

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
MEETING AGENDA
November 9th, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Registration Link: https://us06web.zoom.us/webinar/register/WN_IOROHWhJTDu75gp0SyJEwA

- I. Call to Order**
- II. Approval of October 26th Meeting Minutes**
- III. New Business**

1. Aurora Subdivision Perimeter Fence

Variance*

SW Awakening Ave ([VAR22-0039](#))

- Fence Location Variance
- This item was tabled during the 10/26 meeting pending more details regarding the applicants amended request.

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**BOARD OF ADJUSTMENT
MEETING MINUTES
October 26th, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Recording Link:

https://us06web.zoom.us/rec/share/SiOuWI3uyuk9_FKLJ7mIVo4Fd78eK8gsirMgdl14T5J9k9E7dHHeAk7gQH_nr44P.B43KX2QmrShirOtx

I. Call to Order

- Called to order by Mr. Kruithof at 4:00pm
- Board Member Present: Sam Pearson, Joe Haynie, Celia Swanson, Dean Kruithof, BJ Phillips
- City Staff Present: Christopher Hyatt, Luke Aitken, Tom Adler

II. Approval of September 28th Meeting Minutes

- Motion by Mr. Haynie to approve the minutes as presented, seconded by Mr. Pearson.
- **Minutes are approved 4-0** with Mr. Kruithof abstaining due to absence at the last meeting.

III. New Business

1. Northwest Assembly Student Center

Variance*

305 SW Unity Blvd ([VAR22-0038](#))

- Sign Location Variance
- Christopher Hyatt reads staff report.
- Mr. Kruithof opens Public hearing.
- Jeff Nelson of Best Sign Group representing applicant, speaks on reason for the request and mentions prior precedent set by variance VAR19-0025 to allow wall signage on NW Assembly's other building on the campus.
- No other members of the public were present to speak on the item. Public hearing closed.
- Discussion among staff and Board members re: precedent.
- Motion by Mr. Phillips Seconded by Mr. Pearson to Approve the request as presented.
- **Request is approved 4-1**, with Ms. Swanson voting no due to the request being directly contrary to the sign code, believes rezoning would be a better option to allow this sign by right.

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2. Aurora Subdivision Perimeter Fence

Variance*

SW Awakening Ave ([VAR22-0039](#))

- Fence Location Variance
- Luke Aitken reads staff report.
- Mr. Kruithof opens the public hearing, no members of the public are present to speak.
- Public hearing closed
- Nate Bachelor of CEI Engineering, representing the applicant, details an amendment to the presented request to allow the perimeter fence in question to be placed along the property lines of lots 18-30 at the northern end of the subdivision.
- Nate states they will either withdraw or alter proposed entryway stone features to comply with separation requirements.
- Mr. Pearson speaks to concerns of bike and pedestrian safety with the fence being flush with the edge of the sidewalk.
- Staff and Board have additional questions regarding fence design.
- Bob David, developer, speaks to answer these questions stating utility conflicts and grade changes as the primary reasons for the request.
- Board members suggest the applicant request to table the request and come back at next meeting with a full exhibit showing exact details of the amended request before a vote is taken.
- Applicant requests to table the item.
- Motion by Mr. Phillips, seconded by Mr. Pearson, to table the item until next meeting (11/9)
- **Request is tabled 5-0**

Motion by Mr. Pearson, seconded by Mr. Haynie to adjourn the meeting.

Meeting Adjourned.

Minutes prepared by: Luke Aitken, Planning Technician

BENTONVILLE

COMMUNITY & ECONOMIC DEVELOPMENT

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR22-0039
Applicant / Current Owner	CEI Engineering / Aurora Development Company LLC
Site Area	+/- 3.03 Acres
Current Zoning	PRD, Planned Residential Development
Variance Request	Land Development Code: Article 1100 Section: 1100.06 Fence and Wall Requirements (g) (2)

This property is located at the NW corner of S Morningstar Road and Scoggins Road and is currently zoned PRD, Planned Residential Development.

