOHN E. JENNINGS (OF COUNSEL)
* ALSO LICENSED IN MISSOURI

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

April 9, 2022

Bentonville Planning Department
305 SW A Street
Bentonville, AR 72712

RE: Setback Variance at 201 SW D St., Parcel No. 01-01740-000

Dear Board Adjustments:

This law firm has been hired to assist the applicants, Matthew Hess and Alexandra Hess in obtaining a setback variance on of Parcel No. 01-02287-002 at 201 SW D St. (hereinafter "the Property"), for the purpose of remodeling and adding onto the existing home. The applicant would like a variance modifying the rear setback of the Property from twenty five feet (25') to ten feet (10').

The existing home on the Property was built in 2007, according the Benton County Assessor records. The Property is currently zoned R-1, Low Density Single Family Residential, and at the time the home was built, it was presumably built according to the then-applicable setback regulations under R-1. Under an R-1 zoning, the property is subject to a twenty foot (20') setback in the front, and a twenty-five foot (25') setback in the rear.

On Bentonville's Future Land Use Plan (hereinafter "FLUP"), this property is designated as Medium Density Residential, meaning that it would be eligible for a DN-2, Medium Density Residential zoning. Under a DN-2 zoning, the Property is subject to a minimum twelve foot (12') setback in the front and a twenty-five foot (25') setback in the rear. In other words, if the applicant was building a new home on an empty lot, and the lot was zoned properly pursuant to the current version of Bentonville's FLUP, it would subject to only a twelve foot (12') setback in the front.

As stated above, the existing home was built in 2007, and was presumably built subject to a twenty foot (20') front setback. It is of note that the current property owner **did not** build the home, having purchased it only in 2021. Comparing front and rear setbacks under R-1 and DN-2, because they both have the same rear setback (25'), any lot which is zoned R-1 will inherently have eight feet (8') less of build-able depth due to the lesser front setback. However, the home was actually constructed with a setback of twenty-seven feet (27'). Meaning that, when adding on to the existing home, the applicant actually has **fifteen feet (15')** less build-able depth than they would if they were building a new home today and the lot were properly zoned. The purpose of this variance is to allow the applicant the same privilege they would have were they building a new home.

The standards for granting a variance, as proscribed by the Bentonville Zoning Code § 301.10 are addressed as follows:

1. *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 special circumstances here are the location of the existing home as contrasted with the location that a new home could be built if the lot were zoned properly. A rezoning would not correct the issue, as the physical

location of the home upon the lot cannot be altered.

2. 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.

Most other properties in this neighborhood are zoned DN-2, which would give them a twelve-foot (12') setback. It is impossible for the applicant to enjoy that setback due to the location of the existing home.

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

As stated above, the applicant did not build the home.

4. 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.

Again, any new home built in this area of town would be eligible for a twelve foot (12') front setback if zoned properly.

Thank you for considering this variance request. If you have any questions please feel free to contact me at 479-636-2168 or at wkellstrom@watkinslawoffice.com.

