



**BOARD OF ADJUSTMENT
MEETING AGENDA
December 14, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Meeting Link: <https://us06web.zoom.us/j/85784146516>

- I. Call to Order**
- II. Approval of November 23rd Meeting Minutes**
- III. New Business**

1. Brittain

302 SW E Street ([VAR22-0042](#))

- Fence setback

Variance*

2. Variance Approval Checklist

- Discussion around criteria of approval for variances

Discussion Item



**BOARD OF ADJUSTMENT
MEETING MINUTES
November 23, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Recording Link:

https://us06web.zoom.us/rec/share/w2ORnCj_X0uzh057QFoQdVXnKR_UUF8nTdMCeDhvI4RLItL0ZWofGXQm60gNOkWg.35l6nsiLP4zHGvMg

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, Tom Adler

II. Approval of November 9^h Meeting Minutes

- Mr. Kruithof and Ms. Swanson proposed two changes to the minutes to correct typos.
- Ms. Swanson motions to approve the meetings minutes with the proposed changes. Seconded by Mr. Pearson.
- Minutes approved 5-0.

III. New Business

- Mr. Kruithof wants to remove items on the agenda. Wants to remove item number 3, states it is more of a state issue than a city issue; city has no jurisdiction over.
- Item 3 of new business is removed from the agenda.
- Mr. Kruithof wants to move item 2 of new business up to first item.
- Item 2 of new business will be considered first.

1. Zoning Code Variances

Discussion Item

- Discussion - Board of Adjustments Standards of Approval
- Mr. Kruithof reviews a variance checklist and explains how to use it to the board members.
- Board suggests staff consult City Council to consider change in verbiage of variance approval criteria to allow BOA ability to rule on cases that are not "black and white".
- Mr. Kruithof recommends bringing back variance check list for review at next meeting.

2. Sonic- South Walton Blvd**Variance***208 S Walton Blvd ([VAR22-0040](#))

- Front setback variance – drive-in canopy
- Side setback variance – drive-in canopy
- Christopher Hyatt reads staff reports.
- Mr. Kruithof opens the public hearing; no members of the public are present to speak. Public hearing closed.
- There is discussion between staff, board members and applicant regarding the details of the proposed site design and its impact on traffic along Walton Blvd.
- Mr. Phillips motions to approve the request as presented. Seconded by Mr. Haynie.
- Approved 5-0.

3. Sonic- South Walton Blvd**Variance***208 S Walton Blvd ([VAR22-0041](#))

- Building separation variance – drive-in canopy
- This item was removed from the agenda at the request of Mr. Kruithof.

Adjournment

- Mr. Phillips motions to adjourn the meeting. Seconded by Ms. Swanson.
- Meeting adjourned.



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- I. Call to Order**
- II. Approval of November 23rd Meeting Minutes**
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1. Brittain

302 SW E Street ([VAR22-0042](#))

- Fence setback

Variance*

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- Discussion around criteria of approval for variances

Discussion Item



Mark Brittain

302 SW E Street

BOA Date: 12/14/2022

Reviewer: Luke Aitken, Planning Technician

Project Number	VAR22-0042
Applicant / Current Owner	Mark Brittain
Site Area	+/- 0.30 Acres
Current Zoning	DN-1, Downtown Low-Density Residential
Variance Request	Land Development Code Article 1100, Development Standards, Section 1100.06 Fence and Wall Requirements, Subsection (g) Fence Location (2) Adjacent to public right-of-way
Related Projects	LS22-0032



Property Description

This property is located at 302 SW E Street and is currently zoned DN-1, Downtown Low-Density Residential.

Regulation

According to Land Development Code Article 1100, Development Standards, Section 1100.06 Fence and Wall Requirements, Subsection (g) (2) Fence location: 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. Compliant placement of the proposed fence would be 30 feet from the centerline of SW Glover St.

Variance Request

The applicant is requesting a variance of five feet from the minimum five-foot fence from right-of-way separation required by code, to allow a rear yard fence to be constructed along the edge of the proposed R.O.W boundary and 5 feet east of the proposed sidewalk.