Land Development Code Section 1100.06 (g) Fence Location
(2) Adjacent to public right-of-way states a fence or wall shall be placed no closer than five (5) feet to the current or proposed public right-of-way as prescribed within the Master Street Plan.

The applicant is requesting a variance of five feet from the minimum right-of-way separation of five feet, required by code, to allow the construction of a double-sided wood board privacy fence at the right of way line from lot 18 to lot 30 within the Aurora Subdivision.

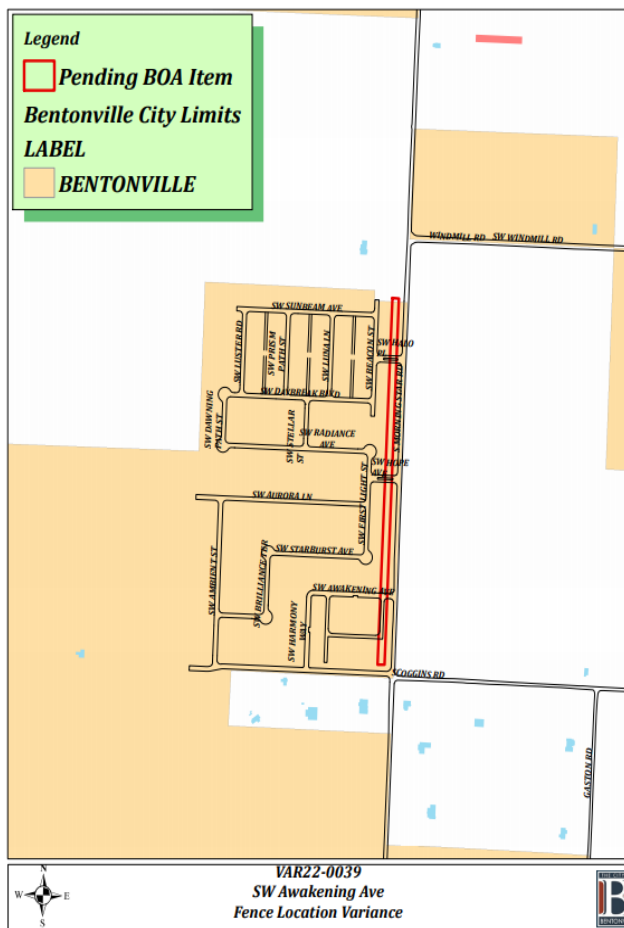
The applicant states the topographic features of the site effectively lower the screening ability of the fence from the adjoining street. Their narrative states this creates a unique hardship as the finished grade of the properties backing up to Morningstar Road slope away from the road surface causing more visibility into the private back yards of adjacent homes (if the fence were placed 5' down the slope as required by code).

It should be noted that both the Bentonville Electric, and Water Departments have reviewed this request and indicated to planning staff that they are not in support of the request. This is because moving the perimeter fence up to the edge of the right-of-way would place electric poles within homeowners fenced in rear yards.

To address this issue, the applicant has indicated within their request, that in areas where the variance applies, the fence will be notched around existing power poles to provide street-side access to the poles as requested by the Bentonville Electric department.

The applicant concluded that, due to the unique topography of the subdivision perimeter, being granted a variance from the right-of-way separation requirements for lots 18-30, would allow Aurora homeowners the same amount of privacy provided by a perimeter fence, as others in surrounding neighborhoods are able to enjoy. It should also be noted that all lots abutting Morningstar Road south of lot 30 will comply with the 5-foot fencing setback requirement.

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



BOARD OF ADJUSTMENT STAFF REPORT

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 an approved fence permit before construction.

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.

