

BOARD OF APPEALS

June 26, 2024

County Administration Building, 100 W. Washington St., Meeting Room 2000, Hagerstown, at 6:00 p.m.

AGENDA

AP2024-024: An appeal was filed by Hard Rock Excavating for a special exception to establish a contractor’s equipment and storage yard with office space for excavation business and a variance from the required 50 ft. setback to 32 ft. for the existing dwelling to be converted into a commercial office space for the excavation business on property owned by Dwight & Kristine Eby and located at 17022 & 17026 Broadfording Road, Hagerstown, Zoned Agricultural Rural. - **GRANTED**

AP2024-025: An appeal was filed by John Norvell for a variance from the required 50 ft. side yard setback from a property zoned for or occupied by a residential land use to 0 ft. from the North property line and 40 ft. from the East property line for lean to/gazabo to be used as bandshell/stage on property owned by the appellant and located at 21400 Leiter Street, Hagerstown, Zoned Rural Business. -**DENIED**

AP2024-026: An appeal was filed by Steven & Cherith Griffin for a variance from the 100 ft. setback requirement for animal husbandry for the existing structures on the property: West property line the closest structures are 12 ft. and East property line the closest structure is 50 ft. The property is owned by the appellants and located at 20402 Jefferson Boulevard, Hagerstown, Zoned Residential Transition.- **GRANTED**

AP2024-027: An appeal was filed by Earl & Maria Brown Jr. for a variance from the lot size requirements and setbacks for two single family dwellings on the same parcel for future subdivision. Proposed Lot 1: Reduce minimum lot size from 10,000 sq. ft. to 8,640 sq. ft. and front yard setback from 20 ft. to 13.6 ft. Proposed Lot 2: Reduce minimum lot size from 10,000 sq. ft. to 3,875 sq. ft. and front yard setback from 20 ft. to 16.5 ft. The property is owned by the appellants and located as 14023 Maugansville Road & 18005 Showalter Road, Maugansville, Zoned Residential Suburban. - **GRANTED WITH CONDITIONS**

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than June 17, 2024. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant’s case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Traice Fulker, Chairman



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P 240.313.2430 | F 240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: Dwight & Kristine Eby
13124 Greencastle Pike
Hagerstown MD 21740
Appellant: Hard Rock Excavating
13124 Greencastle Pike
Hagerstown MD 21740
Property Location: 17022 & 17026 Broadfording Road
Hagerstown, MD 21740
Description Of Appeal: Special exception to establish a contractor's equipment and storage yard with office space for excavation business and a variance from the required 50 ft. setback to 32 ft. for the existing dwelling to be converted into a commercial office space for the excavation business.

Appellant's Legal Interest In Above Property: Owner: Yes
Contract to Rent/Lease: No
Lessee: No
Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s): AP2008-008
Applicable Ordinance Sections: Washington County Zoning Ordinance Section Table No. 3.3 (1) Q & Section 5A.6

Reason For Hardship: Dwelling to be converted into commercial space was built prior to the zoning ordinance and would incur additional expenses to build new structure to meet the setback.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Residential Lots Proposed Use: Excavation Business

Previous Use Ceased For At Least 6 Months: Date Ceased:

Area Devoted To Non-Conforming Use - Existing: Proposed:

I hearby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Handwritten signature of the appellant and the text 'Appellant Signature'.

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 30 day of May, 2024

Notary Public seal for Kathryn B Rathvon, Washington County, Maryland, commission expires November 07, 2025.

Handwritten signature of the notary public and the text 'Notary Public'.



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-024

State of Maryland Washington County, To Wit:

On 5/24/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Frederick Seibert & Associates and made oath in due form of law as follows:

Frederick Seibert & Associates will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 06/26/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 06/04/2024 and will remain until after the above hearing date.

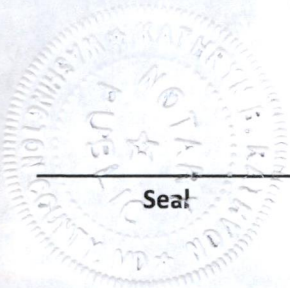
Frederick Seibert & Associates

Sworn and subscribed before me the day and year first above written.

