



**BOARD OF ADJUSTMENT
MEETING AGENDA
February 22th, 2023
Bentonville City Hall
305 SW A St
4:00 PM**

Meeting Link: https://us06web.zoom.us/webinar/register/WN_NTLbwLSSXmZA5I8rm6dZg

- I. Call to Order**
- II. Approval of February 8th Meeting Minutes**
- III. New Business**

1. Chris Conway
327 SW 4th St ([VAR23-0004](#))

- Fence Setback Variance

Variance*



**BOARD OF ADJUSTMENT
MEETING MINUTES
February 7, 2023
Bentonville City Hall
305 SW A St
4:00 PM**

Recording Link:

https://us06web.zoom.us/rec/share/3N22pfC7g_VrZPl2qgQ6nh6Xw8LcDkFtojDMxEgDleR0iob_MdwdWnl--bcMzZ-B.Mn7ko5Q1GGvG6M2g

I. Call to Order

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

II. Approval of January 11th Meeting Minutes

- Pearson motions to approve the meetings minutes as presented, second by Haynie.
- Minutes approved 5-0.

III. New Business

1. Jacobs Group

Variance*

1100 Fillmore Street ([VAR23-0003](#))

- Fence Setback Variance
 - Mr. Gavrielides reads the staff report.
 - Chairman Kruithof opens the public hearing; no members of the public are present to speak. Public hearing closed.
 - The applicant reads and updated narrative from what was provided in the staff report.
 - Swanson asks applicant why this is a requirement to build the fence. Applicant states that it is for aesthetic reasons.
 - Darren Warren states that the fence was built before he could review the fence permit that the applicant submitted.
 - Applicant states other properties in the downtown area that have fences closer than 5 feet to the sidewalk.
 - Mr. Adler states Section 301.10.c.2 of the Land Development Code stating: 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.

- Phillips asks if fence is tied to the Certificate of Occupancy, Mr. Warren states that it is.
- Motion to Deny as presented by Swanson, Second by Haynie
- Variance is Denied 4-1.
- Chairman Kruithof states that Planning shall work together with the applicant to approve of their Certificate of Occupancy.

Adjournment

- Pearson motions to adjourn the meeting. Seconded Haynie.
- Meeting adjourned.

BOARD OF ADJUSTMENT STAFF REPORT



Chris Conway

327 SW 4th Street

BOA Date: 2/22/2023

Reviewer: Bradley Gavrielides – Planning Technician

Project Number	VAR23-0004
Applicant / Current Owner	Chris Conway
Site Area	+/- 0.24 Acres
Current Zoning	DN-2, Downtown Medium-Density Residential
Variance Request	Zoning Code Article: Article 1100 Development Standards Section: Sec 1100.06 Fence And Wall (g) Fence Location (2) Adjacent to public right-of-way. Section: Sec 1100.06 Fence And Wall (h) Fence design standards (1) Fence Height (c) Side exterior yard.
Related Projects	RPOOL22-0012

Property Description

This property is located at 327 SW 4th Street and is currently zoned DN-2, Downtown Medium-Density Residential.

Regulation

Zoning Code Article 1100 Development Standards, Sec 1100.06 Fence And Wall (g) Fence Location (2) Adjacent to public right-of-way, requires a minimum setback of 5 feet from the Right of Way boundary.

Zoning Code Article 1100 Development Standards, Sec 1100.06 Fence And Wall (h) Fence design standards (1) Fence Height (c) Side exterior yard, allows a maximum height of 4 feet for a side yard fence.

