

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
April 12, 2022
Bentonville City Hall
305 SW A St
4:00 PM**

Meeting Link: https://us06web.zoom.us/webinar/register/WN_FOObhZ37Q3uz9C1Uk6fqUA

- I. Call to Order**
- II. Approval of March 22nd Meeting Minutes**
- III. New Business**

- 1. Ehret** **Variance***
1109 NE Monroe Street (VAR23-0008)
 - Front Fence Variance (Applicant requests to put the project on-hold)
- 2. Gilmore Park** **Variance***
502 SW C Street (VAR23-0009)
 - Front Fence Variance (Applicant has Withdrawn, but project was published for a public hearing)
- 3. Jacobs Group** **Variance***
616/618 Bella Vista Rd (VAR23-0010)
 - Front Fence Variance
- 4. Arkansas Affordable Homes LLC (Airship Coffee)** **Variance***
802 SW A Street (VAR23-0011)
 - Sign Location Variance
- 5. Discussion on Amendment to Sec 1100.06 Fence and Wall Requirements** **Discussion**



**BOARD OF ADJUSTMENT
MEETING MINUTES
March 22nd, 2023
Bentonville City Hall
305 SW A St
4:00 PM**

Meeting Recording Link:

<https://us06web.zoom.us/rec/share/7GkvVDOZQMfGTrdw5GxIY3UPEypyoPNvyLY2w1ERmxbyhyYh4gPq9tu-ZR2tmuAE.R-IuMyUF9YcXSML3>

Board Members Present: Joe Haynie, Celia Swanson, Dean Kruithof (Chair), Sam Pearson, BJ Phillips

City Staff Present: Luke Aitken, Tom Adler

I. Call to Order

- Meeting is called to Order by Chairman Kruithof at 4:00 PM

II. Approval of March 8th Meeting Minutes

- Motion Haynie, Second Swanson to approve the meeting minutes as presented

III. New Business

1. Glen Arbor PRD LLC

Variance*

2910 Grandshire Ave ([VAR23-0006](#))

Fence Setback Variance

- Chairman Kruithof gives an overview of the public hearing procedures
- Mr. Aitken reads the staff report outlining the request
- Chairman Kruithof opens the public hearing
- Bill Burckart, developer and applicant addresses the board and outlines the project specific reason for his variance request regarding the location of a proposed subdivision perimeter fence
- Mr. Burckart explains that utility lines installed by 3rd parties created the need to move the fence forward from the location it was originally planned
- Chairman Kruithof clarifies which part of the subdivision fence the variance will affect, the portions along the south perimeter and the west perimeter
- Mrs. Swanson asks for clarification from the applicant on why the proposed fence layout was not possible to install and why the utility conflicts could not be worked out earlier on.
- Mr. Burckart explains that the extents of road improvement construction, associated with this subdivision, on Featherston and Glen Roads were altered during the course of the project which caused utilities to be relocated, necessitating the fence to be moved.
- Motion Phillips, second Haynie to approve the request as presented and shown in the applicants exhibits

- Variance request is approved 7-0

2. HSK Homes

Variance*

2004 Chaucer St ([VAR23-0007](#))

Front Building Setback Variance

- Mr. Aitken reads the staff report outlining the request
- Phil Swope, of Swope Engineering, representing the applicant addresses the Board and explains the applicants reasoning for the variance request being the steep elevation of the lots in question compared to many others nearby/in the same neighborhood
- Mrs. Swanson asked clarifying questions around possible alternatives to a variance, given the setbacks are set by developers during planning of the PRD (Planned Residential Development).
- Mr. Aitken and Mr. Adler clarify the requirements for a PRD zoning proposal do not include a final grading plan and that portion is covered during the preliminary plat phase
- Mr. Phillips clarifies that the majority of lots in this area do conform to the setbacks shown but that the lots in question are unique and a minority in the subdivision.
- Phil Swope clarifies the road design and lot layouts could have been reconsidered during planning and design phases to avoid the steep slope lots being designated for the same home types as the rest of the subdivision.
- Motion Phillips, second Pearson to approve the variance request as presented
- Variance request is approved 7-0

3. Discussion on Amending Article 1100 Sec 1100.06 Fence and Wall Requirements.

- Discussion among staff and board members around revisions to be made to the proposed code amendment before consulting with the legal staff and further consideration by the board
- Motion Pearson, second Swanson to adjourn the meeting
- Meeting adjourned

BOARD OF ADJUSTMENT STAFF REPORT



The Jacobs Group

616/618 Bella Vista Road

BOA Date: 4/12/2023

Reviewer: Bradley Gavrielides – Planning Technician

Project Number	VAR23-0010
Applicant / Current Owner	The Jacobs Group
Site Area	+/- 0.19 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
Related Projects	VAR20-0004

Property Description

This property is located at 616/618 Bella Vista Road and is currently zoned DN-2, Downtown Medium-Density Residential.

Regulation

Zoning Code Article Article 1100 Development Standards, requires a minimum setback of 5 feet from the Right of Way line.

Variance Request

The applicant is requesting a variance of 2.4 feet from the minimum rear setback of 5 feet, required by code, to allow the front fence to be 2.6 feet from the Right of Way.

Background

The applicant states that they want to create a more usable front yard and add to the property values in this type of development in downtown Bentonville and continue a fence line already in place with homes to the north. The applicant states that there are many other projects around the City of Bentonville that have sidewalks within 6 inches of the sidewalk. The distance from the Right of Way is not known at this time for the other properties. Applicant states:

- Special Conditions and circumstances exist which are specific to the proposed project. In particular the required 5' fence setback from public sidewalk takes up 35% of the houses front yard.
- Literal Interpretation of the ordinance - Strict enforcement of the zoning code would severely limit the use of the property commonly enjoyed by other projects found in Downtown Bentonville.
- The special conditions and circumstances do not result from the actions of the applicant. Currently other projects can be found within the City of Bentonville Downtown where the front fence is located directly up against the public sidewalk.