Notary Public



My Commission Expires





BOARD OF ZONING APPEALS

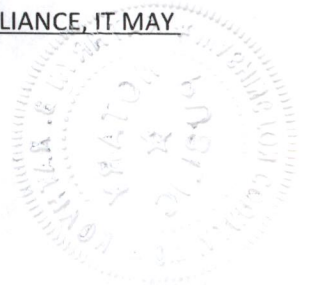
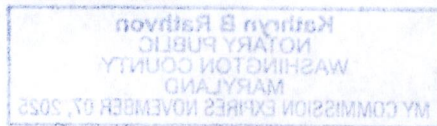
ATTENTION!

Posting Instructions

The premises **MUST** be posted in accordance with the following rules:

1. The sign must be posted a minimum of fourteen (14) days prior to the public hearing. Section 25.51(c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
2. The sign must be placed on the property within ten (10) feet of the property line which abuts the most traveled public road.
3. The sign must be posted in a conspicuous manner not over six (6) feet above the ground level, and affixed to a sturdy frame where it will be clearly visible and legible to the public.
4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for the minimum of fourteen (14) days prior to the public hearing date.

Proper posting of the sign will be spot checked by the Zoning Inspector. IF SIGN IS NOT IN COMPLIANCE, IT MAY RESULT IN RESCHEDULING OF THE HEARING.



Project Name: Hard Rock Excavating

Owner/Applicant: Hard Rock Excavation c/o Dwight Eby

Project Address: 17022 & 17026 Broadfording Road

Tax Map 23 **Grid** 23 **Parcel** 568

Account # 13036470

Zoning: A(R)

Special Exception request:

The owner/applicant has operated Hard Rock Excavation as an excavating contractor for several years and had to lease properties to store machinery. He now has the opportunity to move his business to a location that he currently owns and can create a productive work flow. Site and operations data can be obtained from the enclosed site plan. Currently the properties are independent of each other however, if approved, the lots would be merged together by way of a replat. He has met with the adjacent owners who support the site improvements and use.

Variance request:

The owner/applicant would like to occupy the existing dwelling located at 17022 Broadfording Road as the office for the business. The structure is 32 feet from the dedicated Right of Way for Broadfording Road, the minimum required for any portion of a contractors business in the A(R) district is 50'. The house was built in 1970 prior to zoning in Washington County. Undue hardship would be experience if not allowed to occupy this structure as they would have to incur additional expenses to construct a new office area. The occupation of this building is in the spirit of the ordinance.

Additional information will be provided at the hearing.



Washington County Board of Zoning Appeals Owner's Representative Affidavit

This is to certify that Fred Frederick or Ed Schreiber w/FSA
is authorized to file an appeal with the Washington County Board of Appeals for a
special exception and setback variance
on property located at 17022 and 17026 Broadfording Road
The said work is authorized by Dwight Eby
the property owner in fee.

PROPERTY OWNER

Dwight Eby
Name
17022 and 17026 Broadfording Road
Address
Hagerstown, MD 21740
City, State, Zip Code

[Signature]
Owner's Signature

REBECCA A COOK
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
My Commission Expires 02-22-2027

Sworn and subscribed before me this 15 day of May, 2024.

[Signature]
Notary Public

My Commission Expires: 2/22/27

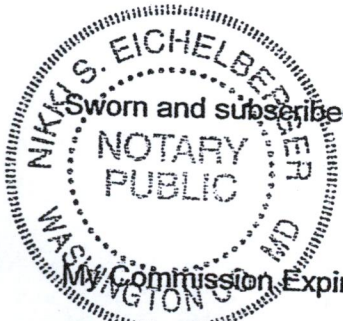
AUTHORIZED REPRESENTATIVE

Fred Frederick or Ed Schreiber w/FSA
Name
128 South Potomac Street
Address
Hagerstown, MD 21740
City, State, Zip Code

[Signature]
Authorized Representative's Signature

Sworn and subscribed before me this 21 day of May, 2024.