Background

According to the applicant's narrative, this variance is being requested to replace a rear yard fence around a newly renovated house and adjacent to a new sidewalk to be constructed along SW Glover St. The applicant is concerned about the preservation of an existing old growth tree, which may be cut down if the fence were located exactly 5 feet off the proposed right-of-way boundary as required by code. If the fence was placed directly on the right-of-way line the existing tree would remain undisturbed and behind the fence.

The applicant concludes that this variance, in addition to protecting a large existing tree, would also allow the new rear fence to tie into the existing neighboring fences without any breaks or re-routes.

A lot split (LS22-0032) is also currently in review for the property in question, and if approved by planning commission and accepted by city council, would dedicate adequate right of way of 25 feet along the east side of SW Glover Street. This dedication would require the new fence to be located a minimum of 30 feet from the centerline of SW Glover St.

Precedent & Staff Recommendation

In April of 2017 an identical request was brought to the Board regarding 406 SW E Street, to allow a replacement fence to be constructed with 0 feet of separation from right of way along SW Glover. This request was withdrawn by the applicant during the meeting and the Board recommended bringing the fence into compliance if it were to be replaced.

Staff recommends the fence be moved east 5 feet or more, from the applicants currently proposed location in the attached site plan, to comply with the requirements of the land development code. Staff also recommends the applicant consult with City Staff to design the proposed sidewalk in such a way that the existing trees in question may potential be preserved.

Public Comment

Staff **HAS NOT** received public comment regarding this request.

See Conditions of Approval below

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 fence permit before construction begins.
3. The approved variance shall be valid only if the related lot split is approved by Planning Commission and accepted by City Council, dedicating appropriate right of way along SW Glover Street.

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.

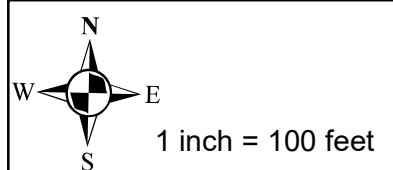
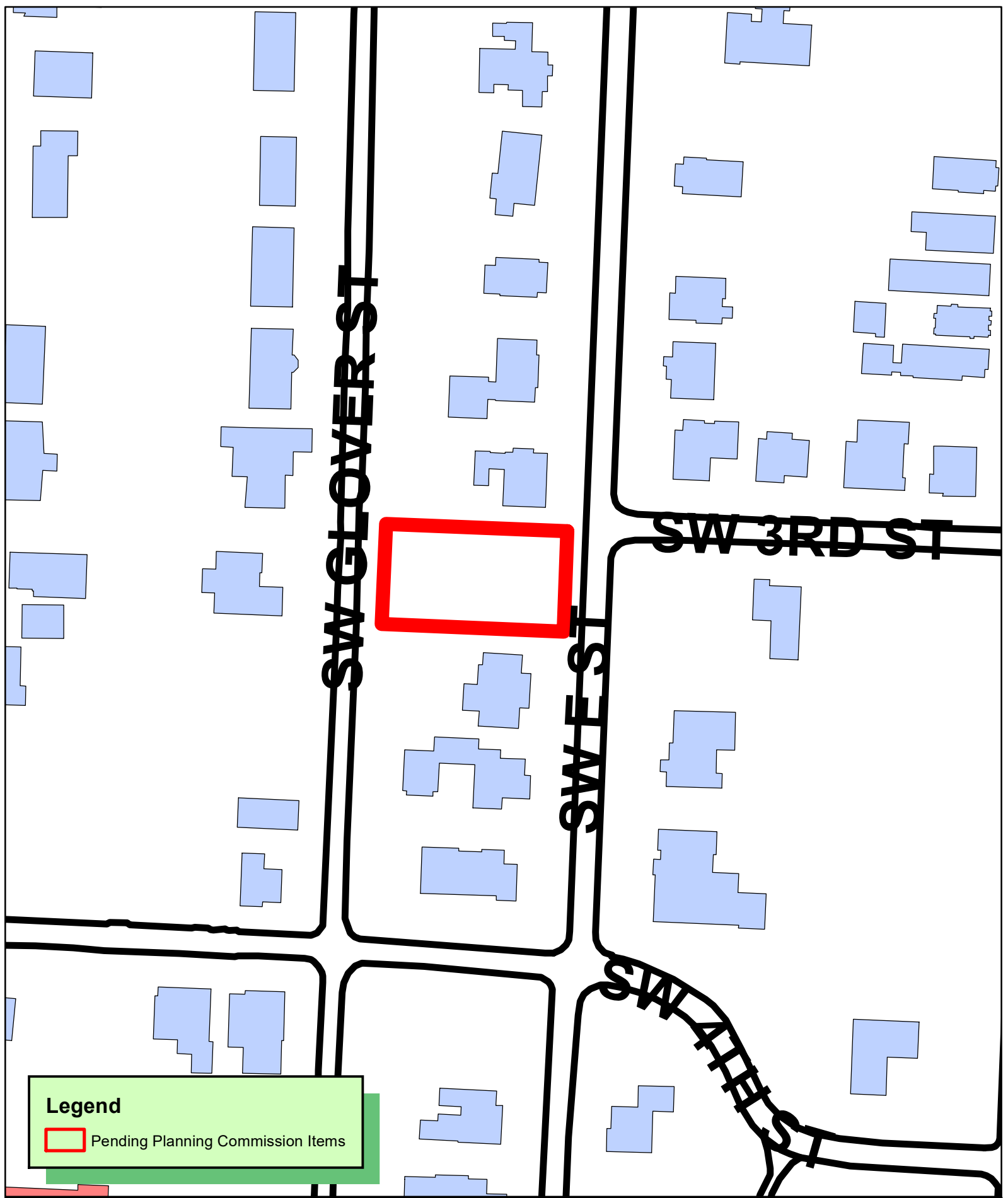
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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.