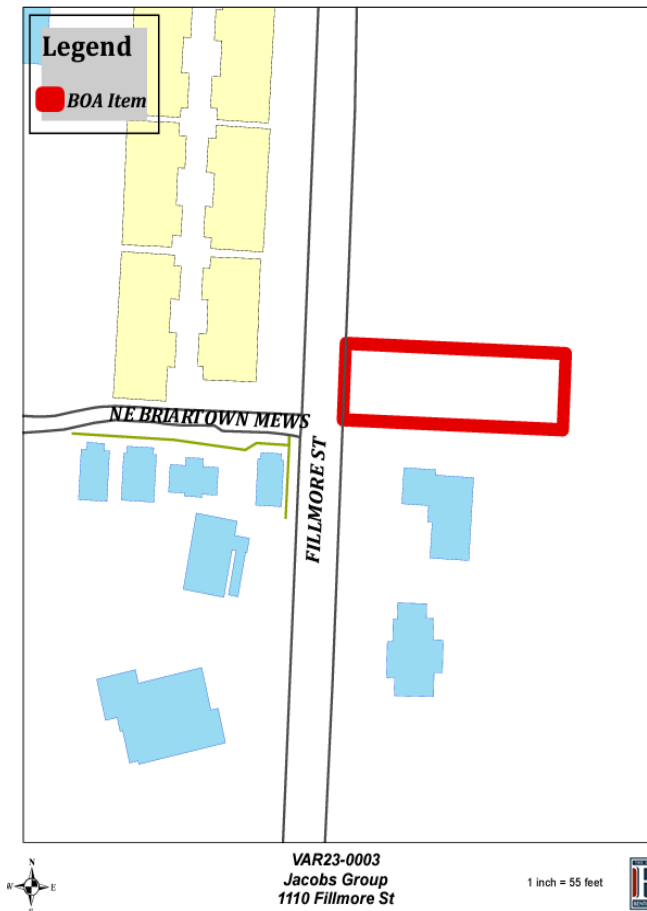
Three other properties to the north along Bella Vista Road have placed fences 2 feet from the right-of-way.

Public Comment

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

Conditions of Approval

Next page



BOARD OF ADJUSTMENT STAFF REPORT

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.

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



BOA Item

NW 7TH ST

NW BIKE CT

BELLA VISTA RD

NW 6TH ST



VAR23-0010
Jacobs Group-616 Bella Vista Rd
Front Fence Setback

1 inch = 69 feet



JACOBS GROUP

Specializing in Downtown Housing

2-23-2023

City of Bentonville
Board of Adjustments
305 SW A Street
Bentonville, AR. 72712

RE: 616/618 Bella Vista Rd, Bentonville – Front Fence Variance Request

Dear Board of Adjustment members,

Jacobs Group requests a variance for the front fence to be located 2.6 ft from the back of the public sidewalk. This is a continuation from the (3) addresses to the North (624, 628 and 632 Bella Vista Rd), were granted the 2 ft Variance. Placing the front fence 5' back from the public right of way limits the front yard space to an unusable area in a downtown setting. Strict enforcement of this code adversely impacts the property values for this type of development in Downtown Bentonville.

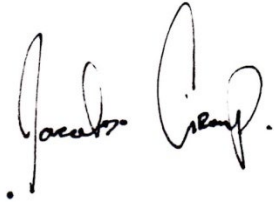
For the reasons listed above, I ask that you find the following:

- A. Special Conditions and circumstances exist which are specific to the proposed project. *In particular the required 5' fence setback from public sidewalk takes up 35% of the houses front yard.*
- B. Literal Interpretation of the ordinance- *Strict enforcement of the zoning code would severely limit the use of the property commonly enjoyed by other projects found in Downtown Bentonville.*
- C. The special conditions and circumstances do not result from the actions of the applicant. *Currently other projects can be found within the City of Bentonville Downtown where the front fence is located directly up against the public sidewalk.*

Sincerely,

JACOBS GROUP

Specializing in Downtown Housing



Jacobs Group
PO Box 1285
Bentonville AR, 72712
479-936-4374



Affordable Arkansas Homes LLC

802 NW A Street

BOA Date: 4/12/2023

Reviewer: Bradley Gavrielides – Planning Technician

Project Number	VAR23-0011
Applicant / Current Owner	Arkansas Sign & Banner / Affordable Arkansas Homes LLC
Site Area	+/- 1.55 Acres
Current Zoning	DN-3, Downtown High Density Residential
Variance Request	Zoning Code Article: Article 801 Sign Ordinance Section: Sec 801.15 Signs Allowed With A Sign Permit (a) Height and area regulations.
Related Projects	CU20-0001 / RZ20-0001

Property Description

This property is located at 802 NW A Street and is currently zoned DN-2, Downtown Medium-Density Residential.

Regulation

Zoning Code Article 801 Sign Ordinance, requires a roof sign to be placed on a building of 3 stories or more.

Variance Request

The applicant is requesting a variance from the 3 story building requirement to allow a roof mounted sign on a single story building. Roof mounted signs are allowed in DN-3 zoning.

Background

The applicant states that the property was rezoned for use as a local coffee shop and small retail called Airship Coffee. The building has a brick façade and poured concrete roof with a 4.5-foot tall screen to hide HVAC equipment. The request is for 2-foot letters to act as the sign on the top eve of the building. The applicant is trying to maintain the feel for the building as it is being repurposed from a pumphouse.

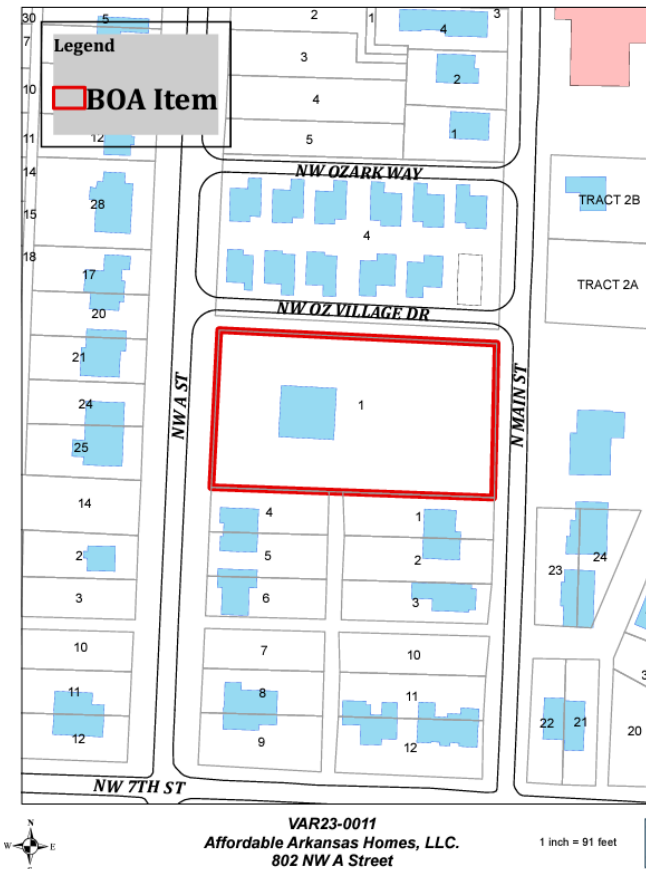
Public Comment

Staff has **NOT** received a 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.