[Signature]
Notary Public



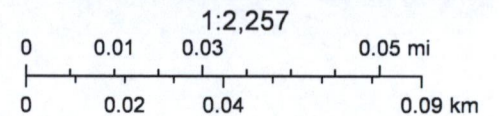
My Commission Expires: 9/15/2024

Frederick Seibert & Associates, Inc.



5/21/2024, 10:06:21 AM

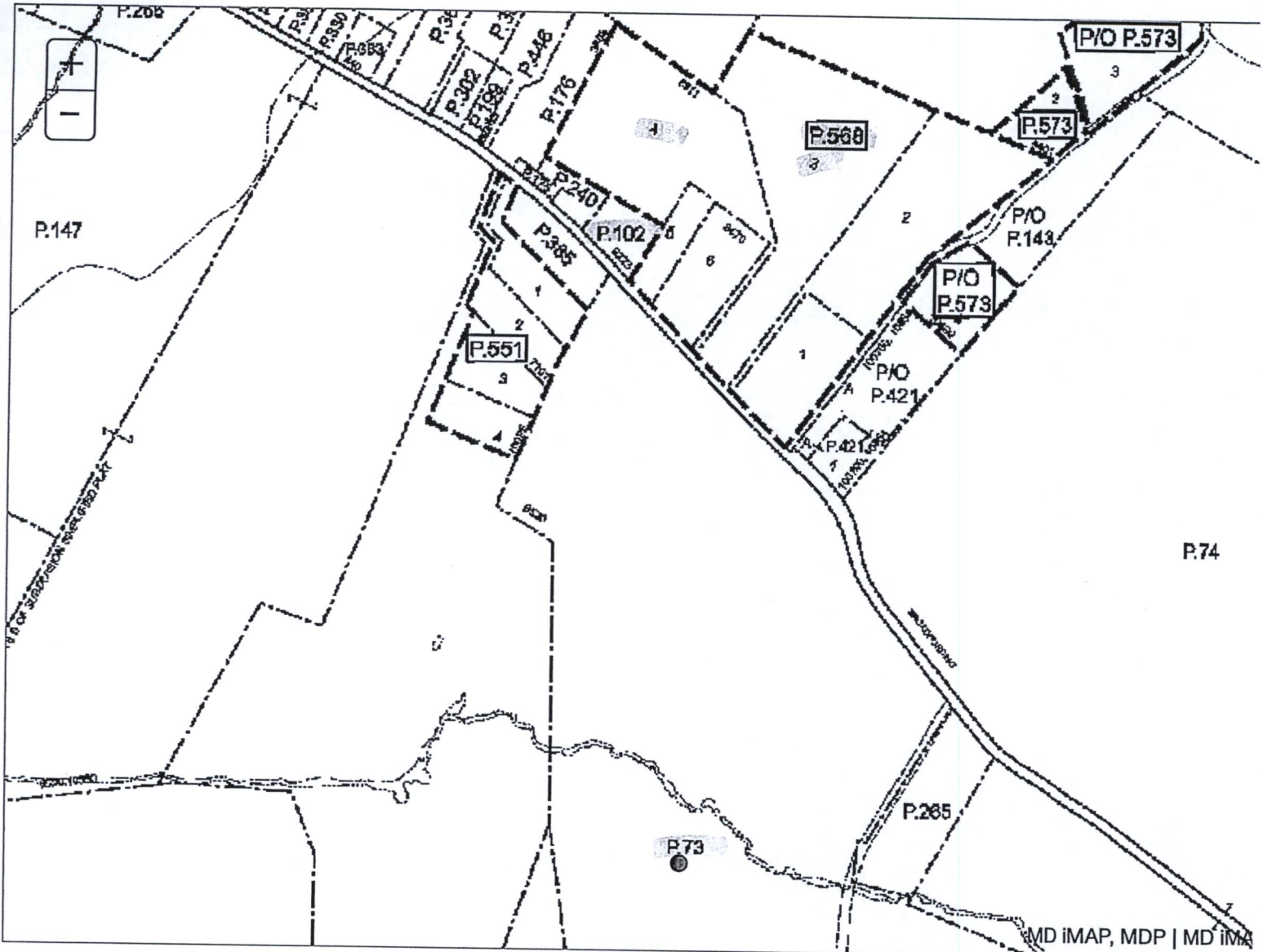
World Transportation — Streams
MD_SixInchImagery — Parcels Washington County