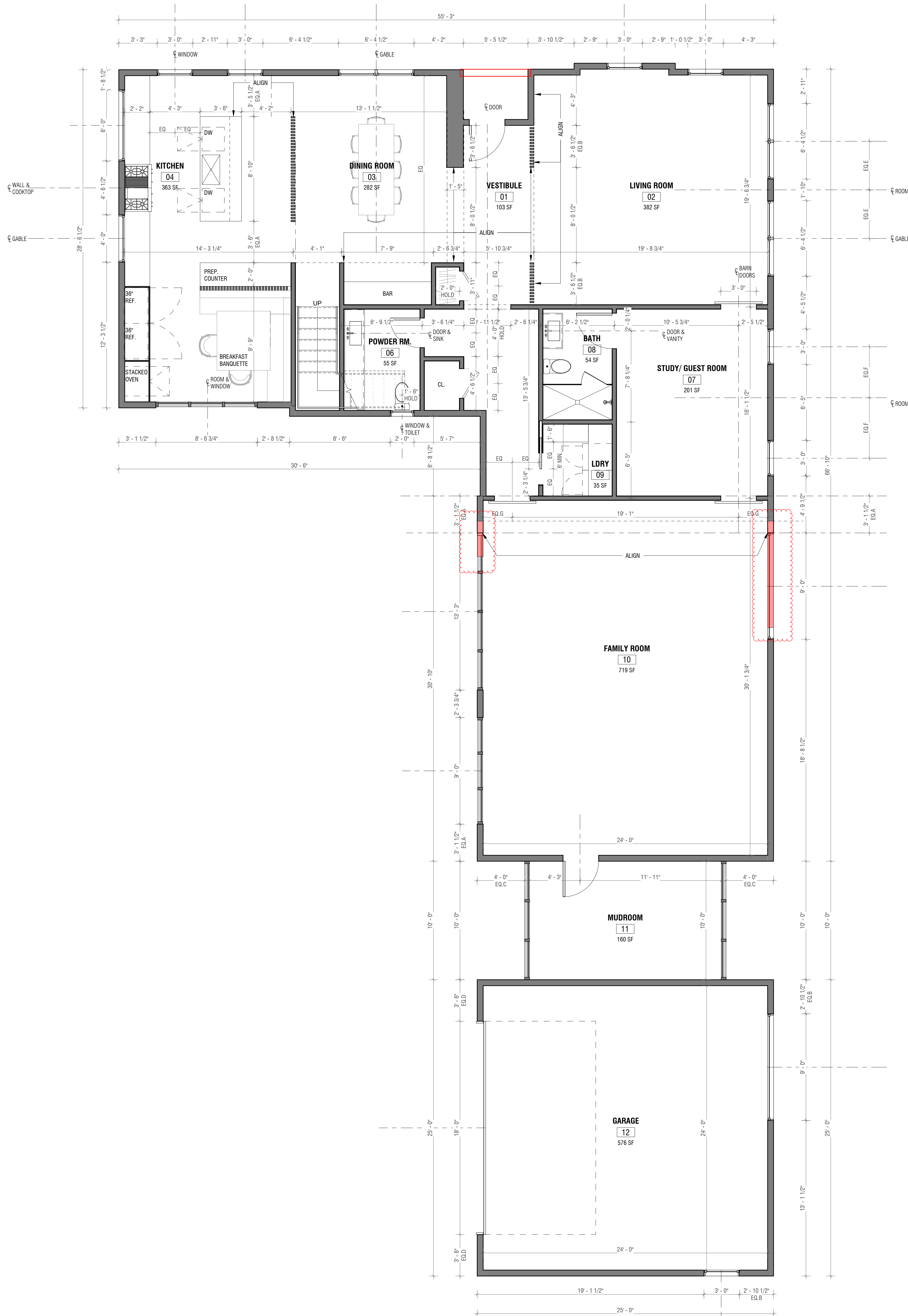
Sincerely,

WATKINS, BOYER,
GRAY & CURRY, PLLC

/s/ Will A. Kellstrom

Will A. Kellstrom

WK:
pc:



1 1ST FLOOR PLAN
1/4" = 1'-0"

MHH
HESSE RESIDENCE

Enter address here

OWNER
FTOPS FOUNDATION
P.O. Box 57 1706 S Walton Blvd., Bentonville, AR 72712
info@ftops.org

DESIGN ARCHITECT
WORKSHOP/APD
WORKSHOP/APD ARCHITECTURE, P.C.
39 W 38th Street, 7th Fl, New York, NY 10018
T: (212) 273-9712 info@workshopapd.com

ARCHITECT OF RECORD
GARTH HUGHINS
KSA ARCHITECTURE
1089 East Mission Blvd., Fayetteville, AR 72703
T: (479) 521-7794 X2