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.

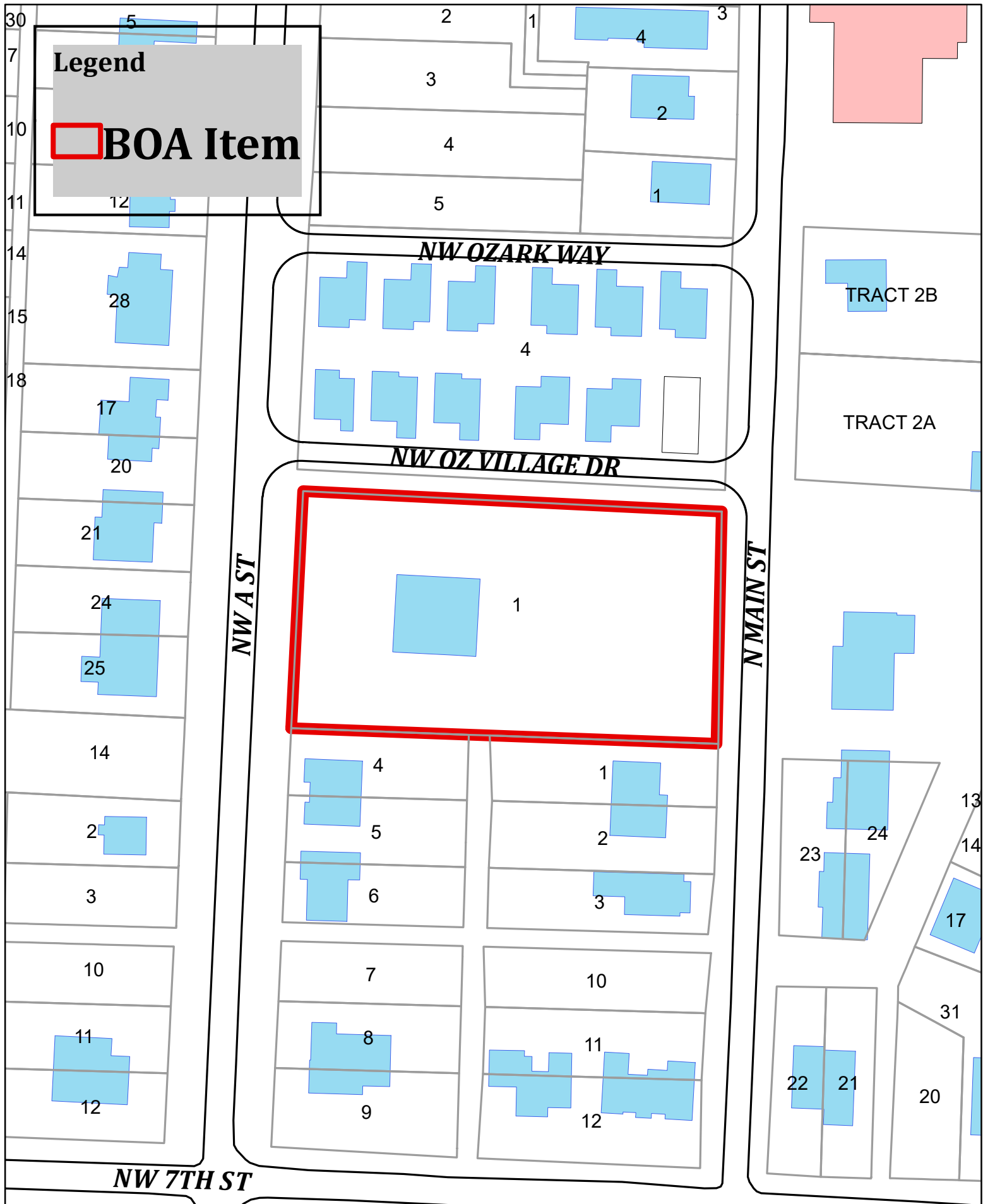
(2) No nonconforming use of neighboring lands, structures, or buildings in the same district, and no permitted or nonconforming use of lands, structures, or buildings in other districts shall be considered grounds for the issuance of a variance.

(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.



VAR23-0011
Affordable Arkansas Homes, LLC.
802 NW A Street

1 inch = 91 feet



March 28, 2023

Narrative for Variance for Sign Permit Application

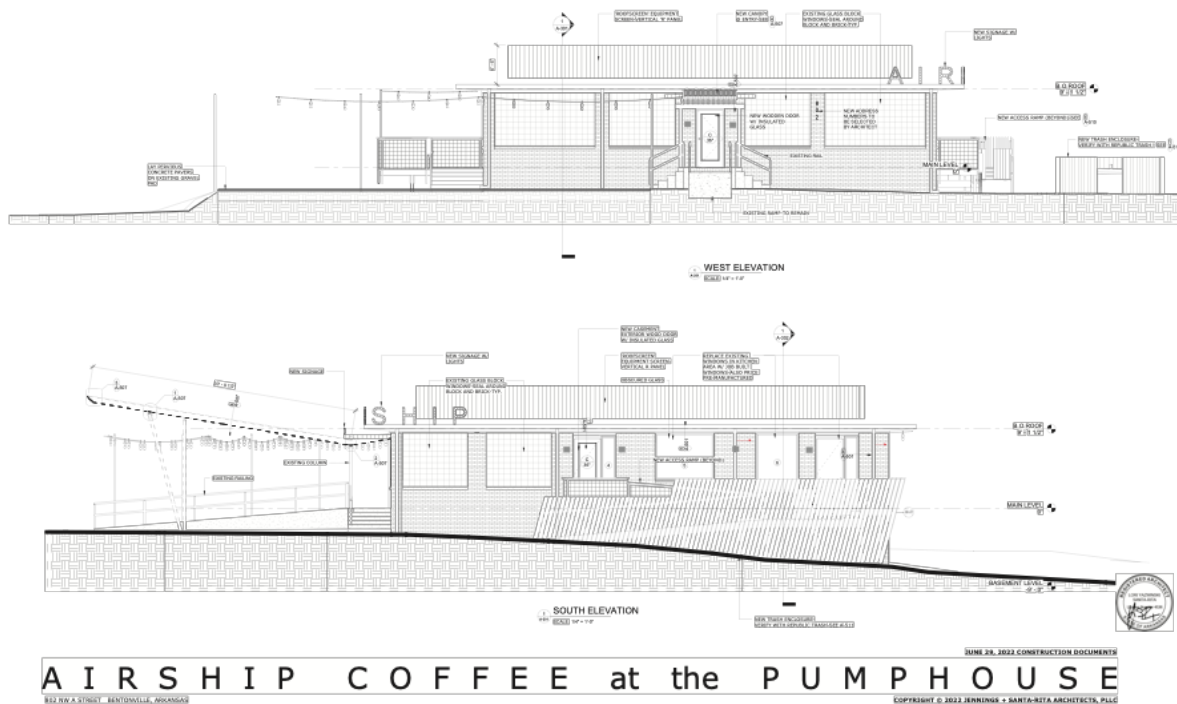
Airship Coffee at The Pumphouse
802 NW A St.
Bentonville, AR 72712