BOARD OF ADJUSTMENT STAFF REPORT

Legend



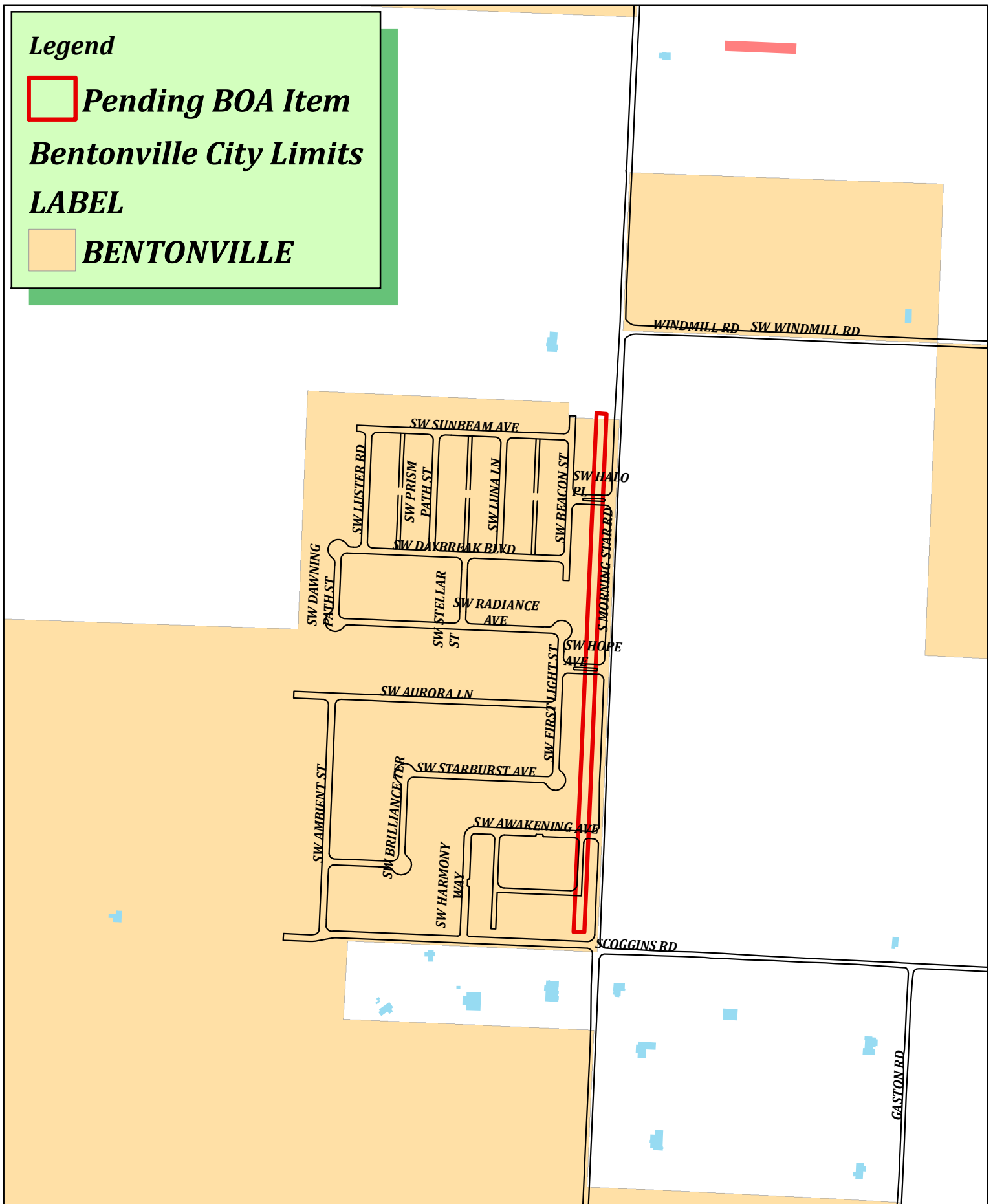
Pending BOA Item

Bentonville City Limits

LABEL



BENTONVILLE



VAR22-0039

**SW Awakening Ave
Fence Location Variance**





*Civil Engineering, Landscape Architecture,
Survey, Planning & Program Management*