CONTRACTOR
BRIAN SHEWMAKER
briansheemaker16@gmail.com
T: (479) 521-0062

ALL DESIGNS & SPECS ARE SUBJECT TO VERIFICATION OF EXG. FIELD CONDITIONS

REVISIONS

NO.	DESCRIPTION	DATE

NOT FOR CONSTRUCTION

SIGN & SEAL

ISSUES

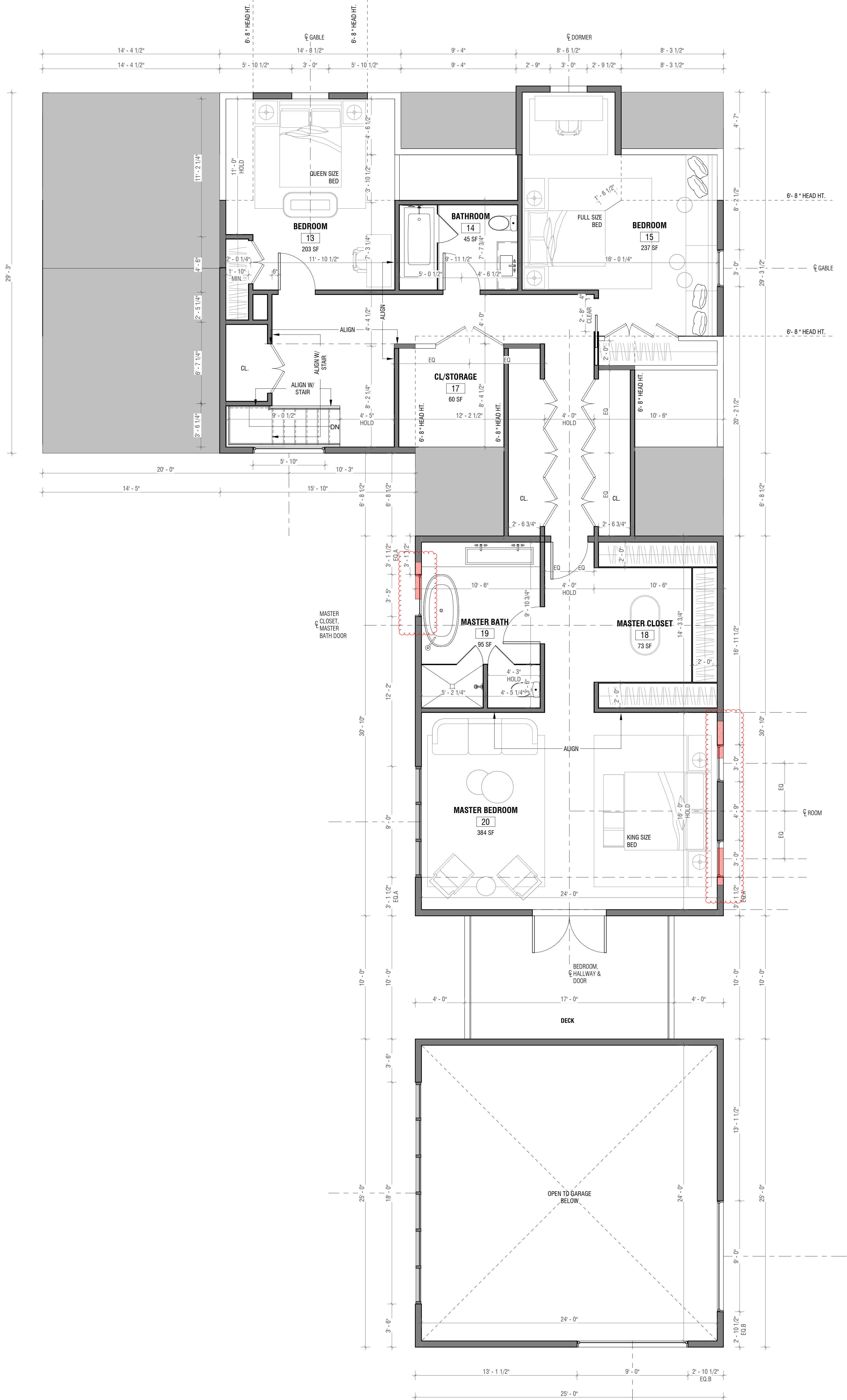
NO.	DESCRIPTION	DATE

DRAWING INFO

CONSTRUCTION DOCUMENTS	Author
DRAWN BY:	Checker
CHECKED BY:	11/20/19
DATE:	1/4" = 1'-0"
SCALE:	Project Number
PROJ. NO.	

FIRST FLOOR PLAN
A-100.00

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2ND FLOOR PLAN

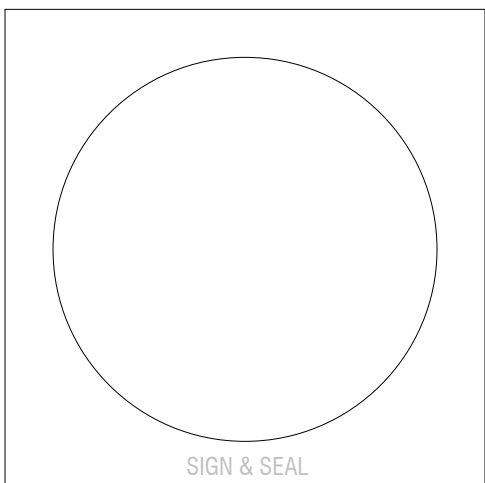
1/4" = 1'-0"