Variance Request

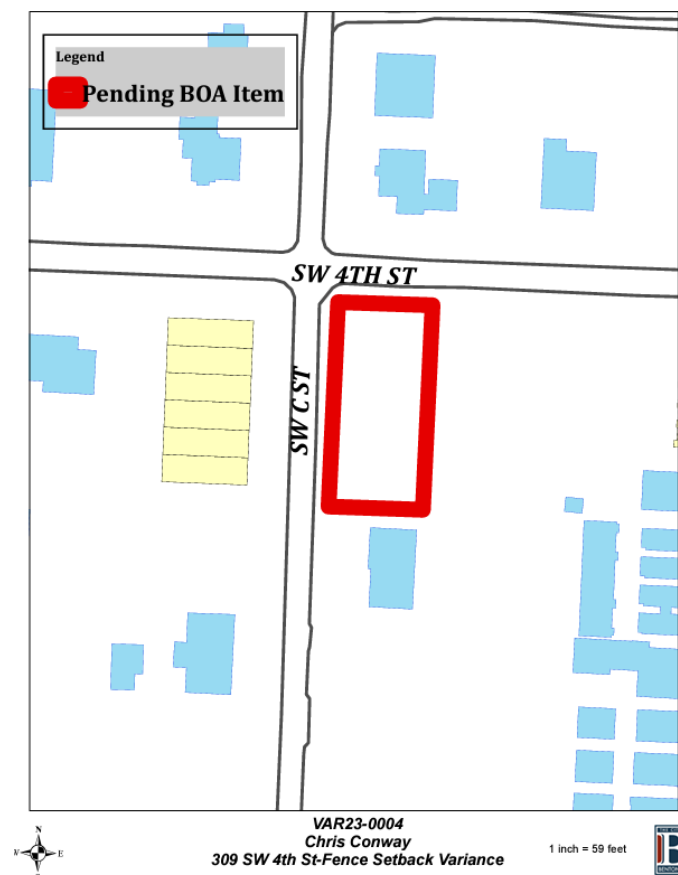
The applicant is requesting a variance of 4 feet from the minimum rear setback of 5 feet from the Right of Way boundary, required by code, to allow the fence to be built 1 foot from the Right of Way boundary. The applicant is also requesting a variance of 4 feet from the maximum side yard fence height of 4 feet, required by code, to build an 8-foot-tall side yard fence for pool privacy along SW C Street. The East side of the property shares a fence with the neighboring property of 319 SW 4th Street. The fence between these two properties only protrudes approximately halfway up the property line, ending at the garage of 319 SW 4th Street. The applicant is proposing to continue the 8-foot fence up to the 25-foot setback from SW 14th Street as well.

Background

The applicant states that they want to create a more private pool area on the west side yard of their house. The City approved the permit for a pool to be built 5 feet from the right of way line without considering the fencing requirement for the pool. Per code, a minimum 48-inch-high fence is required surrounding a pool or spa. The applicant states that there is a 12-inch-wide stone coping around the pool with concrete up to 2 feet below the grade. The applicant states that the fence will require 6x6 posts and will need to be 2 feet into the grade with 12 inches of footing around them.

The applicant states that the 8-foot fence would provide more privacy for the pool area and will not interfere with the 25 foot sight triangle setback from the intersection of SW C Street and SW 4th Street.

- A. Special Conditions and circumstances exist which are specific to the proposed project. The pool plans were approved without the fence being accounted for.



BOARD OF ADJUSTMENT STAFF REPORT

Public Comment

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

4. The front fence must be 5 feet off of the Right of Way line.

Conditions of Approval

If approved, the following conditions shall apply:

1. The approved variance shall be for the proposed layout, minus the other conditions, as provided by the applicant within this application.
2. The applicant must obtain a fence permit before construction.
3. The fence must comply with Article 1100 Development Standards, Sec 1100.06 Fence and Wall (j) Fences for pools and spas.

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.

Legend



Pending BOA Item

SW 4TH ST

SW C ST

VAR23-0004

Chris Conway

309 SW 4th St-Fence Setback Variance

1 inch = 59 feet



To whom it may concern,

We are requesting a variance due to a hardship with our fence having to be a 5' setback from the right of way. Our trees and swimming pool will not allow this setback, so we are asking to be 1' off the right of way and 8' tall to provide privacy for the pool. We will stay back 25' from the intersection for the Sight Triangle. The hardship was created when the pool subcontractor submitted the site plan showing the pool to be built 5' from the property line and the fence being built on the property line. The City approved the permit, and this is how the pool was built. You can see on the drawing provided that the pool was built 5' from the property line. When the pool was being constructed, it had some soft spots in the dirt. The pool contractor had to dig these spots out and fill them with concrete up to 2' underground. There is also a 12" stone coping around the pool. When the fence is built, it will require a 6x6 post that will have to be dug down into the ground 2' deep and concrete poured 2' deep and 1' around them. This will not allow us to install a fence 5' off the right away. We humbly ask for your understanding and approval in this matter, and thank you for your time. We have lived in NWA all our lives and watched Bentonville become this fantastic place to live.

Sincerely,

The Conways

Property Owner Consent Form

City of Bentonville Planning Department

305 SW A Street

Bentonville, AR 72712

479-271-3122

I, Chris Conway am the legal owner of the
(Owner's name, printed)

property located at 327 SW 4th St, identified as Parcel
(Address or Street Name)

Identification Number 01-04094-000, located in
(Parcel ID)

Benton County, Arkansas.