3108 SW Regency Parkway
Bentonville, AR 72712
Office: 479.273.9472
Toll-free: 1.800.433.4173
ceieng.com

November 3, 2022

City of Bentonville
Board of Adjustment
305 S.W. "A" Street
Bentonville, AR 72712

RE: Aurora Subdivision Fence Variance Request (revised)

Dear Members of the Bentonville Board of Adjustment,

On behalf of Aurora Development Company, CEI is requesting a variance to the required location of perimeter subdivision fencing with respect to street right of way. Article 1100 Section 1100.06(g)2 requires fences to be offset from public right of way by five (5) feet. Additional sections under that code require no obstructions within the sight triangles at intersections and various requirements for placement around utilities. Setbacks from utilities and sight triangle requirements will be met with this proposal.

The owner proposes to set a double sided wood board privacy fence at the right of way line from lot 18 to lot 30 within the Aurora Subdivision. Lots abutting Morningstar south of lot 30 will comply with the fencing setback requirement.

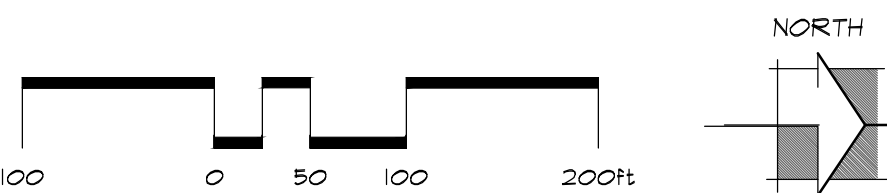
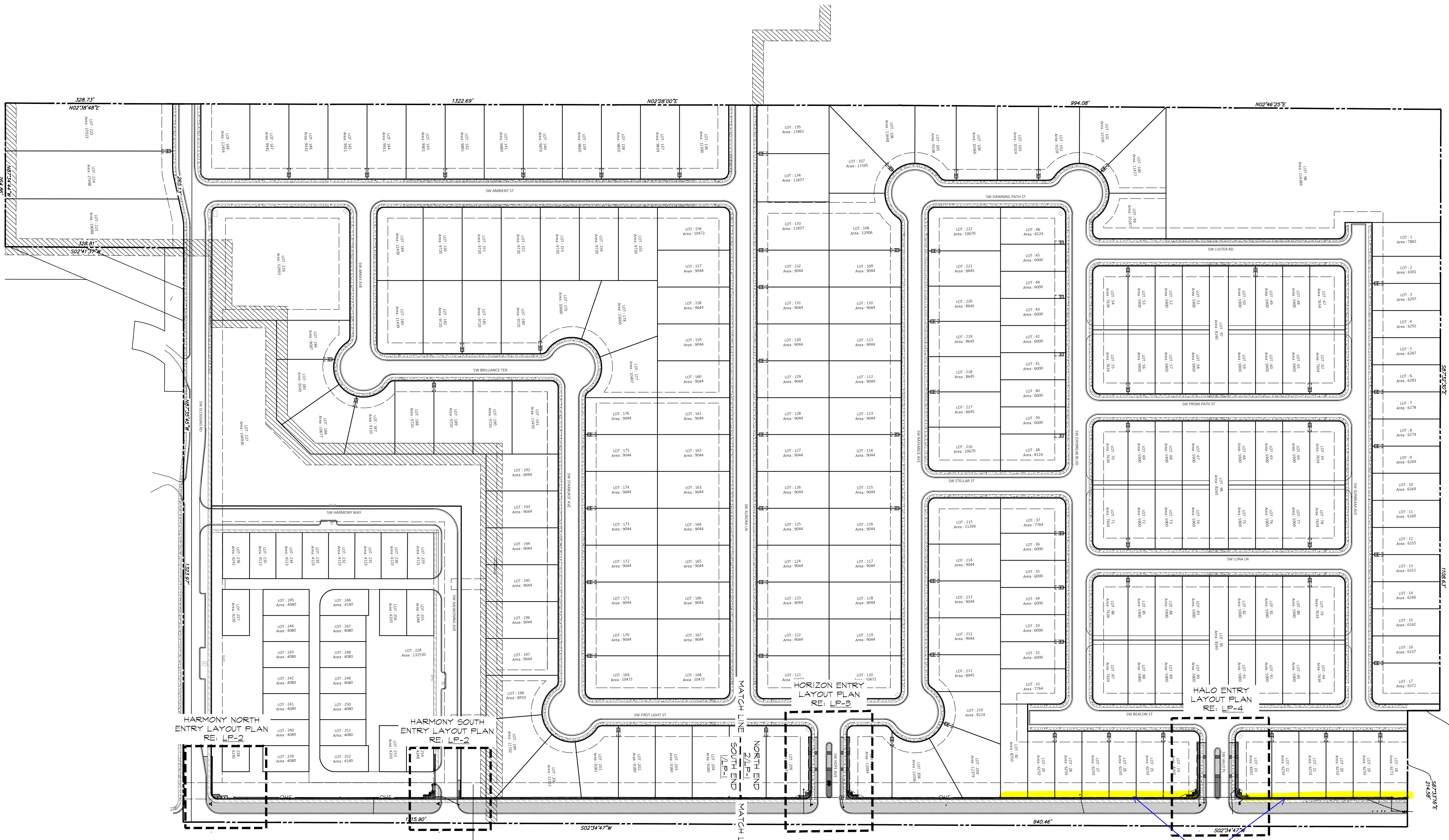
The topographic features of the site create a hardship unique to this property by effectively lowering the screening ability of the fence from the adjoining street. The finished grade of the properties backing up to Morningstar in this area slope away from the road causing more visibility into the private back yards of those homes than if the fence were placed 5' down the slope. Fencing is also proposed to turn the corners into the subdivision entries for a uniform welcoming entry feature to the neighborhood. Fencing and entry features along the roads entering the subdivision will comply with the required fence offset and utility spacing requirements. In areas where the variance is requested, the fence will be notched around the existing power poles to provide street-side access of the poles as requested by the utility department. There are no other utilities along this corridor that would require fencing adjustment.