ALL DESIGNS & SPECS ARE SUBJECT TO
VERIFICATION OF EXG. FIELD CONDITIONS

REVISIONS

NO.	DESCRIPTION	DATE

NOT FOR CONSTRUCTION



ISSUES

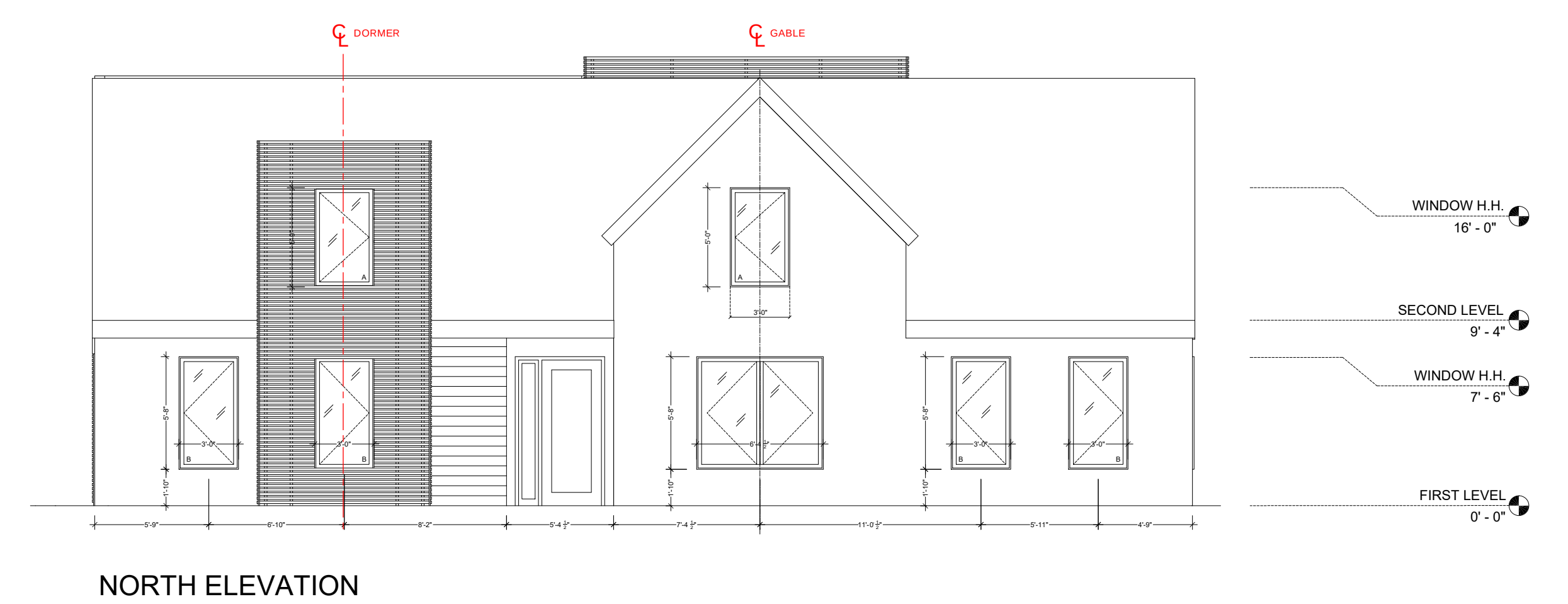
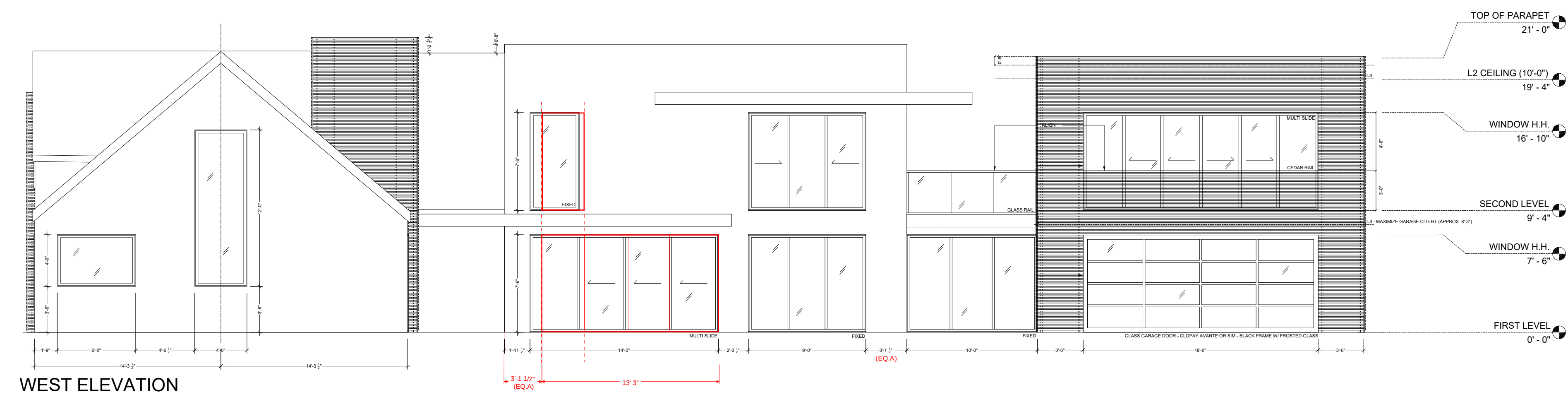
NO.	DESCRIPTION	DATE

DRAWING INFO

CONSTRUCTION DOCUMENTS	Author
DRAWN BY:	Checker
CHECKED BY:	Project Number
DATE:	
SCALE:	
PROJ. NO.	

SECOND FLOOR PLAN

A-101.00



BOARD OF ADJUSTMENT STAFF REPORT



Izadi – Covered Patio

3704 SW Homestead Ave

BOA Date: 5/11/2022

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR22-0023
Applicant / Current Owner	Fariba Izadi
Site Area	+/- 0.38 Acres
Current Zoning	R-1, Low Density Single Family Residential
Variance Request	Zoning Code Article: Section 401.07 (c)

Property Description

This property is located at 3704 SW Homestead Ave and is currently zoned R-1, Low Density Single Family Residential.