I certify that I am the owner of the property above and that I have read the application and consent to its filing.

[Signature]
(Property Owner Signature)

2-2-23
(Date)

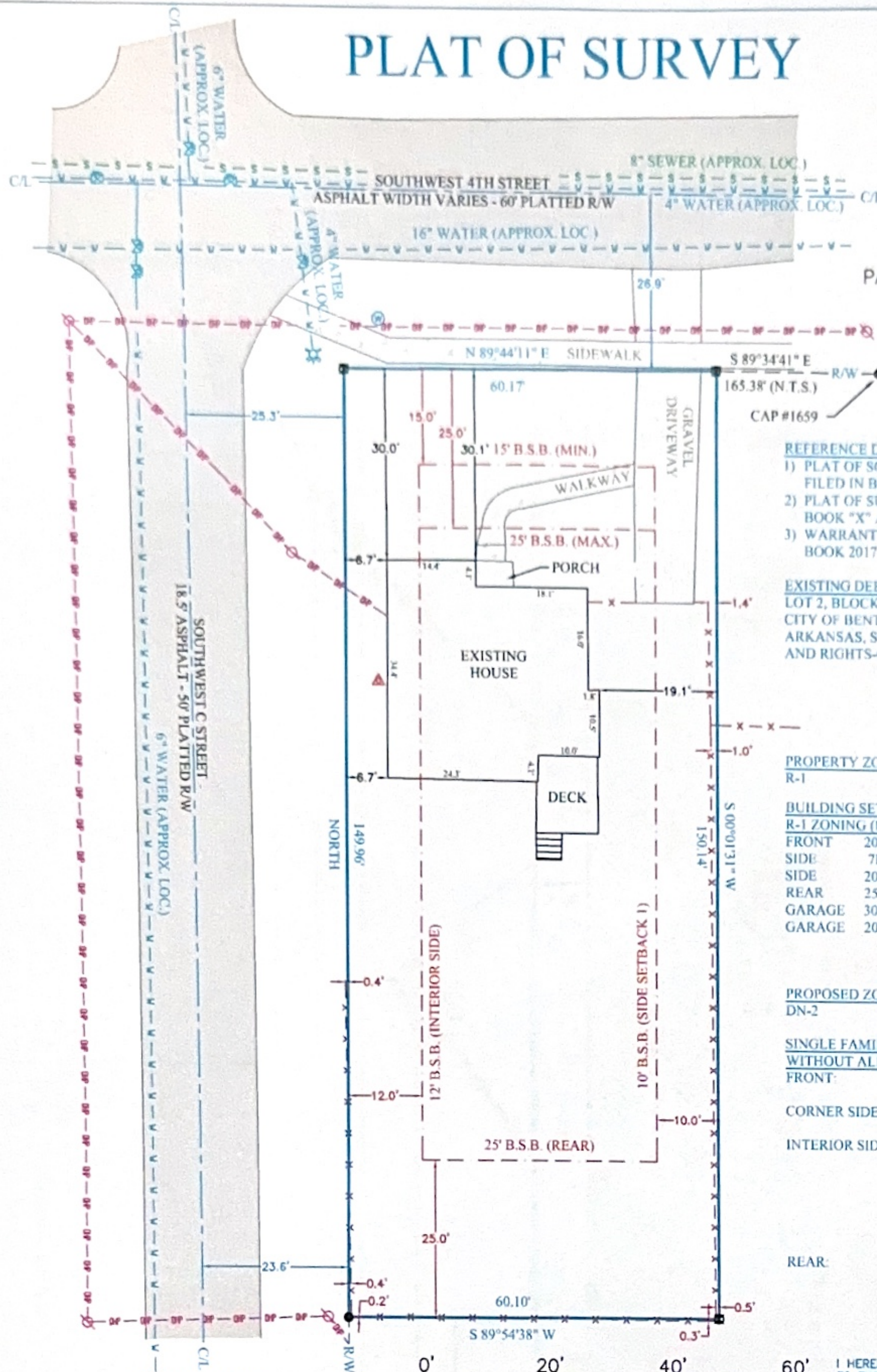
****If one property has multiple owners, a separate signed Property Owner Consent Form is required for each owner.**