Property Details

The property is located at 802 NW A St. and is approximately 1.55 acres. The property was rezoned from Residential-1 (R-1) to Downtown-3 (DN-3) to provide the appropriate zoning for Airship Coffee to restore the building as a neighborhood coffee shop and small-scale retail store serving the local residents and visitors of Bentonville.

Special Conditions and Interpretation

The building has a brick facade and a poured concrete roof with a four and a half foot tall equipment screen setback three feet along the North, South, and West sides of the perimeter of the roofline. The sign permit is requesting allowance for two foot tall letters that will be mounted on the eve of the building. The letters of the sign will be less than half the overall height of the roofline. See drawing below. The literal interpretation of the provisions of Zoning Code Article 801 Section 801.15 related to height of the size deprive us from adding appropriate signage that does not exceed the perceivable roofline of the building.



JOBS\B\Blue Crane\Airship\Building Signs\BC_Airship_BuildingSign.fs"

J# 12592

PROOF DATE: 12-06-2022
APPROVAL DATE: 00-00-2022
DUE DATE:
INSTALL DATE:

COMPANY:
BLUE CRANE

CONTACT:
YUME REDZINSKI

PHONE:
479-283-2924

EMAIL:
yruzdzinski@bluecrane.us

BILL TO:
BLUE CRANE

BUILDING SIGN

- ☐ **SIZE: 24" TEXT**
☐ **SIDES: 1**
☐ **QUANTITY: 1**
☐ **LIT: FRONT/ BULBS**
☐ **MOUNT: BOTTOM RAIL**

MATERIALS

- ☐ **ALUMINUM**
☐ **LED BULBS**
☐
☐
☐

COLOR MATCH

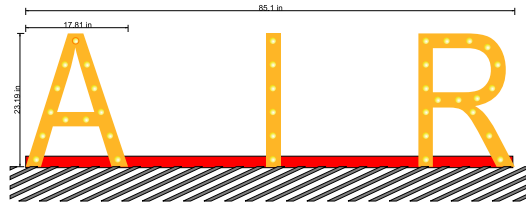
- ☐ **YELLOW - TBD**
☐
☐
☐

INSTRUCTIONS

- ☐ **INSTALL ON CONCRETE**
☐ **AWNING**
☐

These drawings reflect exactly what Arkansas Sign & Banner plans to fabricate for this project. Please carefully review all pages, as these drawings supercede all prior written or verbal communications. Arkansas Sign & Banner is responsible only for details of the job that are included in these drawings. If these drawings accurately represent this project, and you would like us to proceed with the job as drawn, please sign and date below, and email all pages back to your designer.

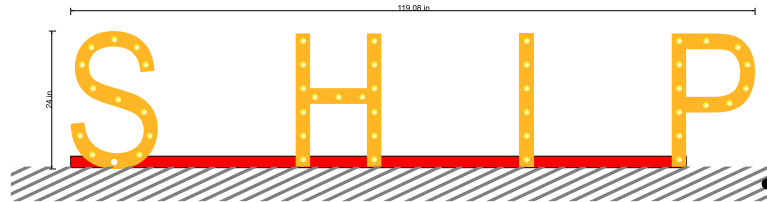
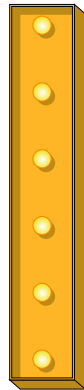
APPROVED ☐ **REVISE** ☐



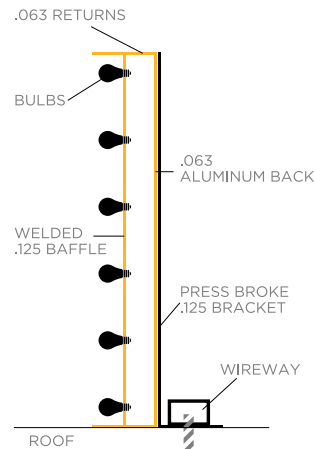
BUILDING SIGN

"AIRSHIP"