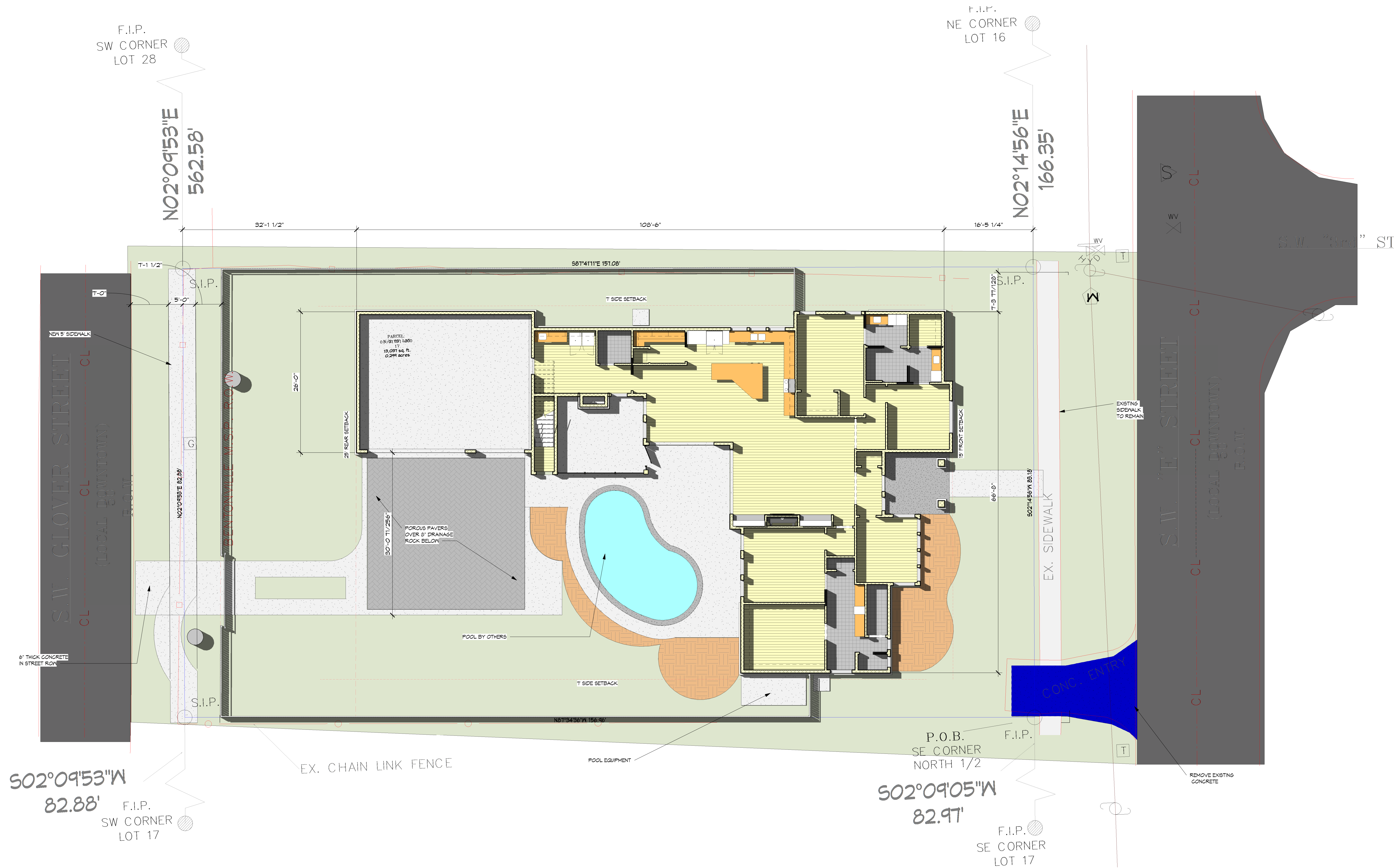
(5) *Conditions.* In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards that it deems necessary or desirable. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of 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.