Esri Community Maps Contributors, WashCo MD, West Virginia GIS, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph,

Web AppBuilder for ArcGIS

District: **13** Account Number: **004811**



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at www.plats.net (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at <http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx> (<http://planning.maryland.gov/Pages/OurProducts/OurProducts.aspx>).

Real Property Data Search ()
 Search Result for WASHINGTON COUNTY

[View Map](#) [View GroundRent Redemption](#) [View GroundRent Registration](#)

Special Tax Recapture: None

Account Identifier: District - 13 Account Number - 036470

Owner Information

Owner Name: EBY DWIGHT E Use: RESIDENTIAL
 EBY KRISTINE J Principal Residence:NO
 Mailing Address: 13124 GREENCASTLE PIKE Deed Reference: /05398/ 00494
 HAGERSTOWN MD 21740-0000

Location & Structure Information

Premises Address: 17022 BROADFORDING RD Legal Description: LOT 5 1.22 ACRES
 HAGERSTOWN 21740-0000 17022 BROADFORDING ROAD

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No: 9470
 0023 0023 0568 13010330.22 0000 5 2023 Plat Ref:

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1970	1,032 SF		1.2200 AC	

Stories	Basement Type	Exterior Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
1	YES	STANDARD UNIT	SIDING/ 3	1 full	

Value Information

	Base Value	Value		Phase-in Assessments	
		As of	As of	As of	As of
Land:	62,200	01/01/2023	07/01/2023	07/01/2024	
Improvements	83,000	62,200	125,900		
Total:	145,200	188,100	159,500	173,800	
Preferential Land:	0	0			

Transfer Information

Seller: EBY MARIETTA L ET AL	Date: 12/21/2016	Price: \$140,000
Type: NON-ARMS LENGTH OTHER	Deed1: /05398/ 00494	Deed2:
Seller:	Date:	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /03422/ 00422	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments:Class	07/01/2023	07/01/2024
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00 0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Real Property Data Search ()
 Search Result for WASHINGTON COUNTY

View Map View GroundRent Redemption View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 13 Account Number - 002223

Owner Information

Owner Name: EBY DWIGHT M Use: RESIDENTIAL
 EBY KRISTINE J Principal Residence:NO
 Mailing Address: 13124 GREENCASTLE PIKE Deed Reference: /04438/ 00183
 HAGERSTOWN MD 21740-0000

Location & Structure Information

Premises Address: 17026 BROADFORDING RD Legal Description: LOT 6 2.56 ACRES
 HAGERSTOWN 21740-0000 17026 BROADFORDING ROAD

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No: 9470
 0023 0023 0568 13010330.22 0000 6 2023 Plat Ref:

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
 1900 2,012 SF 2.5600 AC

StoriesBasementType ExteriorQualityFull/Half Bath Garage Last Notice of Major Improvements
 2 YES STANDARD UNIT SIDING/3 1 full 1 Detached

Value Information

	Base Value	Phase-in Assessments		
		Value As of 01/01/2023	As of 07/01/2023	As of 07/01/2024
Land:	75,600	75,600		
Improvements	124,600	171,200		
Total:	200,200	246,800	215,733	231,267
Preferential Land:	0	0		

Transfer Information

Seller: EBY MICHAEL D ET AL Date: 01/03/2013 Price: \$0
 Type: NON-ARMS LENGTH OTHER Deed1: /04438/ 00183 Deed2:
 Seller: EBY MICHAEL D ET AL Date: 12/19/2007 Price: \$0
 Type: NON-ARMS LENGTH OTHER Deed1: /03422/ 00422 Deed2:
 Seller: ALBERT EUGENE S JR Date: 03/13/2007 Price: \$345,000
 Type: ARMS LENGTH IMPROVED Deed1: /03246/ 00571 Deed2:

Exemption Information

Partial Exempt Assessments:Class 07/01/2023 07/01/2024
 County: 000 0.00
 State: 000 0.00
 Municipal: 000 0.00|0.00 0.00|0.00

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

HARD ROCK EXCAVATING
Appellants

Appeal No.: AP2024-024

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OPINION

Hard Rock Excavating (hereinafter “Appellant”) requests a special exception to establish a contractor’s equipment and storage yard with office space for an excavation business and a variance to reduce the required setback from 50 feet to 32 feet for the existing dwelling to be converted into commercial office space for the excavating business at the subject property. The subject property is located at 17022 and 17026 Broadfording Road, Hagerstown, Maryland and is zoned Agricultural, Rural. The Board held a public hearing on the matter on June 26, 2024.¹

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Dwight and Kristine Eby are the owners of the subject property located at 17022 and 17026 Broadfording Road, Hagerstown, Maryland. The property is zoned Agricultural, Rural.
2. The subject property consists of two lots, both improved with a dwelling and the larger lot also improved with multiple detached storage and garage buildings.

¹ The Board had four (4) members present and Appellants were advised of the possibility of a tie vote which would result in a denial of the relief requested. Appellants elected to proceed with the appeal.

3. Hard Rock Excavating was started as a business by Mr. Eby's father in 2004. In 2009, Mr. Eby purchased the business from his father and in 2012, his brother joined him in the business operations. The business has grown exponentially over the years and they now have eight (8) full-time employees.

4. Appellant's business has two (2) dump trucks, four (4) pick-up trucks, a skid steer, mini excavator, forklift and a tractor trailer that require storage.

5. Appellant proposes to utilize the dwelling on the left as a commercial office for its business operation. The dwelling is located approximate 47 feet from the property line, but with the right-of-way dedication for Broadfording Road, the distance is 32 feet.

6. The only regular traffic to the property will be employees coming to retrieve work trucks to travel to job sites. The equipment is generally stored on the job site and will only be at the property when not being used for a project.

7. There was no opposition presented to this appeal.

Rationale

Special Exception Request

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as "a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood." Article 28A. In addition, Section 25.6 sets forth the limitations, guides, and standards in exercise of the board's duties and provides:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a permit may be issued, or the Board is called upon to decide certain issues, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted, and shall hear any

person desiring to speak for or against the issuance of the permit. However, the application for a permit shall not be approved where the Board finds the proposed building, addition, extension of building or use, sign, use or change of use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall consider any other information germane to the case and shall give consideration to the following, as applicable:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities
- (d) The effect of such use upon the peaceful enjoyment of people in their homes.
- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of the land and structure.
- (h) Decision of the courts.
- (i) The purpose of these regulations as set forth herein.
- (j) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

Mr. Eby's testimony and the evidence presented at the hearing suggest there will be limited, if any, impact on the surrounding properties. The subject property is in a rural area with surrounding agricultural business operations. Mr. Eby also testified that none of his neighbors raised any objections when he presented his plan for the property to them.

The Board finds no cause for concern with respect to the number of people residing or working in the area, traffic conditions, nearby public gatherings or the conservation of property values. There will be no odors, gas, smoke, noise, fumes, vibrations or glare produced beyond what is normally expected in an agricultural area. The proposed use will not affect any public gatherings in the vicinity and will be hardly noticeable to anyone other than the immediate and adjacent property owners. The Board finds that the proposed use at the subject property will have no greater "adverse effects above and beyond those inherently associated with such a special exception use irrespective of its

location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981). For all these reasons, we conclude that this appeal meets the criteria for a special exception and therefore should be granted.

Variance Request

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.² “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994.)