This request is consistent with similar development such as Woodland Crossing built at the same time in the same proximity of the Aurora Subdivision. We request your consideration and approval of the requested variance for fence placement.

Respectfully submitted,
CEI Engineering Associates, Inc.

Nate Bachelor, PE
Attachments: Aurora subdivision sketch of fence location, photos
cc: Bob David, Developer

1 OVERALL SITE PLAN
SCALE: 1"= 100'-0"



BEFORE
YOU DIG...
1-800-522-6543
CALL OKIE

DUTY OF COOPERATION

P.D.G. LLC, dba PLANNING DESIGN GROUP IN THIS STATEMENT SHALL BE KNOWN AS ARCHITECT. RELEASE OF THESE PLANS CONSTITUTES FURTHER COOPERATION AMONG THE OWNER, HIS CONTRACTOR AND THE ARCHITECT. DESIGN AND CONSTRUCTION ARE COMPLEX. ALTHOUGH THE ARCHITECT AND HIS CONSULTANTS HAVE PERFORMED THEIR SERVICES WITH DUE CARE AND DILIGENCE, THEY CANNOT GUARANTEE PERFECTION. COMMUNICATION IS IMPERFECT AND EVERY CONTINGENCY CANNOT BE ANTICIPATED. ANY AMBIGUITY OR DISCREPANCY DISCOVERED BY THE USE OF THESE PLANS SHALL BE REPORTED IMMEDIATELY TO THE ARCHITECT. FAILURE TO NOTIFY THE ARCHITECT OF DISCREPANCIES MISUNDERSTANDING AND INCREASES CONSTRUCTION COSTS. A FAILURE TO COOPERATE BY SIMPLE NOTICE TO THE ARCHITECT SHALL RELIEVE THE ARCHITECT FROM RESPONSIBILITY FOR ALL CONSEQUENCES. CHANGES MADE FROM THE PLANS WITHOUT CONSENT OF THE ARCHITECT ARE UNAUTHORIZED, AND SHALL RELIEVE THE ARCHITECT OF RESPONSIBILITY FOR ALL CONSEQUENCES ARISING OUT OF SUCH CHANGES.