- FRONT LIT
- LED BULBS
- COLOR TBD
- FACE/ RETURNS/ BACK
- COLOR TBD
- MOUNT
- BOTTOM RAIL
- QTY: 1



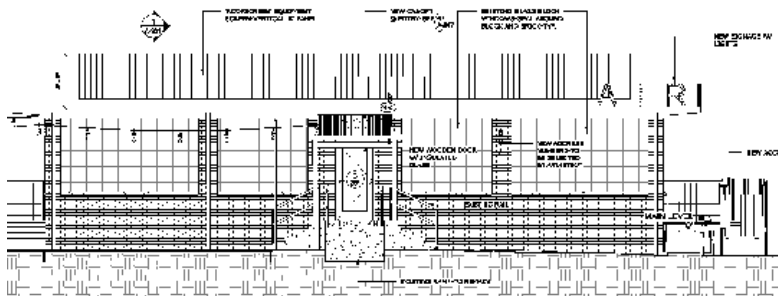
CONCRETE AWNING



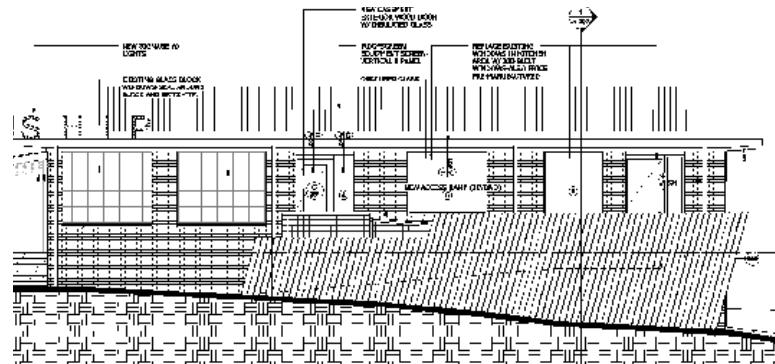
CONCEPT



PROPOSED VIEW

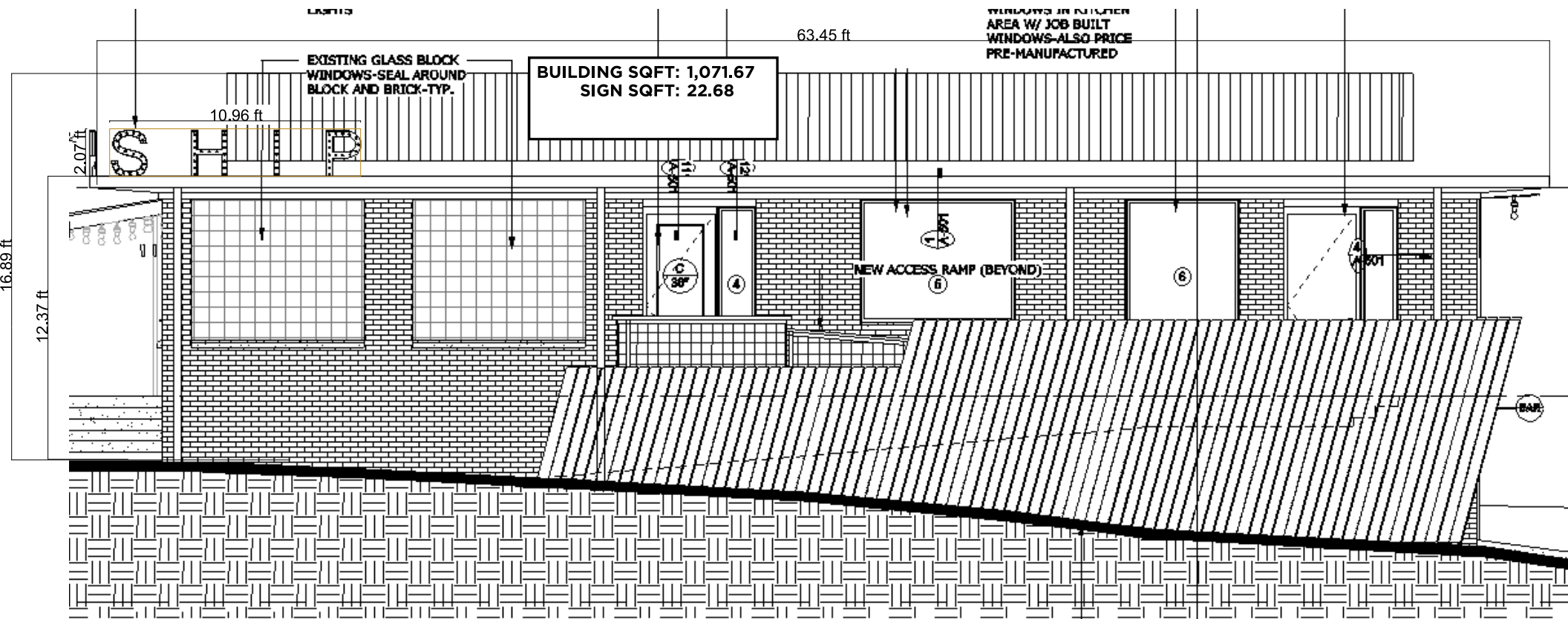


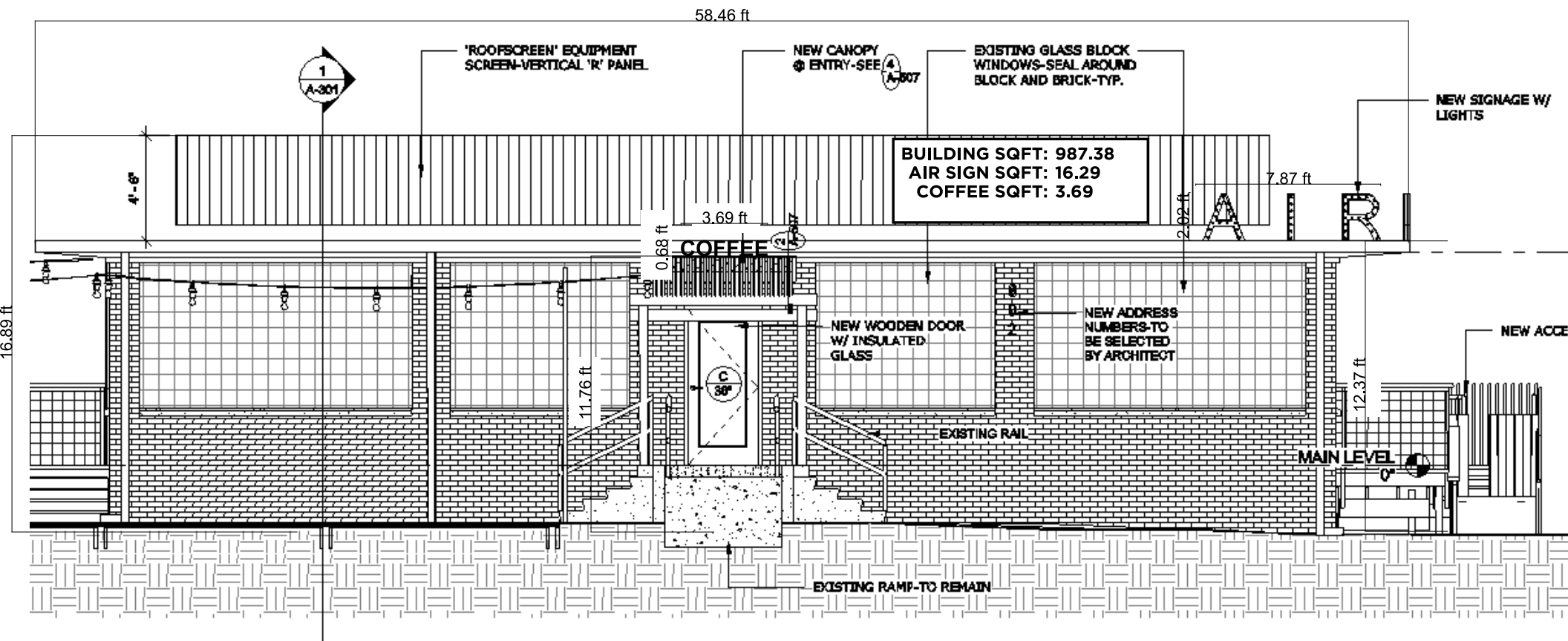
PROPOSED VIEW



APPROVED BY: _____ DATE: _____

WE HAVE REVIEWED ALL SPELLING, SIZING, COLORS, QUANTITIES AND MATERIALS AND UNDERSTAND ALL REVISIONS AFTER APPROVAL WILL BE OUR RESPONSIBILITY.