LS22-00328 16/222
LOT SPLIT
CLARKS ADDITION
PART OF LOT 17 CREATING LOT 31





1 SITE PLAN
1/8" = 1'-0"

PRELIMINARY
NOT FOR CONSTRUCTION

Burris
Architecture
8200 Tiger Blvd, Suite 4, Bentonville, Ar 72712
479-319-6045

BRITAIN HOME
302 SW E ST
BENTONVILLE, AR

DATE
7-13-22
JOB NO.
22029
REVISIONS

AS1
FENCE DISCUSSION

THIS DRAWING IS PROVIDED AS AN INSTRUMENT OF SERVICE BY THE ARCHITECT. IT IS THE PROPERTY OF THE ARCHITECT AND SHALL BE RETURNED TO THE ARCHITECT UPON COMPLETION OF THE PROJECT. NO PART OF THIS DRAWING SHALL BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE PRIOR WRITTEN CONSENT OF THE ARCHITECT. ALL DIMENSIONS, SPECIFICATIONS, MATERIALS, AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THIS DRAWING. THE ARCHITECT ASSUMES NO LIABILITY FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS DRAWING. THE ARCHITECT'S OFFICE IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS DRAWING.

Board of Adjustments - 302 SW E Street Fence

- The existing fence at the back of our property at 302 SW E Street must be removed under ordinances for new construction. Fence is located on east side of SW Glover St.
- New sidewalk is required to be installed between the existing street pavement and the boundary of the new Master Street Plan ROW.
- New, relocated fence must be no closer than 5 feet of the new sidewalk.
- Distance requirements of city ordinances places the new fence directly inline with a massive tree.
- Precedent exists at 400 & 406 SW E Street, that also back up to SW Glover, where the new sidewalks were installed 6 feet from the edge of the pavement.
- I'm requesting installing new sidewalk approximately 7 feet from the pavement edge. New 5-foot sidewalk will leave almost exactly 5 feet to the west side of the tree mentioned above where the new fence will be located.
- Location of the new fence in front of the tree would allow the fence to not have to break or re-route and directly tie into neighbors fence and run completely strait across my property.

CITY REQUIRED NOTES:

1. SIDEWALKS SHALL BE THE RESPONSIBILITY OF THE BUILDER / OWNER AT THE TIME OF BUILDING PERMIT ISSUANCE.
2. OWNER / DEVELOPER SHALL COORDINATE WITH ALL LOCAL UTILITIES TO INSURE THAT EACH LOT HAS WATER, SEWER AND ELECTRIC SERVICE.
3. THERE MAY NOT BE FENCES OR ANY OTHER STRUCTURES BUILT IN ANY DRAINAGE EASEMENTS.
4. BEFORE ANY WORK IN THE RIGHT-OF-WAY COMMENCES, CONTRACTOR AND OR OWNER IS TO OBTAIN RIGHT-OF-WAY PERMIT FROM THE CITY OF BENTONVILLE TRANSPORTATION DEPARTMENT.
5. ALL STRUCTURES MUST MAINTAIN MINIMUM OF 20' CLEARANCES FROM ALL ELECTRIC LINES.