Pursuant to Section 5A.6, the front yard setback for the subject property is required to be 50 feet. Appellant has requested a variance to reduce the setback to 32 feet, taking into consideration the additional 15 feet lost for the right-of-way dedication. The

²² “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

dwelling was constructed in 1970, which predates the adoption of the Zoning Ordinance. Setbacks did not exist and therefore could not have been considered at the time the property was laid out. In its current form, the subject property does not conform to the setback requirements and the application of the right-of-way dedication only furthers that nonconformance. These circumstances establish practical difficulty that makes strict conformance with the Ordinance impossible. The request is the minimum necessary to afford relief and does not confer any special benefit upon Appellant. The Board finds that Appellants have satisfied the criteria for variance relief and the variance request should be granted.

Accordingly, the request for a special exception to establish a contractor's equipment and storage yard with office space for an excavation business at the subject property is hereby GRANTED, by a vote of 4 to 0. The accompanying request for a variance to reduce the required setback from 50 feet to 32 feet for the existing dwelling to be converted into commercial office space for the excavating business at the subject property is also GRANTED, by a vote of 4 to 0. The special exception and variance relief are granted subject to the general condition that the use is consistent with the testimony and evidence presented.

BOARD OF APPEALS

By: Robert Meyers, Acting, Chair

Date Issued: July 25, 2024

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P. 240.313.2430 | F. 240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: John & Barbara Norvell
21400 Leiter Street
Hagerstown MD 21742
Appellant: John Norvell
21400 Leiter Street
Hagerstown MD 21742
Property Location: 21400 Leiter Street
Hagerstown, MD 21742
Description Of Appeal: Variance from the required 50 ft. side yard setback from a property zoned for or occupied by a Residential Land Use to 0 ft. from the North property line and 40 ft. from the East property line for lean to/gazabo to be used as bandshell/stage.

Docket No: AP2024-025
Tax ID No: 09007318
Zoning: RV
RB Overlay: Yes
Zoning Overlay:
Filed Date: 05/28/2024
Hearing Date: 06/26/2024

Appellant's Legal Interest In Above Property:
Owner: Yes
Contract to Rent/Lease: No
Lessee: No
Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s): AP2008-049, AP2008-044
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 5E.5 (c)

Reason For Hardship: Lot was established before zoning and is a non-conforming undersized lot.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Tavern Proposed Use: Bandshell/Stage

Previous Use Ceased For At Least 6 Months: Date Ceased:

Area Devoted To Non-Conforming Use - Existing: Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

[Signature]
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 28 day of May, 2024.

Kathryn B Rathvon
Notary Public
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025



[Signature]
Notary Public



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-025

State of Maryland Washington County, To Wit:

On 5/28/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared John Norvell and made oath in due form of law as follows:

John Norvell will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 06/26/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 06/04/2024 and will remain until after the above hearing date.

John Norvell

Sworn and subscribed before me the day and year first above written.

Notary Public

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

My Commission Expires



Seal



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P: 240.313.2430 | F: 240.313.2431 | Hearing Impaired: 7-1-1

BOARD OF ZONING APPEALS

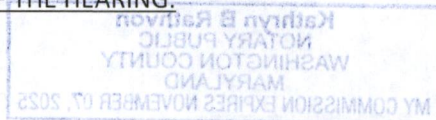
ATTENTION!

Posting Instructions

The premises **MUST** be posted in accordance with the following rules:

1. The sign must be posted a minimum of fourteen (14) days prior to the public hearing
Section 25.51(c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
2. The sign must be placed on the property within ten (10) feet of the property line which abuts the most traveled public road.
3. The sign must be posted in a conspicuous manner not over six (6) feet above the ground level, and affixed to a sturdy frame where it will be clearly visible and legible to the public.
4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for the minimum of fourteen (14) days prior to the public hearing date.

Proper posting of the sign will be spot checked by the Zoning Inspector. IF SIGN IS NOT IN COMPLIANCE, IT MAY RESULT IN RESCHEDULING OF THE HEARING.