JOBS\B\Blue Crane\Airship\Building Signs\BC_Airship_BuildingSign.fs"

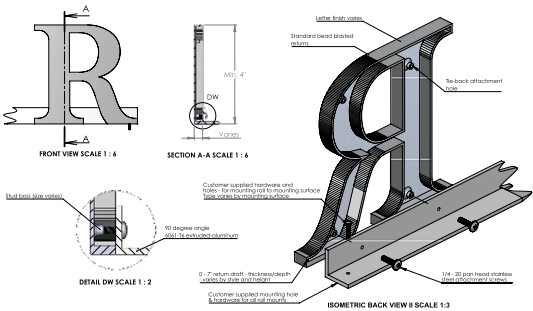
J# 12592

PROOF DATE: 02-09-2023
APPROVAL DATE: 00-00-2023
DUE DATE:
INSTALL DATE:

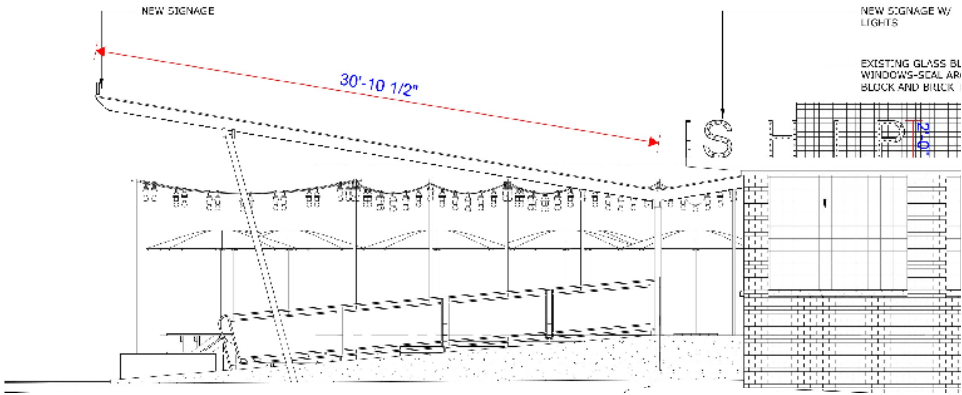
44.24 in
8.14 in
COFFEE

BUILDING SIGN
"COFFEE"

- NON LIT
- CAST ALUMINUM
- CUSTOM PAINTED
 - 2025 BLACK
 - GLOSS FINISH
- MOUNT
 - 3B BOTTOM RAIL MOUNT
 - RAIL MOUNT TO BE SHIMMIED TO LEVEL
- QTY: 1



CONCEPT - SIDE VIEW



CONCEPT



APPROVED BY: _____ DATE: _____

WE HAVE REVIEWED ALL SPELLING, SIZING, COLORS, QUANTITIES AND MATERIALS AND UNDERSTAND ALL REVISIONS AFTER APPROVAL WILL BE OUR RESPONSIBILITY.

