

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
September 14th, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Registration Link: https://us06web.zoom.us/webinar/register/WN_7J4TRDMFTDKw-6ojM5k8xg

- I. Call to Order**
- II. Approval of August 24th Minutes**
- III. New Business**

- 1. Spangler** **Variance***
3101 and 3103 SW Walton Blvd ([VAR22-0034](#))
 - Setback Variance

- 2. Slusin** **Variance***
4600 SW Barton St ([VAR22-0035](#))
 - Setback Variance



**BOARD OF ADJUSTMENT
AGENDA
August 24th, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Recording Link:

https://us06web.zoom.us/rec/share/kSTJ3FJPCq0XON3xxSlspaBn4wxdEXa7aT_XZ29T0pWEuHQFFP2ok-qqhAXV314D.0gOh_Ehu49sjHCof

I. Call to Order

- Board of Adjustments meeting called to order at 4:00

II. Approval of August 12th Minutes

- Haynie motion to approve the minutes, seconded by Kruithof
- Approved 5-0

III. Old Business

1. Jacobs Group– New Construction

Variance*

807 SE 3rd Street ([VAR22-0028](#))

- Rear Setback Variance

- Christopher reads staff report
- Public hearing was already held in a previous meeting
- Todd Jacobs of Jacobs group, applicant, speaks to details of his request
- Discussion amongst committee and staff
- VAR22-0028 Approved with condition that the associated lot split be completed and approved by planning commission
- Approved 5-0

IV. New Business

1. Wolfe– Fence

Variance*

406 NW 7th Street ([VAR22-0032](#))

- Fence Height Variance

- Christopher reads staff report
- Public hearing opened
- Public hearing closed
- John Wolfe, the applicant spoke to the item
- Discussion amongst committee members and staff
- Approved 5-0

2. Willis – Addition

Variance*

201 NE 7th Street ([VAR22-0033](#))

- Building Setback Variance
-
- Luke reads the staff report
 - Public hearing opened
 - Marcela Williams, representing applicant, of Williams Design Build, speaks on the request
 - Discussion amongst committee members and staff
 - Approve as presented on the condition, that adequate easement vacations have been done to accommodate this request
 - Approved 5-0



Spangler

3101 S Walton Blvd

BOA Date: 9/14/2022

Reviewer: Christopher Hyatt, Planning Technician

Project Number	VAR22-0034
Applicant / Current Owner	Burris Architecture / Soon AE Spangler
Site Area	+/- 5.4 Acres
Current Zoning	C-2, General Commercial
Variance Request	Zoning Code Article 401.08 Section (c) (1)
Related Project(s):	LS22-0041

Property Description

This property is located at 3101 S Walton Blvd and is currently zoned C-2, General Commercial.

Regulation

Zoning Code Article 401.08 Section (c) (1) states the minimum side setback adjacent to residential district in a C-2, zoned property is 30 feet.

Variance Request

The applicant is requesting a variance of 15 feet from the minimum 30 foot side setback.

Background

According to the applicant's narrative, a portion of the property to the North is adjacent to a religious worship center in a R-O district. Per code, the R-O district would require a minimum of 30 foot side yard setback. With the property to the north being a church with larger structures and parking, the applicant feels the request of a 15 foot side setback is consistent with the intent of the zoning code.

It should be noted that this project is tied to LS22-0041 for the Parkside Row II project.

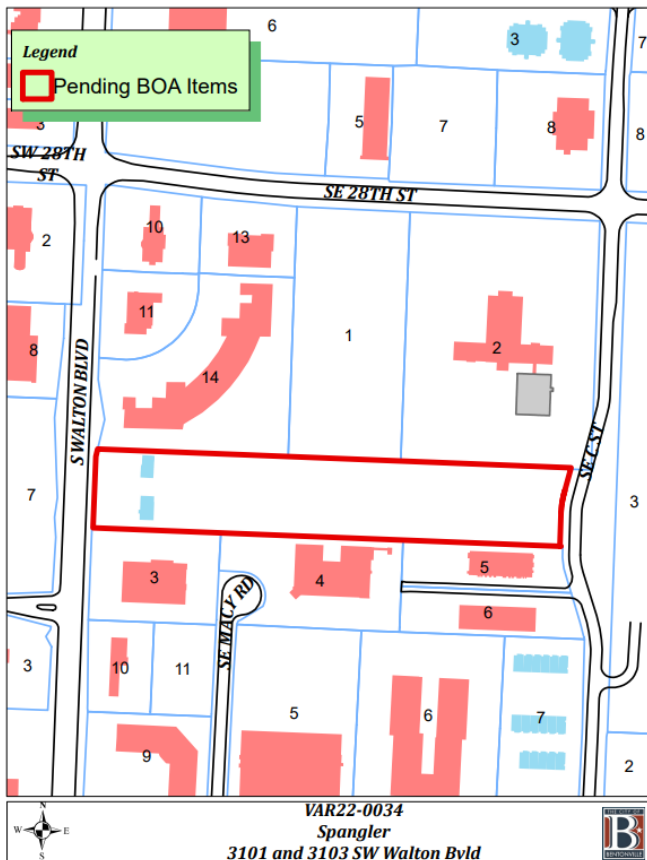
Public Comment

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.