Regulation

Zoning Code Article Section 401.07 (c) states that the minimum rear setback for properties zoned R-1, Low Density Single Family Residential is 25 feet.

Variance Request

The applicant is requesting a variance of four feet from the minimum rear setback of 25 feet. Leaving 21 feet from the rear property line to the primary structure.

Background

The applicant states that they have constructed a concrete patio behind their home that sits 21 feet from the rear property line.

According to the applicant's narrative, to construct the covered patio all that would need to be added would be the covering over the existing concrete slab itself. The applicant concludes that they would be unable to build the patio within the required setbacks without either attaining a variance or demolishing part of the existing concrete slab.

The applicant also states that other covered patios exist on nearby properties that required a variance to be obtained prior to construction. Staff has confirmed a similar variance was approved on 2/24/2021 which allowed a covered backyard patio to be constructed 18 feet from the rear property line of 3703 SW Town Vu Road.

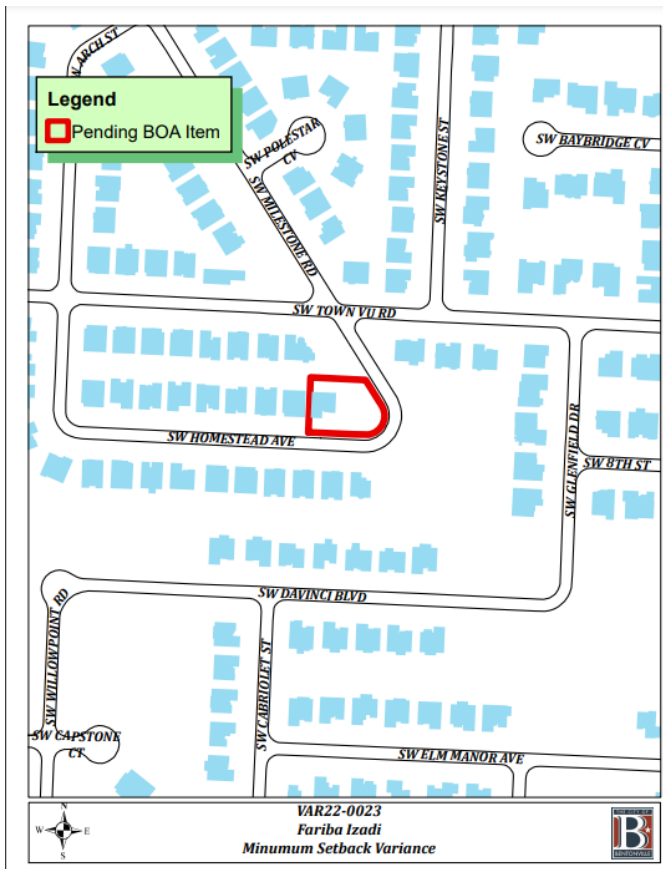
Public Comment

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, as provided by the applicant within this application.
2. The applicant must obtain a building permit before construction begins.



BOARD OF ADJUSTMENT STAFF REPORT

Section 301.10.c, Standards of Approval, of the Zoning Code

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- 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.