PLAT OF SURVEY

FIELD WORK:
OCTOBER 19, 2017

BASIS OF BEARING:
PLAT OF SURVEY FILED IN
BOOK "X" AT PAGE 121

TOTAL ACREAGE
LOT #2
PARCEL #01-04094-000
0.21 ACRES +/-



REFERENCE DOCUMENTS:

- 1) PLAT OF SCOGGAN SUBDIVISION
FILED IN BOOK "A" AT PAGE 1324
- 2) PLAT OF SURVEY FILED IN
BOOK "X" AT PAGE 121
- 3) WARRANTY DEED FILED IN
BOOK 2017 AT PAGE 49156

EXISTING DEED DESCRIPTION (B-2017, P-49156):
LOT 2, BLOCK 1, SCOGGAN'S ADDITION TO THE
CITY OF BENTONVILLE, BENTON COUNTY,
ARKANSAS, SUBJECT TO COVENANTS, EASEMENTS
AND RIGHTS-OF-WAY OF RECORD, IF ANY.

PROPERTY ZONED (EXISTING):

R-1

BUILDING SETBACKS:

R-1 ZONING (EXISTING ZONING OF PROPERTY):

FRONT 20FT
SIDE 7FT (INTERIOR)
SIDE 20FT (EXTERIOR)
REAR 25FT
GARAGE 30FT (STREET FACING)
GARAGE 20FT (SIDE- OR REAR-LOADING)

PROPOSED ZONING - SHOWN:

DN-2

SINGLE FAMILY AND 2 FAMILY, LOT WIDTH > OR = 50'

WITHOUT ALLY ACCESS (SHOWN):

FRONT: 15' MIN, 25' MAX

CORNER SIDE: 12' MIN, N/A MAX

INTERIOR SIDE: TOTAL MIN: 25% OF LOT WIDTH

SIDE SETBACK 1: 10' (SHOWN)

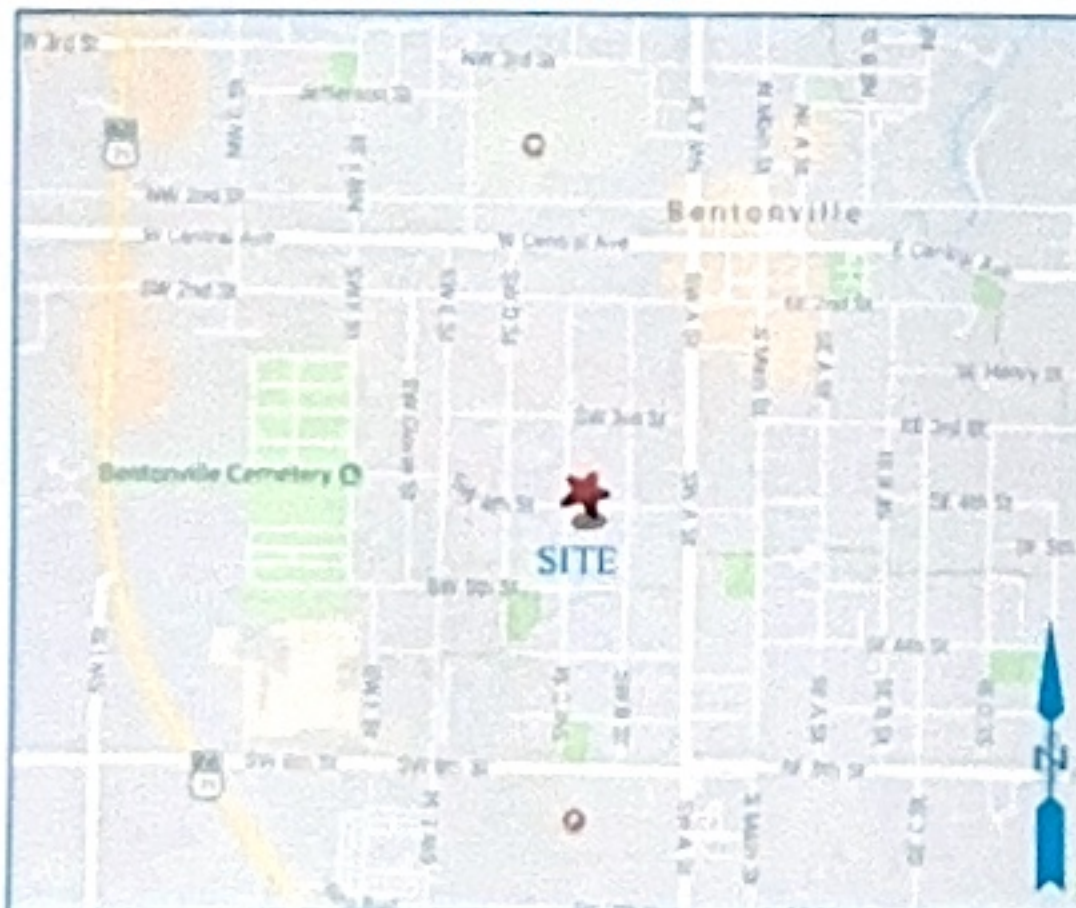
SIDE SETBACK 2: REMAINDER OF
TOTAL, BUT NO LESS THAN 5'