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.

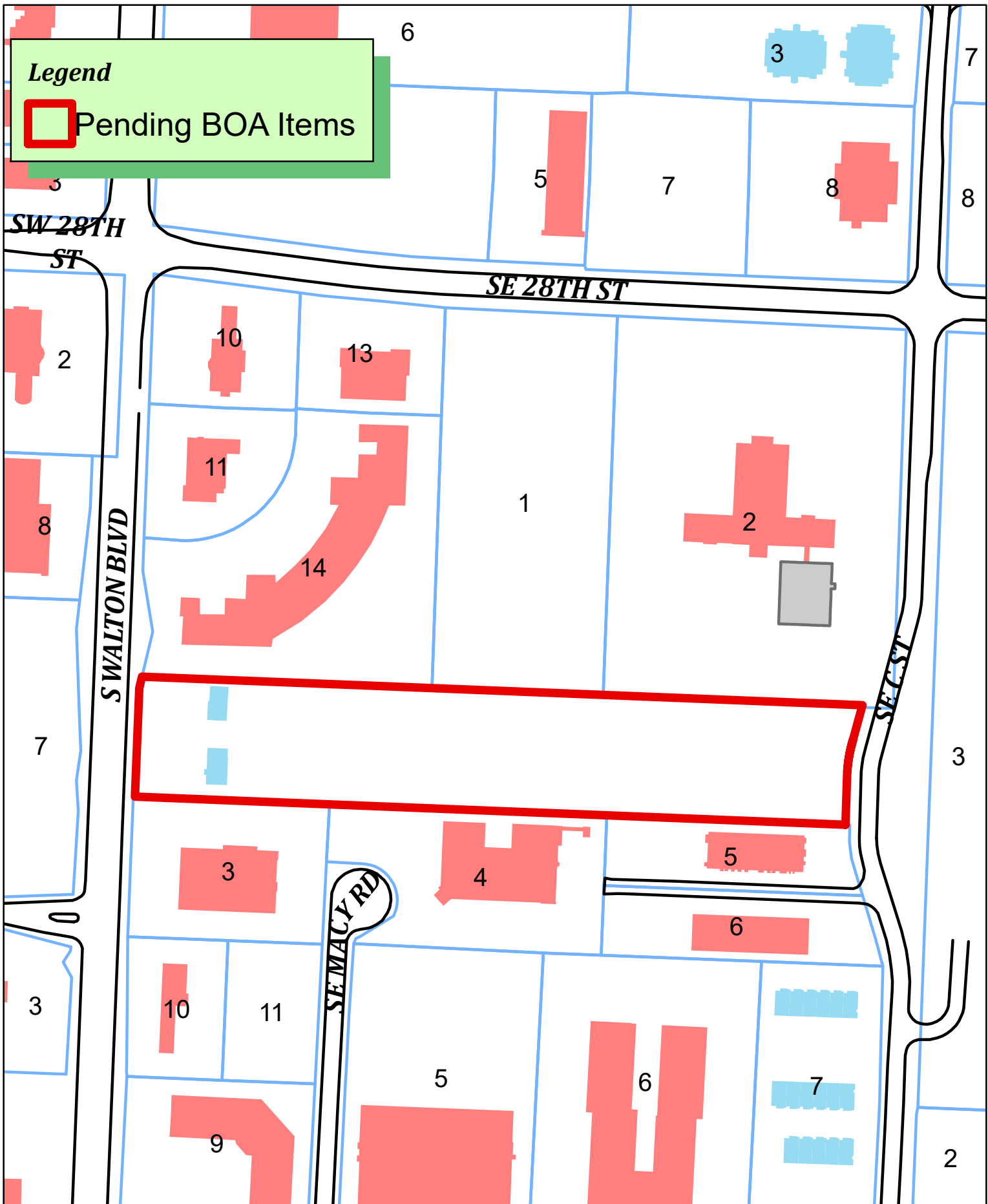
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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.



Date: 8-16-22

To: City of Bentonville - BOA

PROJECT NAME: Parkside 2

Re: Side yard setback Variance Request –

Acting as the owner's agent, Burris Architecture respectfully requests setback variance on the northern property line of parcel# 01-00111-000

(c) Commercial (C) districts setback standards.

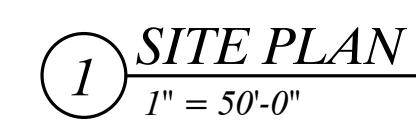
(1) Standards: The table below establishes the minimum setbacks required for all development in commercial (C) districts.