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BASE INFORMATION

ALL BASE INFORMATION INCLUDING EXISTING DRAINAGE WAYS, EXISTING CONTOURS, EXISTING VEGETATION, EXISTING STRUCTURES AND STREETS WERE PROVIDED TO PLANNING DESIGN GROUP BASED FROM DATA COLLECTED BY GEI ENGINEERING ASSOCIATES, INC., BENTONVILLE, AR.

PDG
PLANNING DESIGN GROUP
LANDSCAPE ARCHITECTURE •
RECREATIONAL DESIGN • LAND PLANNING
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918.628.1255 918.628.1256 FAX
WWW.PLANNINGDESIGNGROUP.COM

OWNER / DEVELOPER:

**LEADERSHIP
PROPERTIES LLC.**
7304 S. Yale Ave.
TULSA, OK 74136
(918) 808-6792

10-11-22

JAMES C. CROSBY, ASLA
LANDSCAPE ARCHITECT OF RECORD

PROJECT INFORMATION

PROJECT ADDRESS:

MORNINGSTAR ROAD,
BENTONVILLE, ARKANSAS

PROJECT NO.

DATE 10-11-2022

DRAWN BY

CHECKED BY

AK CC

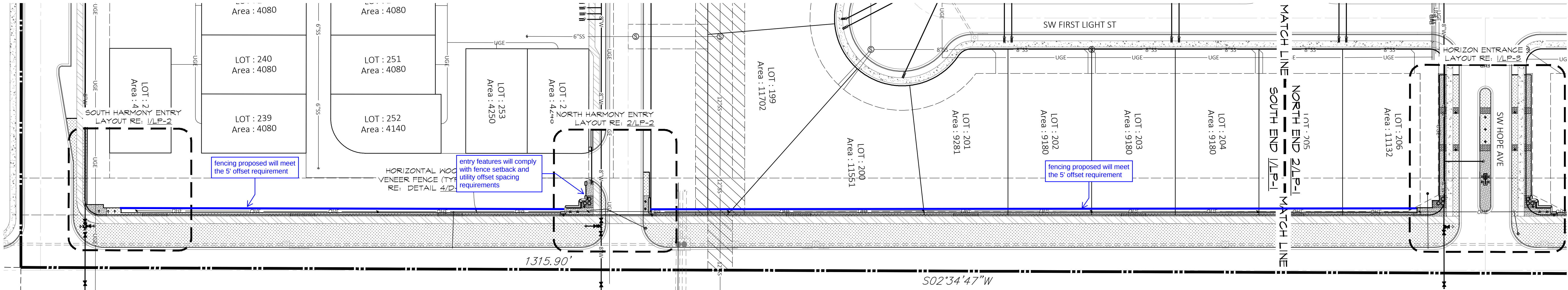
AURORA ENTRIES
BENTONVILLE, AR

ISSUE/ REVISIONS

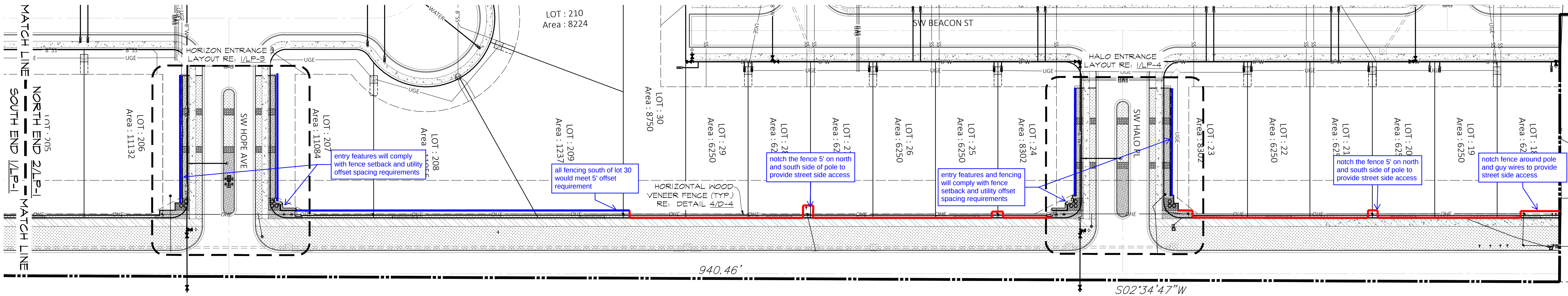
10-11-2022 REVISED 100% SET

OVERALL SITE
PLAN

SP-1



1 SOUTH END STREET FRONTAGE - PLAN VIEW