REAR: 25'

I HEREBY CERTIFY THIS TO BE TRUE AND CORRECT
TO THE BEST OF MY KNOWLEDGE AND BELIEF
ON THIS THE 19TH DAY OF OCTOBER, 2017.



IF THE SIGNATURE ON THIS SEAL IS NOT AN
ORIGINAL AND NOT BLUE IN COLOR
THEN IT SHOULD BE ASSUMED THAT THIS PLAT MAY
HAVE BEEN ALTERED. THE ABOVE CERTIFICATION
SHALL NOT APPLY TO ANY COPY THAT DOES NOT
BEAR AN ORIGINAL SEAL AND SIGNATURE.



VICINITY MAP NOT TO SCALE

NOTE:

THE LOCATION OF UTILITIES SHOWN HEREON ARE FROM
OBSERVED EVIDENCE OF ABOVE GROUND
APPURTENANCES. ALL UTILITY LINES APPEARING ON THIS
PLAT, AS WELL AS THOSE THAT MAY EXIST UNDERGROUND
NEED TO BE VERIFIED PRIOR TO DOING ANY TYPE OF
EXCAVATION OR DESIGN. SOME UTILITY LINES MAY ALSO
EXIST THAT WERE NOT SHOWN ON THIS PLAT.

FLOOD CERTIFICATION:

NO PORTION OF THIS PROPERTY IS LOCATED
WITHIN FLOOD ZONE "A" OR "AE" AS DETERMINED
BY THE NATIONAL FLOOD INSURANCE PROGRAM
FLOOD INSURANCE RATE MAP FOR BENTON
COUNTY, ARKANSAS.
(FIRM PANEL #05007C0255K, DATED 06/05/2012)