COMPANY:
BLUE CRANE

CONTACT:
YUME REDZINSKI

PHONE:
479-283-2924

EMAIL:
yruzdzinski@bluecrane.us

BILL TO:
BLUE CRANE

CANOPY SIGN

- ☐ **SIZE: 8" TEXT**
- ☐ **SIDES: 1**
- ☐ **QUANTITY: 1**
- ☐ **LIT: NON**
- ☐ **MOUNT: BOTTOM RAIL**

MATERIALS

- ☐ **ALUMINUM**
- ☐
- ☐
- ☐
- ☐

COLOR MATCH

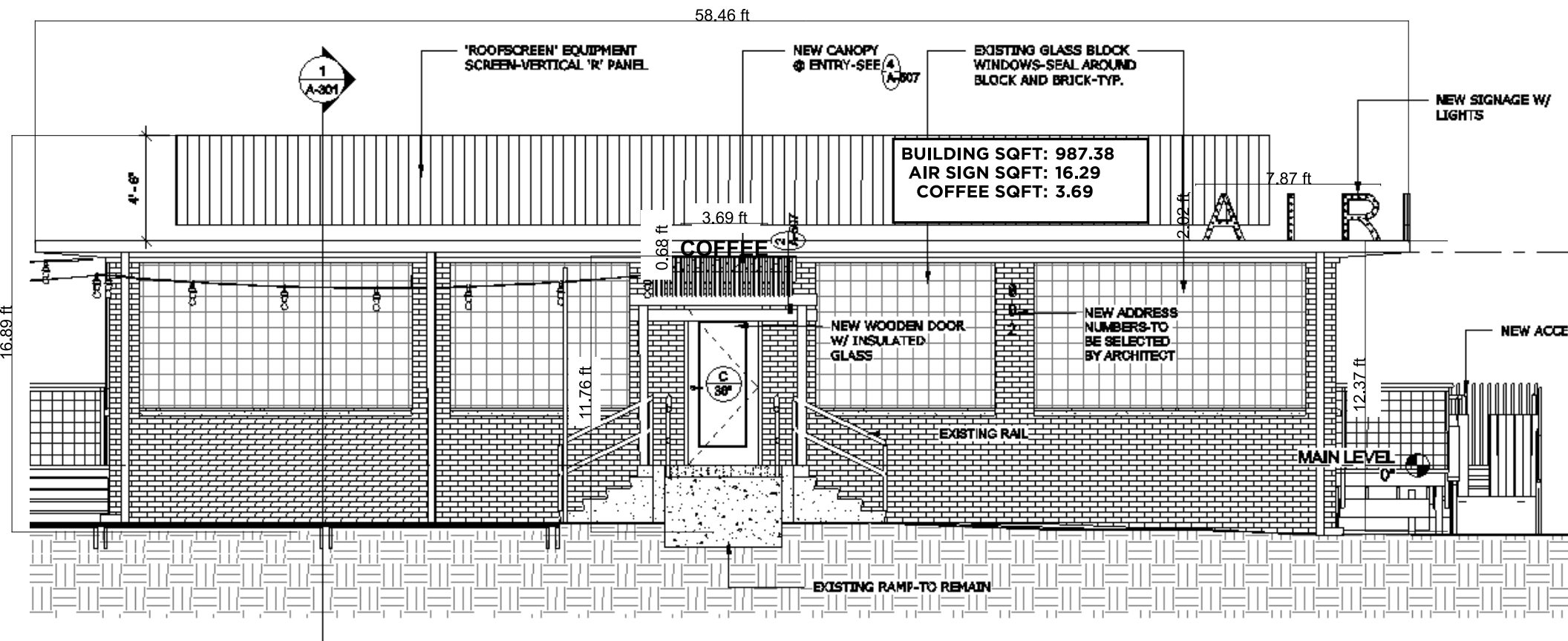
- ☐ **BLACK**
- ☐
- ☐
- ☐
- ☐

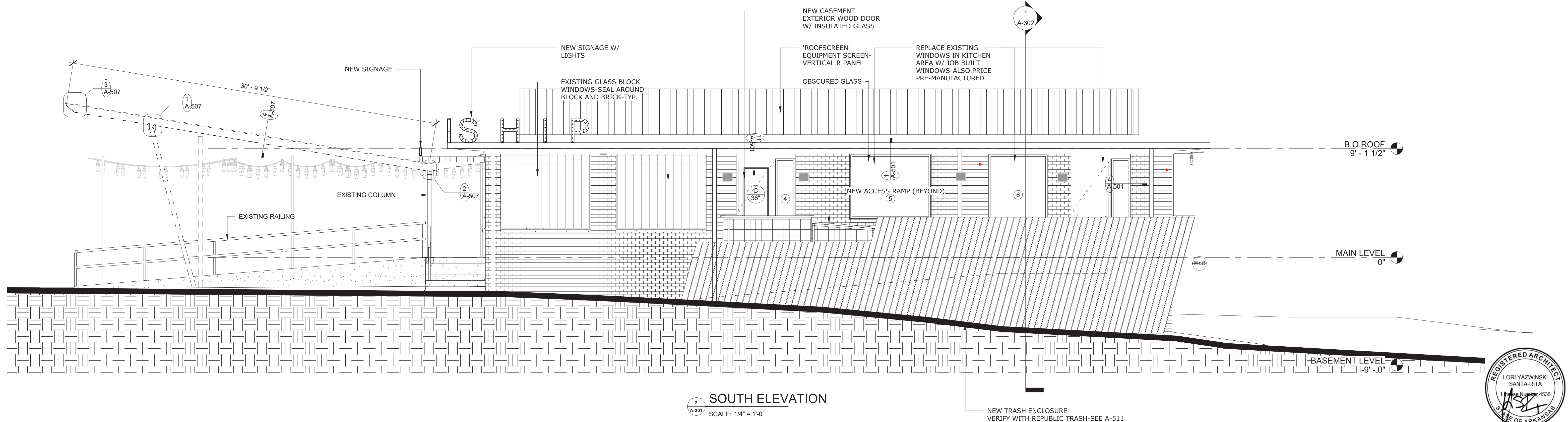
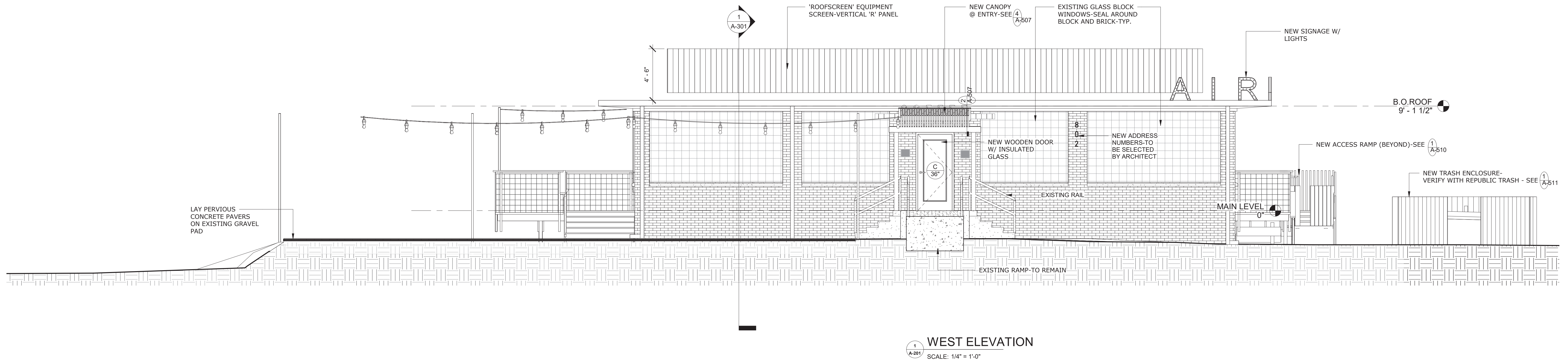
INSTRUCTIONS

- ☐ **INSTALL ON CANOPY**
- ☐
- ☐

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APPROVED ☐ REVISE ☐





AIRSHIP COFFEE at the PUMPHOUSE

802 NW A STREET BENTONVILLE, ARKANSAS

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JUNE 29, 2022 CONSTRUCTION DOCUMENTS

A-201

REVISED

Sec 1100.06 Fence And Wall Requirements

1. *Applicability.* The requirements of this section shall apply in the following instances in all zoning districts, except as exempted in this section:
 1. *New construction.* Construction of a new fence or wall.
 2. *Extension.* Extension of or addition to an existing fence or wall.
 3. *Replacement.*
 1. Replacement of an existing fence or wall that is a different size, at a different location or of a different material (e.g. a chain link fence being replaced by a wood privacy fence); or,
 2. Replacement of more than fifty percent (50%) of the linear length of an existing fence.
2. *Exemptions.* This section shall not apply to replacement of less than fifty percent (50%) of the linear length of an existing fence, except that the portion being replaced shall not:
 1. Impede visibility at the sight triangle;
 2. Impede a natural drainage way;
 3. Be located in certain utility easements that require gated access; or
 4. Encroach into neighboring property lines.
3. *Fence permit required.* A fence permit shall be obtained prior to beginning construction and replacement of all applicable fences and walls, except those shown on an approved preliminary plat or large scale development. The following items shall be submitted:
 1. *Application.* Completed application form.
 2. *Fee.* Pay the fee as indicated on the application form.
 3. *Site plan.* Provide a site plan that shows the following:
 1. Location of all property lines.
 2. Location of all existing structures.
 3. Location of existing or proposed pool or spas.
 4. Location of existing fencing on or adjacent to the property that is to remain in place.
 5. Portions of existing fence that will be replaced.
 6. Location of new fencing.
 7. A note indicating the height of the proposed fence and the type of fence construction (i.e. wood privacy, wrought iron, brick, etc.).
 4. *Cut sheet.* A cut sheet or photo of the fence style, labeling the side of the fence that is the finished surface.
4. *Review and approval.* Once all the required information is submitted, it will be reviewed by the planning department for compliance. If the application is approved, the fence permit will be issued. The Director of Community Development or their designee may approve minor modifications associated with fence permits to include height or horizontal modifications of up to 2 feet when there exists topographical, utility or other considerations. The Director shall provide the Board of Adjustments a list of such minor approvals on a quarterly basis. Any minor modifications not

approved by the Director of Community Development may be appealed to the Board of Adjustments.