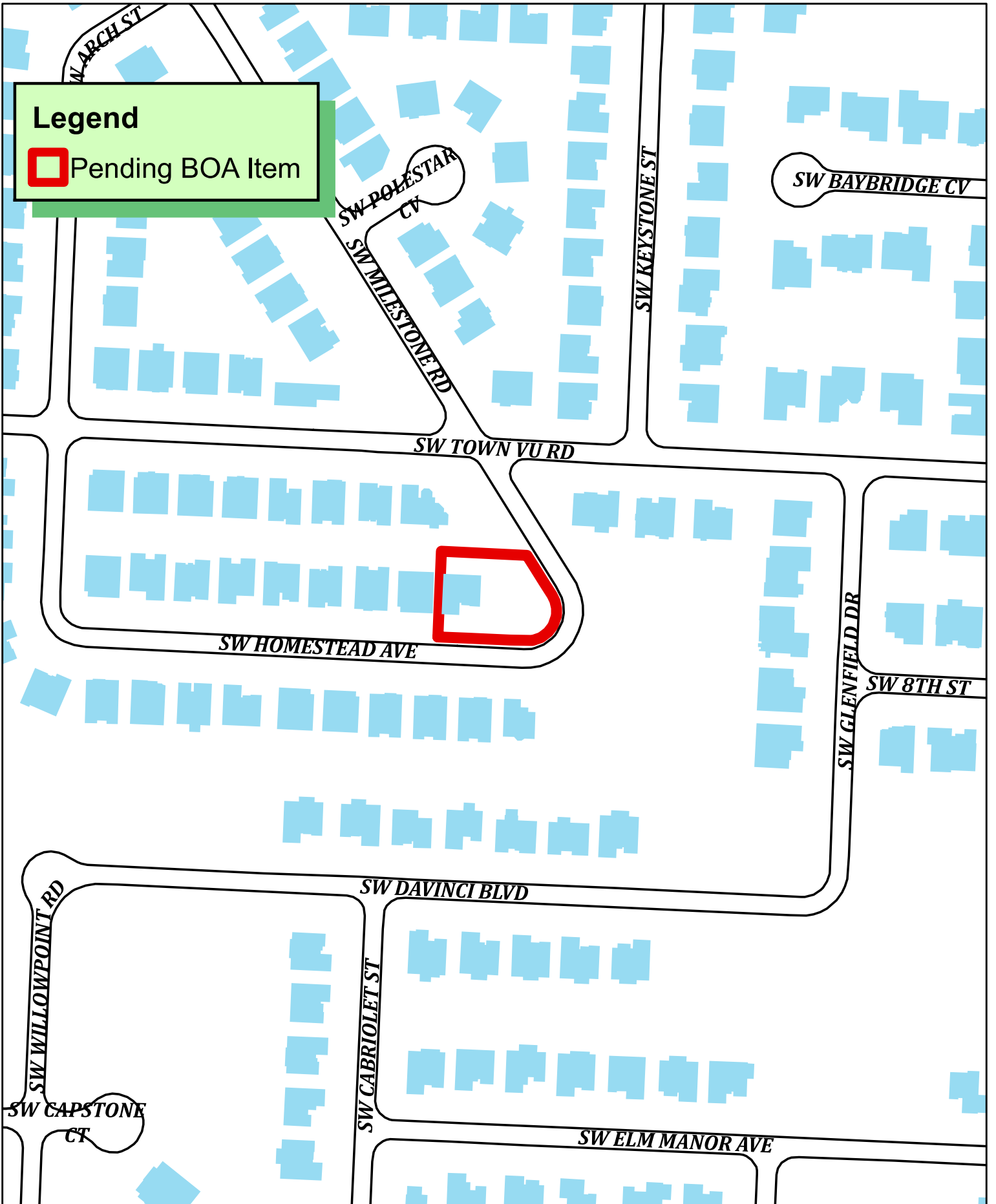
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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.



VAR22-0023
Fariba Izadi
Minumum Setback Variance



Requesting variance on adding covered porch over the existing uncovered patio concrete

To whom it may concern

The distance between the house to the backyard property line is only 36 feet. And to cover the existing concrete structure without adding any new concrete pad leaves about 21 feet instead of 25 feet requested based on the existing concrete structure to be able to cover. I am not adding any concrete foundation and just covering the existing one original built drawing. Other properties in the neighborhood have covered their existing concrete pad with the covered patio structures requiring variance approval.

Sincerely

Fariba Izadi

5/24

1

2017-2018

47

50