SCALE: 1" = 40'-0"



2 NORTH END STREET FRONTAGE - PLAN VIEW
SCALE: 1" = 40'-0"

PDG
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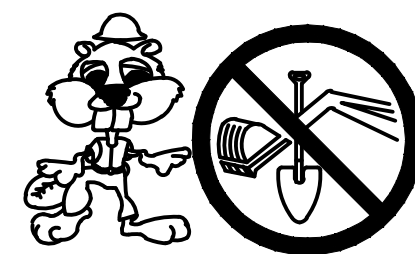
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MORNINGSTAR ROAD, BENTONVILLE, ARKANSAS	
PROJECT NO.	
DATE	10-11-2022
DRAWN BY	CHECKED BY
AK	CC

AURORA ENTRIES
BENTONVILLE, AR

ISSUE/ REVISIONS	
10-11-2022	REVISED 100% SET

STREET FRONTAGE
LAYOUT PLAN

LP-1



BEFORE
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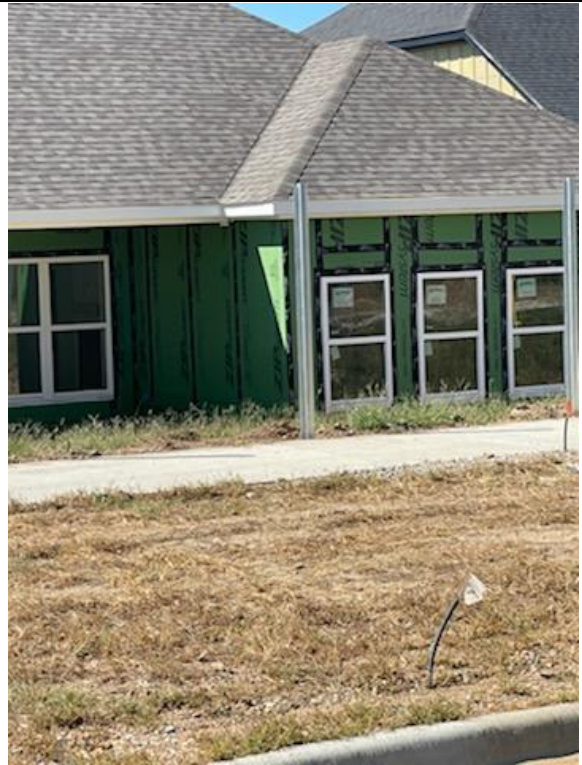
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Morningstar Fencing grade change



Morningstar Fencing grade change



Woodlands Crossing Fence



Woodlands Crossing Fence

PREPARED BY:



CEI Engineering Associates, Inc.

3108 SW Regency Pkwy, Suite 2
Bentonville, Arkansas

(479) 273-9472 or 1-800-433-4173 / Fax (479) 273-0844

Exhibit Description: Photographs

Job Number: 30234

City, State: Bentonville AR

Type of Work: Variance Exhibit

EXHIBIT NUMBER

EX1.01