5. *Compliance.* All fences or walls must be installed in compliance with the fence regulations and with the information shown on the approved site plan and fence permit application form.
6. *Inspection required.* The applicant shall contact the building inspection department to request a final inspection upon completion of the fence. If the building inspector determines that the fence is constructed in accordance with the ordinance requirements and the approved fence permit, a Certificate of Compliance will be issued. If the fence does not pass the inspection, the building inspector shall prepare an inspection report detailing the deficiencies.
7. *Fence location.*
 1. *Private property.* All fences and walls shall be located on private property and shall be built with the consent of the property owner. The installer and/or property owner shall be responsible for correctly locating all property lines. Fences and walls shall not encroach into any neighboring property lines.
 2. *Adjacent to public right-of-way.* 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.
 3. *Utility easements.* Walls used as fences and footings for retaining walls are prohibited in a utility easement. Construction of all other fences in utility easements is allowed, but the fence installer and/or property owner assumes some risk by doing so. The fence enclosing utility easement(s) shall have a gate installed to allow access to the easement.
 4. *Drainage easements.* Fences or walls shall not impede the normal flow of storm water and shall not cross an open drainage channel. Fences or walls proposed in drainage easements shall be approved on a case by case basis. The city reserves the right to remove any fence found to be impeding the normal flow of storm water and replacement cost of such fence shall be the sole responsibility of the property owner. Except where exigent circumstances exist, reasonable notice to the property owner shall be made or attempted prior to City staff or contractors entering the property to remove a fence.
 5. *Access easement.* Fences or walls shall not be constructed over a public access easement. Fences or walls proposed over private emergency access easements must be approved by the fire department to ensure adequate access for emergency vehicles and equipment at all times.
 6. *Sight distance requirements.* Fences shall comply with the areas to be kept clear of all sight obstructions as set forth in Sec. 1101(f) Sight Distances at Driveways and Intersections, unless otherwise approved by the city engineer.
8. *Fence design standards.* The following design standards shall apply to any new or replacements of any fence or wall where the length of the replacement exceeds fifty percent (50%) of the length of the existing fence.

1. *Fence height.* The maximum fence height shall be six (6) feet above grade, with the following exceptions:
 1. *Downtown zoning districts.* For properties in all Downtown Neighborhood (DN) zoning districts, the DE Downtown Edge zoning district, and the DC Downtown Core zoning district, the maximum rear yard fence height shall be eight (8) feet above grade.
 2. *Front yard.* The maximum fence height for a fence or wall located in the front yard or positioned any closer to the front property line than the front surface of the building for a typical residential lot or commercial lot, shall not exceed four (4) feet in height. Decorative fencing, such as split rail, picket and wrought iron, is allowed.
 3. *Side exterior yard.* The maximum fence height for a fence or wall located in the side exterior yard shall not exceed four (4) feet in height. However, if two corner lots have abutting rear property lines and side exterior yards along the same street, a fence or wall located in the side exterior yard shall not exceed six (6) feet in height. Decorative fencing, such as split rail, picket and wrought iron, is allowed.
 2. *Finished surface.* Finished surface shall face outward from the property when visible from a public right-of-way. A finished surface shall be the surface of the fence where the pickets or slats are fully exposed to view. Posts, cross members, protruding bolts, and support beams shall be inside the finished surface facing the interior of the yard.
 3. *Gates.* All fence segments abutting a thoroughfare, except for corner lots, shall provide one gate opening per lot to allow access to the area between the fence and the street pavement for maintenance and mowing. An exception may be granted if the city receives a letter from the homeowners' association stating that this area is maintained by the association and not by individual homeowners.
9. *Fence types prohibited.*
1. *Razor wire.* Razor wire is prohibited.
 2. *Barbed wire.* Barbed wire is prohibited, except in agricultural uses and may be used as an anti-climbing deterrent in industrial zones, but shall not be placed within five (5) feet of the right-of-way of a public sidewalk or within five (5) feet of a street right-of-way where a public sidewalk does not exist.
 3. *Electric fences.* Electric fences are prohibited, except in agricultural uses but shall not be placed within five (5) feet of the right-of-way of a public sidewalk or within five (5) feet of a street right-of-way where a public sidewalk does not exist. Underground electric pet fences are permitted.
10. *Fences for pools and spas.* Outdoor pools, spas and hot tubs shall be protected by an enclosure designed to restrict access by children. If a fence is intended to serve as the required enclosure, it shall meet the following requirements in addition to those that apply to a fence or wall.

1. *Height.* The minimum height of the fence enclosure shall be at least forty-eight (48) inches. The maximum clearance between the bottom of the fence and the ground shall be two (2) inches.
 2. *Gates.* Gates in the enclosing fence shall swing away from the pool/spa area and be designed to be self-closing and self-latching. If the latch or latch release hardware is on the outside of the fence, it shall be at least fifty-four (54) inches above the ground. If the latch hardware is on the inside of the fence, it must be at least three (3) inches below the top of the fence and there shall not be any openings more than a half-inch in width within eighteen (18) inches of the latch. Gates more than five (5) feet in width and designed for equipment access to the fence area are not required to be self-closing or self-latching provided they are locked at all times except when needed for equipment access.
 3. *Design.* The fence shall be designed so that there are no openings large enough to allow the passage of a four-inch diameter sphere and so that no "ladder effect" is created on the outside. If a chain link fence material is used, the maximum size of the openings (i.e., the distance between parallel wires) shall not exceed one and a quarter (1¼) inches.
11. *Fences for detention and retention ponds.* If a fence or wall is installed around a detention or retention pond with permanent water two (2) feet deep or more, the fence or wall shall meet the requirements of Subsection (g) Fences for pools and spas above.