FLOOD CERTIFICATION

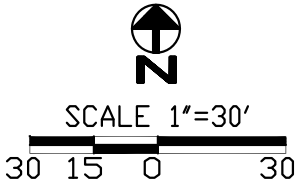
THIS PROPERTY DOES NOT LIE IN FLOOD ZONE AE OR A, AS SHOWN ON FEMA PANEL #05007C0255 K, DATED JUNE 05, 2012.

BASIS OF BEARING

ARKANSAS STATE PLANE COORDINATE SYSTEM, CITY OF BENTONVILLE, AR CONTROL MONUMENTS (7 & 56).

SETBACK CHART: DN-1 ZONING

BUILDING TYPE	FRONT YARD		SIDE YARD				REAR YARD
			EXTERIOR SIDE YARD		INTERIOR SIDE YARD		
	MIN.	MAX.	MIN.	MAX.	DETACHED YARD	ATTACHED YARD	
SINGLE-FAMILY AND TWO-FAMILY	15'	25'	15'	—	7'	0'	25'



- LEGEND**
- F.I.P. FOUND IRON PIN
 - S.I.P. SET IRON PIN (5/8" W/CAP)
 - POWER POLE
 - BUILDING SETBACK
 - MASTER STREET PLAN R.O.W.
 - EX. WATER METER
 - POWER POLE
 - AT&T VAULT
 - GAS METER
 - WATER VALVE
 - FIRE HYDRANT
 - SEWER MANHOLE



VIC. MAP

PROPERTY DESCRIPTION (PARENT)

THE NORTH 1/2 OF LOT 17 IN CLARK'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS.

PROPERTY DESCRIPTION (LOT 31)

NEW LOT 31 IN CLARK'S ADDITION TO THE CITY OF BENTONVILLE, BENTON COUNTY, ARKANSAS, FURTHER DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF NEW LOT 31, THENCE SOUTH 02°14'56" WEST 83.18 FEET; THENCE NORTH 87°34'36" WEST 150.43 FEET TO THE EAST RIGHT OF WAY OF SW GLOVER STREET; THENCE ALONG SAID RIGHT OF WAY, NORTH 02°32'54" EAST 82.89 FEET; THENCE SOUTH 87°41'11" EAST 150.00 FEET TO THE POINT OF BEGINNING, CONTAINING 0.286 ACRES MORE OR LESS.

RIGHT OF WAY TO BE DEDICATED

BEGINNING AT THE NW CORNER OF THE NEW LOT 31, THENCE SOUTH 02°32'54" WEST 82.89 FEET; THENCE NORTH 87°34'36" WEST 6.53 FEET; THENCE NORTH 02°09'53" EAST 82.88 FEET; THENCE SOUTH 87°41'11" EAST 7.08 FEET TO THE POINT OF BEGINNING, CONTAINING 0.013 ACRES MORE OR LESS.

SITE ADDRESS:

302 SW "E" STREET
BENTONVILLE, ARKANSAS
ATLAS PAGE = 403/403B

LOT SPLIT OF A PORTION OF THE NORTH 1/2 OF LOT 17 OF CLARK'S ADDITION, CREATING LOT 31, CLARK'S ADDITION, BENTONVILLE, ARKANSAS		REVISIONS		
		No.:	BY:	DATE:
OWNER: MARK BRITTAIN P.O. BOX 961009 FORT WORTH, TX 76161		#1	Z.S.	5/23/22
		#2	B.W.	7/8/22
366-7989 OR 273-7989 DAVID B. PLATZ LAND SURVEYOR P.O. BOX 223 BENTONVILLE, AR 72712		DRAWN BY:	DBP/ZHS	DATE: 12/17/21
		CHECKED BY:		JOB No.: 2021558
		SCALE:	1"=20'	SHEET: 10

CERTIFICATE OF APPROVAL

PURSUANT TO THE BENTONVILLE LAND DEVELOPMENT CODE AND ALL OTHER CONDITIONS AND APPROVAL HAVING BEEN COMPLETED, THIS DOCUMENT IS HEREBY ACCEPTED. THIS CERTIFICATE IS HEREBY EXECUTED UNDER THE AUTHORITY OF THE SAID RULES AND REGULATIONS.