COMMERCIAL (C) DISTRICTS MINIMUM SETBACK REQUIREMENTS						
District	Front		Side		Rear	
	Parking in front	No parking in front	Adjacent to non-residential district	Adjacent to residential district	Adjacent to non-residential district	Adjacent to residential district
C-1	50'	20'	7'	15'	20'	25'
C-2	50'	20'	7'	30'	20'	30'
C-3	0'	0'	0'	10'	0'	0'

The code states setbacks on the side yard shall be 30' when adjacent to a residential district. A portion of the property to the north is adjacent to Commercial zone and use, as well as a Religious worship center in a R-O district. Per code, the R-O would require the 30' side yard setback. Since the property use is a church with larger structures, and parking, we feel the request of a 15' setback is consistent with the intent of the zoning code.

Thank you for your consideration.

Dave P Burris, AIA
479-319-6045
dave@burrisarch.com



Burris
Architecture
820 Tiger Blvd, Suite 4, Brentsville, Ar 7 2 7 1 2
4 7 9 - 3 1 9 - 6 0 4 5

PARKSIDE 2
SEC ST
BENTONVILLE, AR

DATE
8-16-22

JOB NO.
22098

REVISIONS

PRE1



Joshua & Vanessa Slusin

4600 SW Barton Street

BOA Date: 9/14/2022

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR22-0035
Applicant / Current Owner	Joshua & Vanessa Slusin
Site Area	+/- 0.25 Acres
Current Zoning	R-1, Low Density Single Family Residential
Variance Request	Zoning Code Article 401.07 Section (c) (1)
Related Projects	RADD22-0044

Property Description

This property is located at 4600 SW Barton Street and is currently zoned R-1, Low Density Single Family Residential.

Regulation

Zoning Code Article 401.07 Section (c) (1) The minimum rear setback shall be twenty-five (25) feet in areas zoned R-1, Low Density Single Family Residential.

Variance Request

The applicant is requesting a variance of nine feet from the minimum twenty-five-foot rear setback.

Background

According to the applicant's narrative, a nine-foot rear setback variance is necessary to keep in place an addition to the existing home which was constructed within the rear setback without a building permit in 2020. The applicant's narrative states they hired J&E Home Remodeling to construct a non-livable, covered back porch with a scale and aesthetic designed to match the existing house and roof, with the same pitch. The applicants were under the assumption that as part of the process, the contractor retained all necessary permits to complete the project which ultimately was found to be false.

The applicant concludes that the structure was primarily built to provide privacy from neighboring two-story homes that look down into the applicant's backyard. Their narrative states that removing this structure would deprive them of rights commonly enjoyed by other properties in the same area.

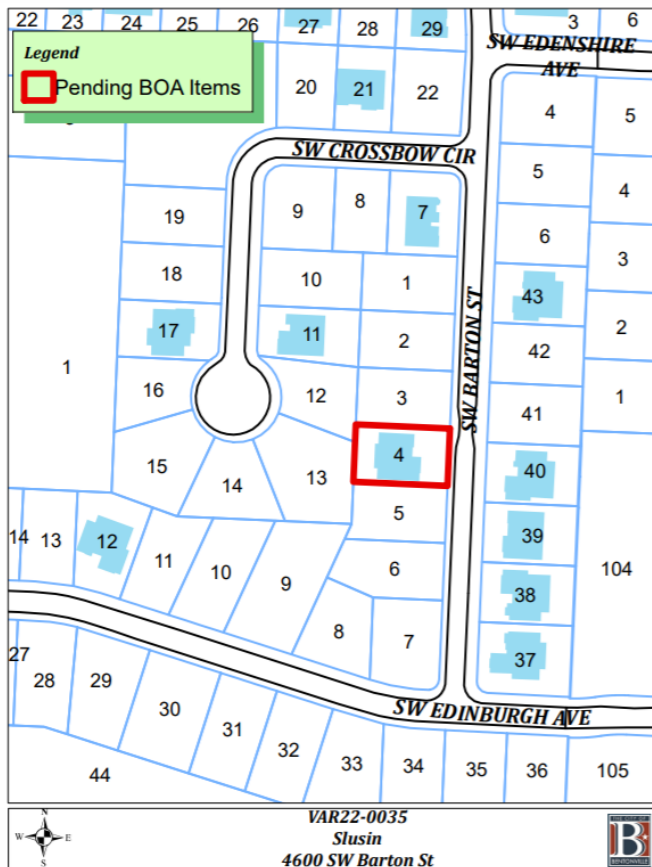
Public Comment

Staff HAS received public comment regarding this request. See attached.

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.



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.