DRAWING #17-306

FOR USE AND BENEFIT OF
CHRIS CONWAY

ADDRESS
309 SOUTHWEST 4TH STREET
BENTONVILLE, ARKANSAS

DATE: 11/02/17 SCALE: 1"=20'
LOCATION: SEC. 31
T-20-N, R-30-W
LOT #2 BLOCK 1
SCOGGAN
SUBDIVISION

SURVEYED: RS
DRAFTED: KG
REVIEWED: DT
COA #1335

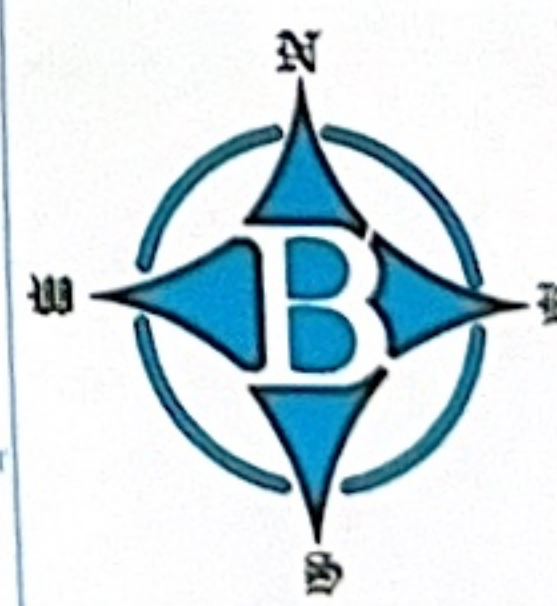


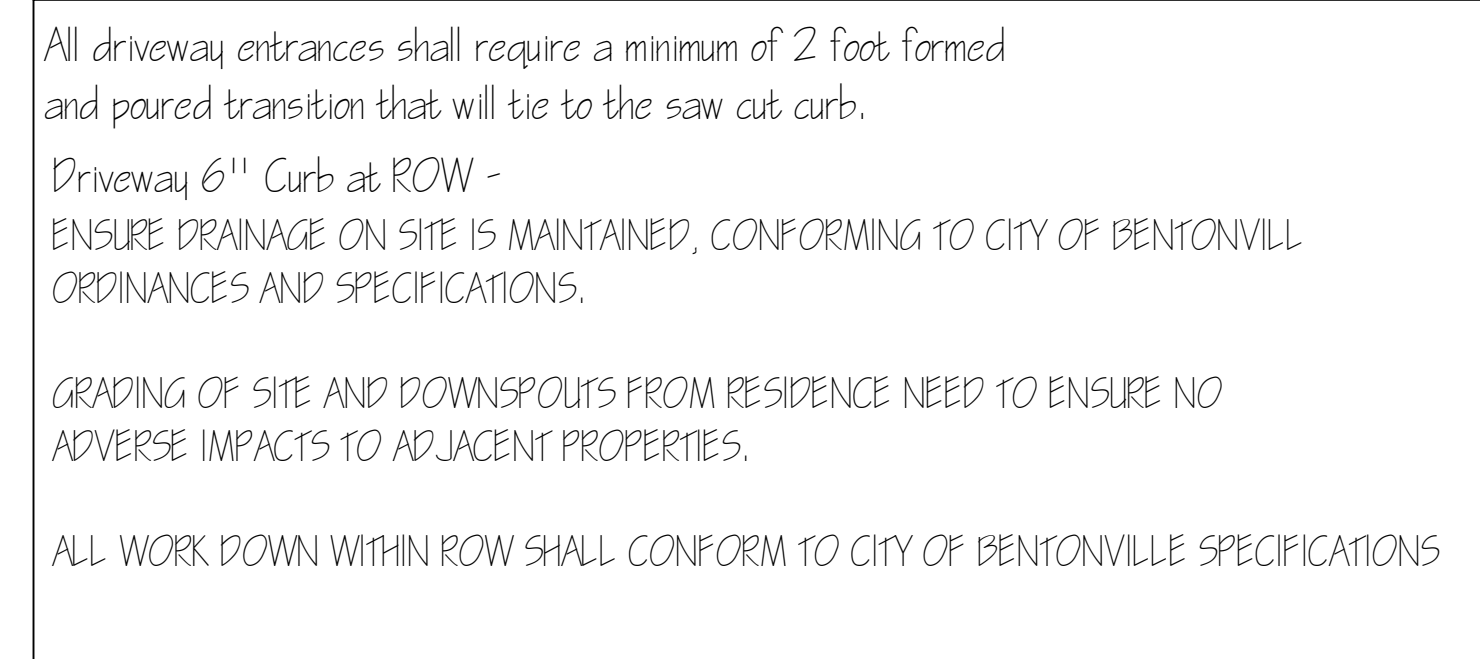
Bates & Associates, Inc.
Engineers - Surveyors - Landscape Architects

7238 S. Pleasant Ridge Dr. Fayetteville, Arkansas 72704 • 479.442.9350 • Fax 479.521.9350
BATES & ASSOCIATES, INC. Copyright 2017
This survey was conducted for the person or persons whose name(s) appear on this plat. This plat is
protected by copyright. No one including the person(s) named may reproduce this plat without the
express written consent of Bates & Associates, Inc. Surveyor has made no independent
investigation for easements of record, encroachments, restrictive covenants, easements of
easement, or any other fact which a complete and accurate title search may disclose. Any flood
statements provided on this plat is for information only and Bates & Associates, Inc. assumes no
liability for the correctness of the survey data shown, but the above statement does not
represent the opinion of Bates & Associates, Inc. of the probability of flooding.

LEGEND:

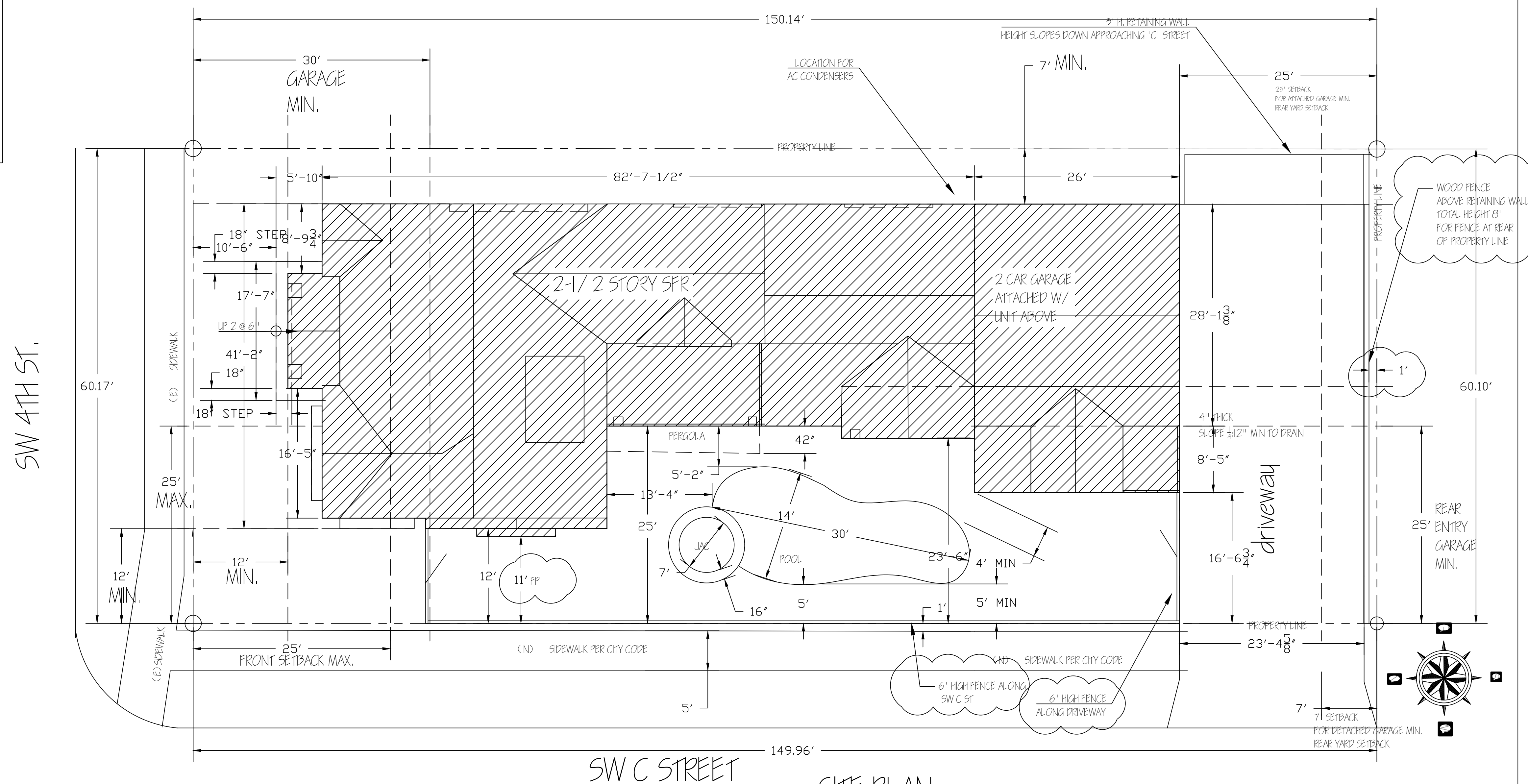
- THESE STANDARD SYMBOLS WILL
BE FOUND IN THE DRAWING.
- BOUNDARY LINE (MEASURED)
 - TIE LINE - X - X - FENCE
 - CENTERLINE OF ROAD
 - RIGHT-OF-WAY
 - W - W - WATER LINE
 - OP - OP - OVERHEAD POWER LINE
 - S - S - SEWER LINE
 - BUILDING SETBACK
 - FOUND 1/2" REBAR
 - FOUND 5/8" REBAR
 - WATER METER
 - WATER VALVE
 - FIRE HYDRANT
 - POWER POLE
 - GAS METER





../../../../Desktop/Screen Shot 2021-03-12 at 2.52.35 PM.png

There are no Easements on this lot.


$$1/8'' = 1'-0''$$

General Notes

CONWAY RESIDENCE
309 SW 4TH ST.
BENTONVILLE, AR. 72712
SITE PLAN

No.	Revision/ Issue	Date

Firm Name and Address

LAURI MATISSE STUDIO

L.AURIMATISSESTUDIO@GMAIL.COM
310-756-9372

Project Name and Address

CONWAY RESIDENCE

Project	Sheet
Date 3/31/2021	A O
Scale AS NOTED	