DATE OF EXECUTION:

SIGNED:

MAYOR

CITY CLERK

PLANNING COMMISSION CHAIRMAN

CERTIFICATE OF OWNERSHIP

WE, THE UNDERSIGNED, OWNERS OF THE REAL ESTATE SHOWN AND DESCRIBED HEREIN, DO HEREBY CERTIFY THAT WE HAVE LAID OFF, PLATTED, AND SUBDIVIDED AND DO HEREBY LAY OFF, PLAT, SUBDIVIDE SAID REAL ESTATE IN ACCORDANCE WITH THIS PLAT AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC THE STREETS, ALLEYS, DRIVES, EASEMENTS, ETC. AS SHOWN ON SAID PLAT.

DATE OF EXECUTION

SIGNED:

NAME AND ADDRESS:

PRINT NAME:

SOURCE OF TITLE: D.R. PAGE:

STATE OF ARKANSAS)

COUNTY OF BENTON)

SWORN TO AND SUBSCRIBED BEFORE ME THIS DAY OF 2022.

NOTARY PUBLIC SIGNATURE

SURVEYOR NOTES:

1. PARENT DEED IS A WARRANTY DEED FILED ON NOVEMBER 29, 2021 & FOUND AT BOOK L2021 AT PAGE 89710.
2. PROPERTY COUNTY TAX PARCEL #01-01701-000
3. THE CURRENT ZONING FOR THE PROPERTY IS RESIDENTIAL (R-1). SETBACKS SHALL BE PER THE CURRENT ZONING DISTRICT AS STATED IN THE MOST RECENT CITY OF BENTONVILLE ZONING CODE. FOR MORE INFO VISIT WWW.BENTONVILLEPLANNING.COM OR CALL THE PLANNING DEPARTMENT @ 479-271-3122.
4. AT THE TIME OF THIS SURVEY, THIS PROPERTY IS NOT IN CONFORMITY TO THE CURRENT CITY OF BENTONVILLE STANDARDS.

SURVEYOR NOTES:

ALL EASEMENTS AVAILABLE TO THE SURVEYOR ARE SHOWN, TO FIND ANY/ALL EASEMENTS OF RECORD A TITLE SEARCH IS REQUIRED.

CERTIFICATE OF ACCURACY

I, DAVID B. PLATZ, HEREBY CERTIFY THAT THIS PLAT CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME AND BOUNDARY MARKERS AND LOT CORNERS SHOWN HEREON ACTUALLY EXIST AND THEIR LOCATION, TYPE AND MATERIAL ARE CORRECTLY SHOWN AND ALL MINIMUM REQUIREMENTS OF THE ARKANSAS MINIMUM STANDARDS FOR LAND SURVEYORS HAVE BEEN MET.

DATE OF EXECUTION:

SIGNED:

REGISTERED LAND SURVEYOR
NO. 1553
STATE OF ARKANSAS



Board of Adjustment Record of Findings

Board Member _____

Dissapproval _____

Approval _____

Project Number: _____ Project Name: _____

Yes	No	
		<i>Muni Code Se. 301.10(c)1 requires applicant to demonstrate:</i>
		That special conditions and circumstances exist, peculiar to the land, structure or building involved and not applicable to other areas in the same district.
		That a literal interpretation of the code deprives the applicant of rights commonly enjoyed by others in the area.
		That special conditions are not self created.
		That granting the variance will not confer any special privilege.
		<i>Muni Code Se. 301.10(c)2-6 further states that:</i>
		Other areas shall not be considered when approving.
		That the request is the minimum possible variance.
		That the variance will be in harmony with the intent of the code, not detrimental to public welfare.
		Variances shall not be granted for uses.

Signature of Board Member _____

Date _____