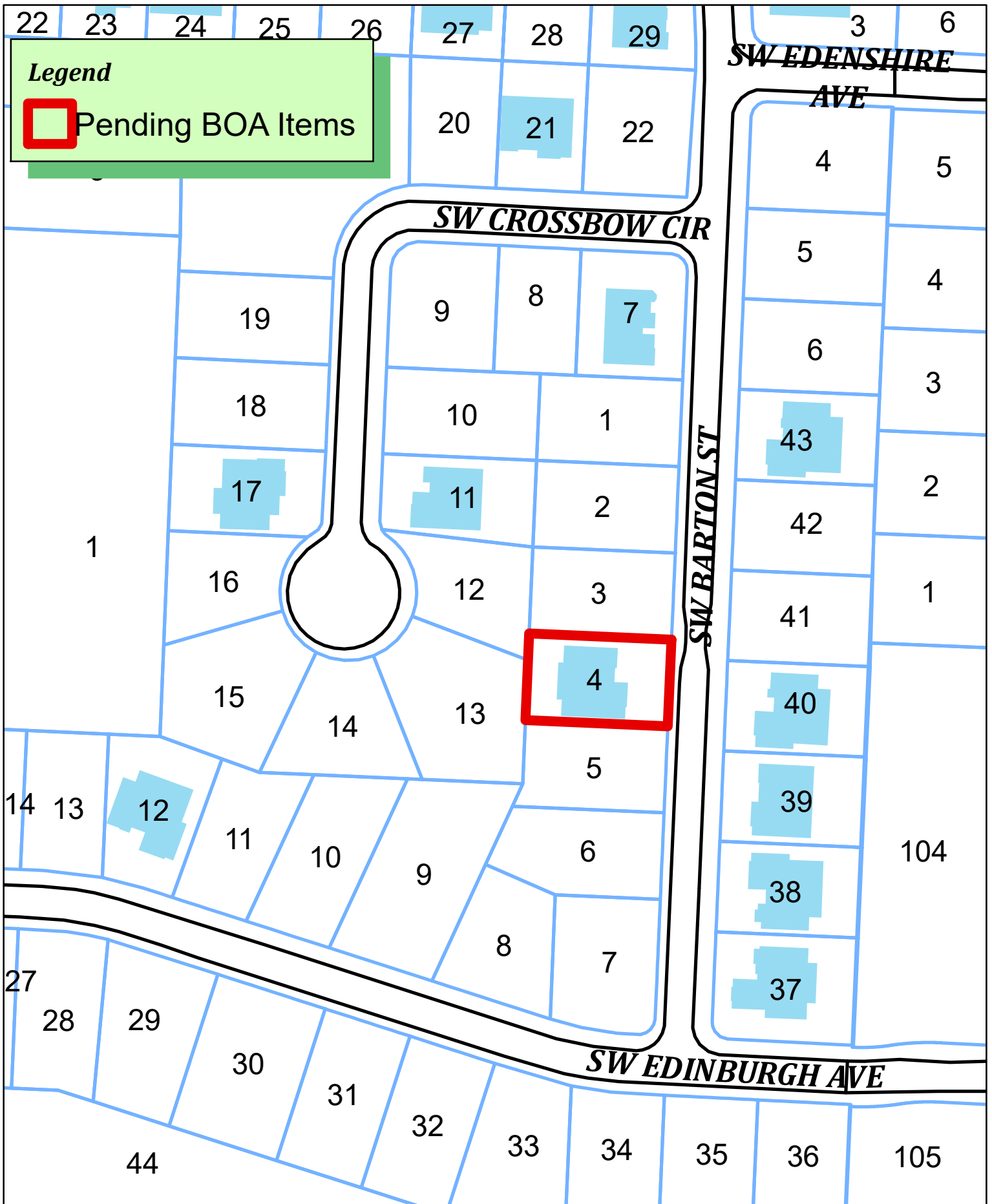
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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.



August 24th, 2022

Variance Application Narrative

RE: 4600 SW Barton St. Bentonville, AR 72713

The owners, Joshua and Vanessa Slusin, of 4600 SW Barton Street, respectfully request a 9' rear setback variance to allow a non-livable, covered porch to remain on the property.

Background: We hired J&E Home Remodeling to construct our non-livable, covered back porch. We were under the assumption that as part of the process, the contractor retained all necessary permits to complete the project. This project was completed two years ago, and the setback violation and lack of permit was recently brought to our attention.

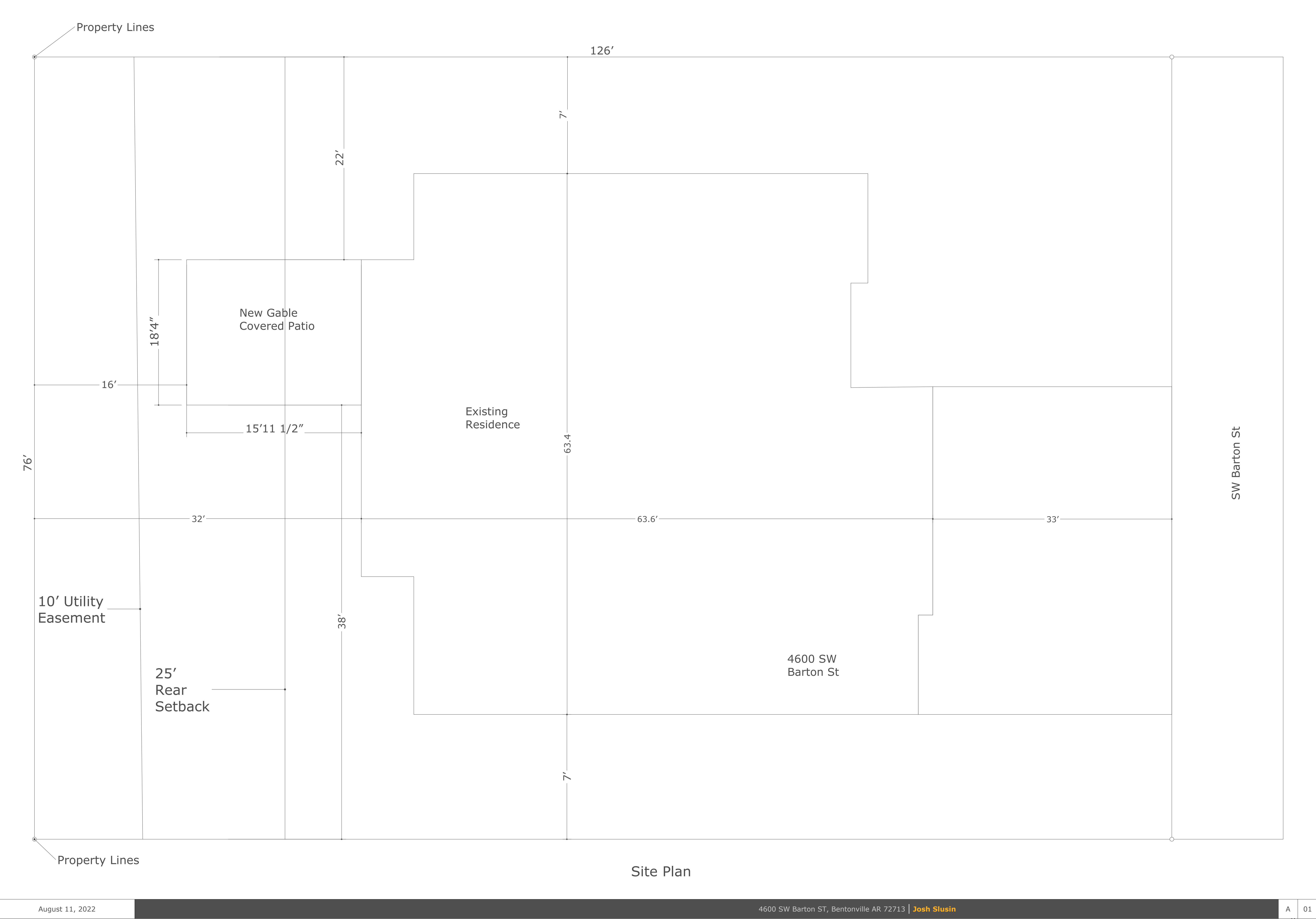
The variance is requested for the following reasons:

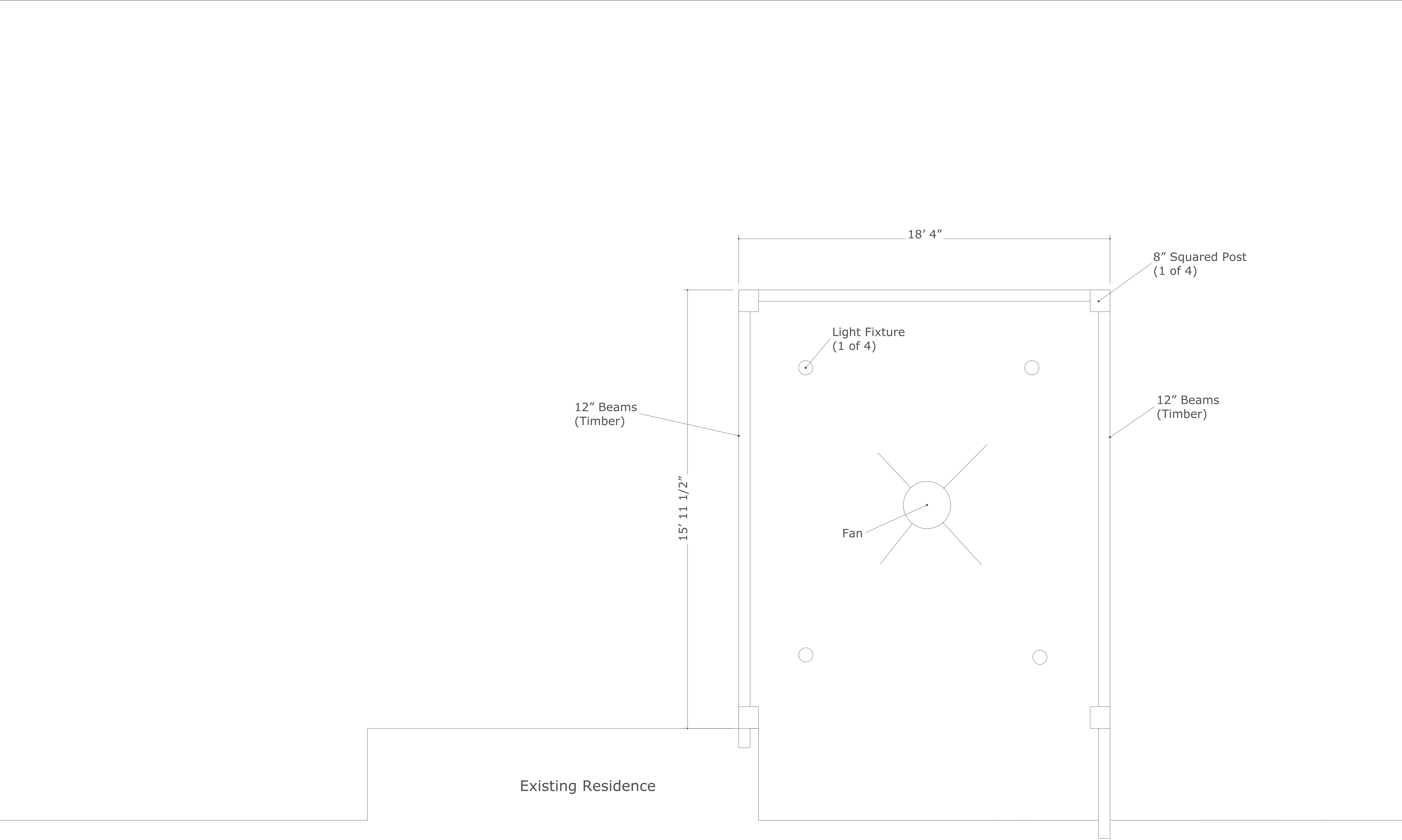
- Requiring us to deconstruct this non-livable, covered back porch will create a financial hardship if we are instructed to remove 9' of the structure to be compliant with the 25' setback requirement.
- This structure was built to give us privacy from our neighbors. Our backyard is landlocked between houses that have second floors that look down into our backyard. There are also cameras and many security lights that shine and record our backyard. This non-livable, back porch offers us privacy from our neighbors. Removing this structure would deprive us of rights commonly enjoyed by other properties in the same district.
- The scale and aesthetic of the non-livable, covered back porch was designed to match our house and roof, with the same pitch and scale.
- There are no special conditions or circumstances that will result from the actions of this variance request.

Addition to Narrative for BOA Variance

Please find attached three additional items:

- 1) Letter of support for variance from north side property owner – Michael Tisher
- 2) Letter of support for variance from west side property owner – Benin Chellamthara Job
- 3) Letter of support for variance from south side property owner – Sudheer Babu Uppala

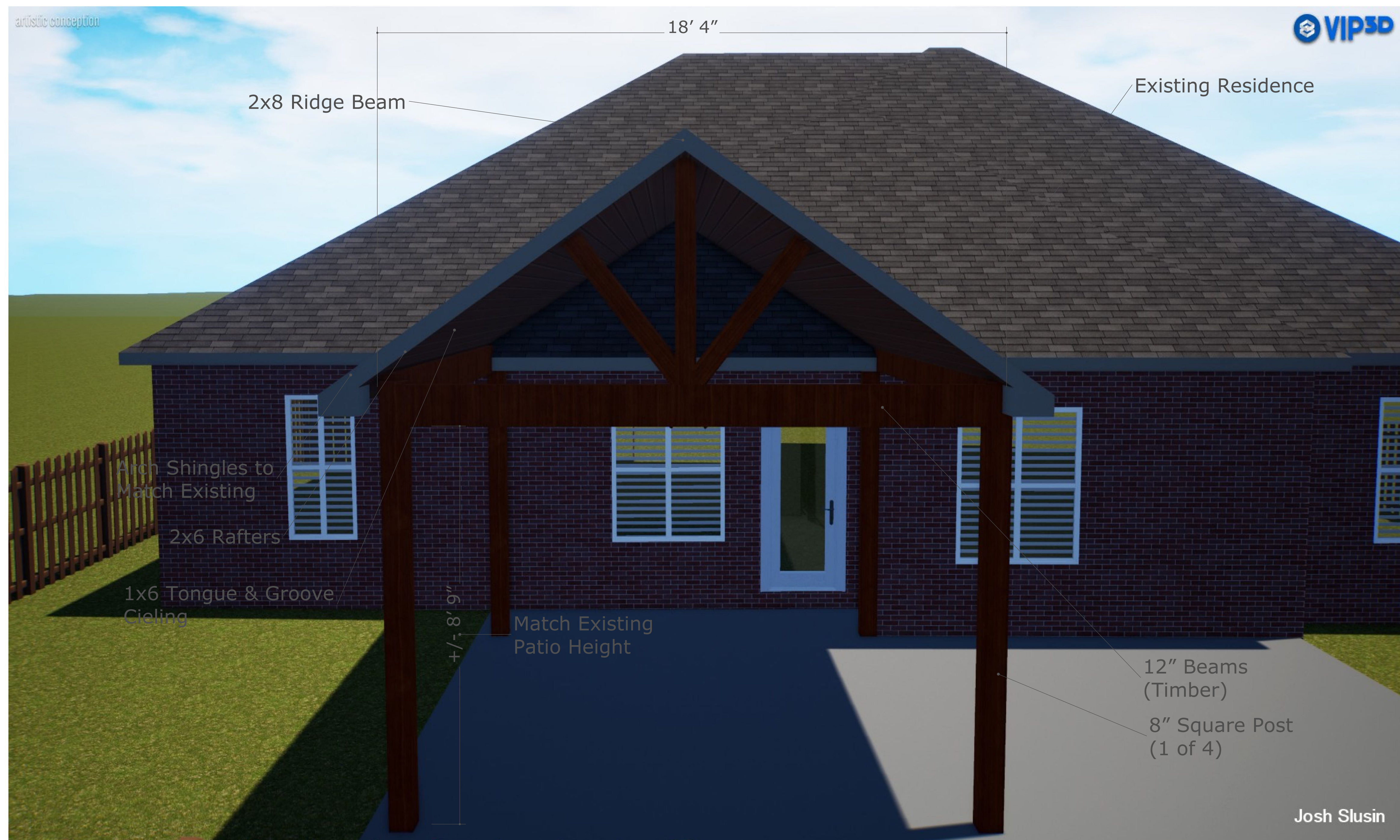




Floor Plan



Side (East) Elevation
(West Elevation Similar)



Rear (South) Elevation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sent: Friday, September 9, 2022 11:42 AM

To: Thomas Adler <tadler@bentonvillear.com>

Subject: Concern regarding variance request - 4600 SW Barton, Bentonville

1. The development at 4600 SW Barton was done without taking any permit, it was done secretly/illegally.
2. They knew they won't get approval if they would have applied for permit for such a wrong thing, they extended the patio to within 12-14 feet of fence line.
3. The variance request now has no strong reasoning. Every home around has cameras for security. This is a fact for everyone. Most camera installers don't install camera to look into someone else house, but to watch own house.
4. By bringing their patio within 10-12 feet of fence they have not left any space for them, they step out of patio into yard onto the fence line.
5. By making a covered patio attached to house and extending so further towards the fence line they are invading other's privacy.
6. If this is approved, city would need to approve any other illegal improvement/development on the same basis.
7. There is no financial hardship here, just excuses to continue to keep something that was not rightly done.
8. Their backyard is facing someone's side yard (cul-de-sac house side is behind their backyard), side setback requirement is 7 feet. They are invading other's privacy by bringing patio so close to
9. This will impact price and selling for the house immediate next to this structure as no one would like to have a house where someone's backyard is so close to fence line and invading privacy.
10. This is a new neighborhood with every house built with permitted easements. Most of the lots are same size averaging little over .2 acres, and most have covered patios including the house at 4600 SW Barton. If they need, they should make the patio to follow the easements everyone has followed.

August 18, 2022

Michael & Kelsey Tisher
4506 SW Barton St
Bentonville, AR 72713

To the City of Bentonville Board of Adjustments:

I am aware of the house plans and variance request on the west side of the property that Joshua and Vanessa Slusin are presenting for 4600 SW Barton Street in Bentonville. I am the owner of 4506 SW Barton Street which is on the north side of the property requesting the variance. This variance will allow the property owner to maintain their current house structure, which I support.

 Date 8-22-22

Michael or Kelsey Tisher

August 18, 2022

Benin Chellamthara Job
4605 SW Crossbow Circle
Bentonville, AR 72713

To the City of Bentonville Board of Adjustments:

I am aware of the house plans and variance request on the west side of the property that Joshua and Vanessa Slusin are presenting for 4600 SW Barton Street in Bentonville. I am the owner of 4605 SW Crossbow Circle which is on the west side of the property requesting the variance. This variance will allow the property owner to maintain their current house structure, which I support.

 Date 08/20/2022

Benin Chellamthara Job

August 18, 2022

Sudheer Babu Uppala
4602 SW Barton St
Bentonville, AR 72713

To the City of Bentonville Board of Adjustments:

I am aware of the house plans and variance request on the west side of the property that Joshua and Vanessa Slusin are presenting for 4600 SW Barton Street in Bentonville. I am the owner of 4602 SW Barton Street which is on the south side of the property requesting the variance. This variance will allow the property owner to maintain their current house structure, which I support.


_____ Date 08/20/22

Sudheer Babu Uppala

RE: concern regarding variance request at 4600 SW BARTON - VAR22-0035

To whom it may concern:

- I read the homeowners variance application narrative online as well as his three letters of support that were submitted to this Board of Adjustments. After reading them, I feel that the homeowner has taken no responsibility for his actions and placed blame on everyone except himself as reasons why this variance should be approved. (the construction company, the proximity of the neighbors, the neighbor's security lights and cameras)
- There are no documents posted online showing that the POA at the time of the construction, RLP, approved the plans for the addition to the house. Per the Edgar Estates covenants that were filed on 08/11/2017, given to the homeowner upon purchase, and that are still in effect, the homeowner must get approval first before construction begins.
 - Covenants p3, section 5, "Before commencing construction, must get approval from the Developer in writing."
 - Covenants p5, section 7, "No building shall be located on any lot nearer to the minimum building setback lines shown on the anticipated final recorded plat. Porches, steps, chimneys, window boxes and other portions of a permitted structure shall not project beyond the minimum setback line,"
 - Had the homeowner submitted his plans to RLP before construction began, RLP, a construction company, would have had the opportunity to speak with the homeowner regarding any violations to the covenants and Bentonville city codes.
- The homeowner's letter states that it would create a financial hardship if he were required to deconstruct the back porch that is in violation of city code setback requirement of 25 feet.
 - Not only did the homeowner not get approval from the Edgar Estates POA before construction, the homeowner did not get approval or construction permits from the city of Bentonville during the process. The homeowner would not be having this hearing if he would have followed these procedures, and his addition would not be in violation.
 - Also, he would not be having this hearing if he would have made sure that the construction company that he hired retained all the necessary permits. The possible financial hardship was directly brought upon by the homeowner himself by not reaching out to the POA and the city to get approval.
 - If this was indeed the construction company's fault, for not pulling permits, the homeowner should be getting the construction company or the construction company's insurance to fix the addition in question to alleviate a possible financial hardship on him.

- Ultimately, it was the homeowner's responsibility to make sure the construction company retained all of the necessary permits to ensure that the addition to his home was within the building codes. Therefore, the homeowner should be held responsible financially for fixing the structure so that it is not out of the guidelines of the city requirements.
 - No homeowner should be allowed to not follow the POA covenants and the city of Bentonville's codes, and no homeowner should be awarded a variance after the fact because they felt like they could do the changes without getting caught.
 - Awarding the homeowner, a variance would show the Edgar Estates neighborhood they don't have to follow the rules of the POA or the city of Bentonville. This could bring down the property values for the neighborhood and the surrounding areas.
- The homeowner states that the addition was done to create backyard privacy from his neighbors. However, the homeowner told me recently, after attending a board meeting on the porch in question, that the fast-growing trees that he planted were to provide privacy from his neighbors for his porch. While I was sitting on the porch, I could still see all the neighbor's yards and could notice no privacy that it would provide to the him. I could see where this outdoor living space could be considered a nuisance to the surrounding neighbors since it extends over the easement and it is set-up for use as an entertainment area.
- The homeowner purchased the residence in March of 2018 when there were only a few houses built. The homeowner knew that his property was surrounded by lots in which 2 story structures would be built. If the homeowner wanted backyard privacy, he should have selected a lot that would have provided him that privacy when the subdivision was completed or not selected a house in a neighborhood. Very few of the lots in the subdivision have backyard privacy and the homeowner's expectation is unreasonable based on the lot location that he selected.
 - My fiancée and I also purchased our residence in March of 2018 and purposely didn't select his house for that issue. There were several similar houses available at that time that would have provided the homeowner backyard privacy if that was important to him.
- The scale and aesthetic of the addition that is in question is irrelevant because it is still in violation of the Edgar Estates covenants and the city code no matter how it looks.
- Granting this variance to the homeowner, who is the current Edgar Estates POA President, will show the other homeowners of the subdivision that they don't need the POA's approval or building permits from the city of Bentonville to make changes to their property. It sets the standard that any homeowner can be non-compliant and just ask for forgiveness later because that is what the POA President was able to do and get away with. Although the board members are in a position of power, they are also homeowners and are not exempt from

following POA rules and regulations. They should even be held to higher standards due to their fiduciary duty to the POA.

- Also, since he took office in September 2021, the POA President has advised homeowners of the changes that they can and cannot make to their property based on the covenants of the POA. Therefore, he should have been fully aware that his home was in violation, even before the city of Bentonville found the violation and issued him a citation.
 - For example, on May 24, 2022, the homeowner, as POA President, denied a request from a fellow homeowner for a concrete pad to be poured on their property with the reasoning via text message to his fellow board members, “We took place of the developers. We are the architectural control committee. The last line states our power. ‘The developer (now us) shall have full power to enforced the Provisions and restrictions herein by any action.’”
- Just like he never asked for approval of the addition from the POA before construction, he also never mentioned his violation to his fellow board members. He only mentioned it to his three surrounding neighbors, none of which are board members. Although it was considerate of him to reach out to his three surrounding neighbors, this variance doesn’t just affect his three surrounding neighbors, it effects the future of the entire neighborhood and could have detrimental long-term effects to the property values of all homeowners.
- I feel that the homeowner should have reached out to the current POA board, for which I am a member, when he received the citation, and been required to submit the response and voting results from the POA board members as a whole to this violation as well. However, there are no documents submitted by the homeowner showing that he did so, and I was never contacted to vote on the issue.
- When I found out about the violation that led to the homeowner’s citation, I tried to inform the property owners of Edgar Estates of his violation via the neighborhood Facebook group to get their input, and my post was removed within minutes and mine and my family’s access to the community neighborhood Facebook group was revoked without any explanation. When I contacted one of the ADMIN of the group, who is one of the homeowners that is applying for this variance, Vanessa Slusin, she reported me to the police for direct messaging her and told them that I had been voted out of the community. This shows me that the homeowners are trying to hide this violation from the entire neighborhood as well as fellow board members and do not care what long-term effects it has on the neighborhood as a whole.