Washington County
MARYLAND

BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2461 | Hearing Impaired:

7-1-1 WWW.WASHCO-MD.NET

Appeal for Variance

Appeal is hereby made for a variance from a requirement of the Washington County Zoning Ordinance as follows:

Location 21400 Leiter St., Hagerstown, MD 21742

Appellant's present legal interest in above property: (Check One)

Owner (Including Joint Ownership) Lessee Contract to rent/lease
 Contract to Purchase Other

Specify the Ordinance section and subsection from which the variance is desired:

25.56 ARTICLE 5E

Specify the particular requirement(s) from which a variance is desired in that section or subsection:

40 FT SETBACK FROM THE PROPERTY LINE WITH THE ROAD FRONTAGE AND 50 FT FROM THE SIDE YARDS

Describe the nature and extent of the desired variance from Ordinance requirements: listed above:

would like to keep the new band stage in same place as the previous deteriorated stage. The property is 70' wide, so not able to abide by the setback.

Describe reason(s) why the Ordinance requirement(s) in question would result in peculiar and/or unusual practical difficulties to or would impose exceptional or undue hardship upon the owner of the property if the requested variance were not granted:

Provide Detailed Explanation on Separate Sheet

Has any previous petition or appeal involving this property been made to the Board?

Yes No

If yes, list docket number(s): _____

I hereby certify that I have, to the best of my knowledge, accurately supplied the information required for the above referenced appeal.

Adam T. Nowak
Signature of Appellant

21400 Leiter St. Hager, MD 21742
Address and of Appellant

Leitersburg Tavern@MyActiv.net
Email of Appellant

240-347-4821
Phone Number of Appellant

This appeal form is to be used to assist the customer in gathering the information necessary to submit an application. However, the application shall be processed in person.

We are requesting to keep the new, structurally sound band stage, which is basically a platform with a lean-to type roof and just a back wall, in the same place as the previous, deteriorated stage. The placement of the new stage is no closer to the neighboring property than the old stage or the existing deck. (This neighboring property has been vacant and neglected for decades). We basically replaced our rotting, unsafe band stage with a safer, solid band stage with a lean-to type roof.

With the layout of the tavern property's current structure and parking lot, this stage is positioned in the only spot and direction that will carry the music away from currently occupied neighboring properties. As per an email from the county, I am told the setback for this property is "40ft setback from the property line with the road frontage and 50ft from the side yards". The tavern property is only 70ft wide, so there is no way for us to be able to abide by these setbacks.

The licensed contractor, whom I engaged to ensure this work is done up to code, advised me before beginning work that they had checked with a county engineer, and was told that no permit was required, since this was "basically a movable shed with less than a 200 sq ft footprint, was under all required height limitations, and is not an addition to a current structure". They also advised me that it's location or setback was ok as it is no closer to the neighboring property than the existing deck.

If this variance is not approved, this will definitely result in significant hardships to this business, as well as it's employees and local musical talent. The financial success of this business has relied on revenue obtained by being known for introducing and supporting live local bands. We have limited space inside and a small indoor capacity, which prevents us from being able to generate enough sales to make a profit when paying for bands to play inside. Other than when we can offer this outdoor entertainment, which enables us to make use of the entire property, there is otherwise only a small number of local customers that normally frequent our business, since we are located off the beaten path in an undeveloped area of the county. During the colder months, we normally only have one person working at any given time, but when we can host outdoor music we have up to 6 people working. These extra employees, and the extra business being generated from the existence of this band stage, also adds tax revenue to the county. Without the approval of this variance, this business may very likely fail due to the loss of revenue expected to be generated by bands we already have booked, money already spent by the business to have this needed improvement completed and/or any further cost if this stage needs to be moved or removed.

Provide Detailed Explanation on Separate Sheet

Has any previous action or appeal involving this property been made to the Board? Yes No

If yes, list docket number(s)

I hereby certify that I have, to the best of my knowledge, accurately supplied the information required for the above referenced appeal.

Signature of Applicant: *[Signature]*

Address and of Applicant: *[Address]*

Phone Number of Applicant: *[Phone Number]*

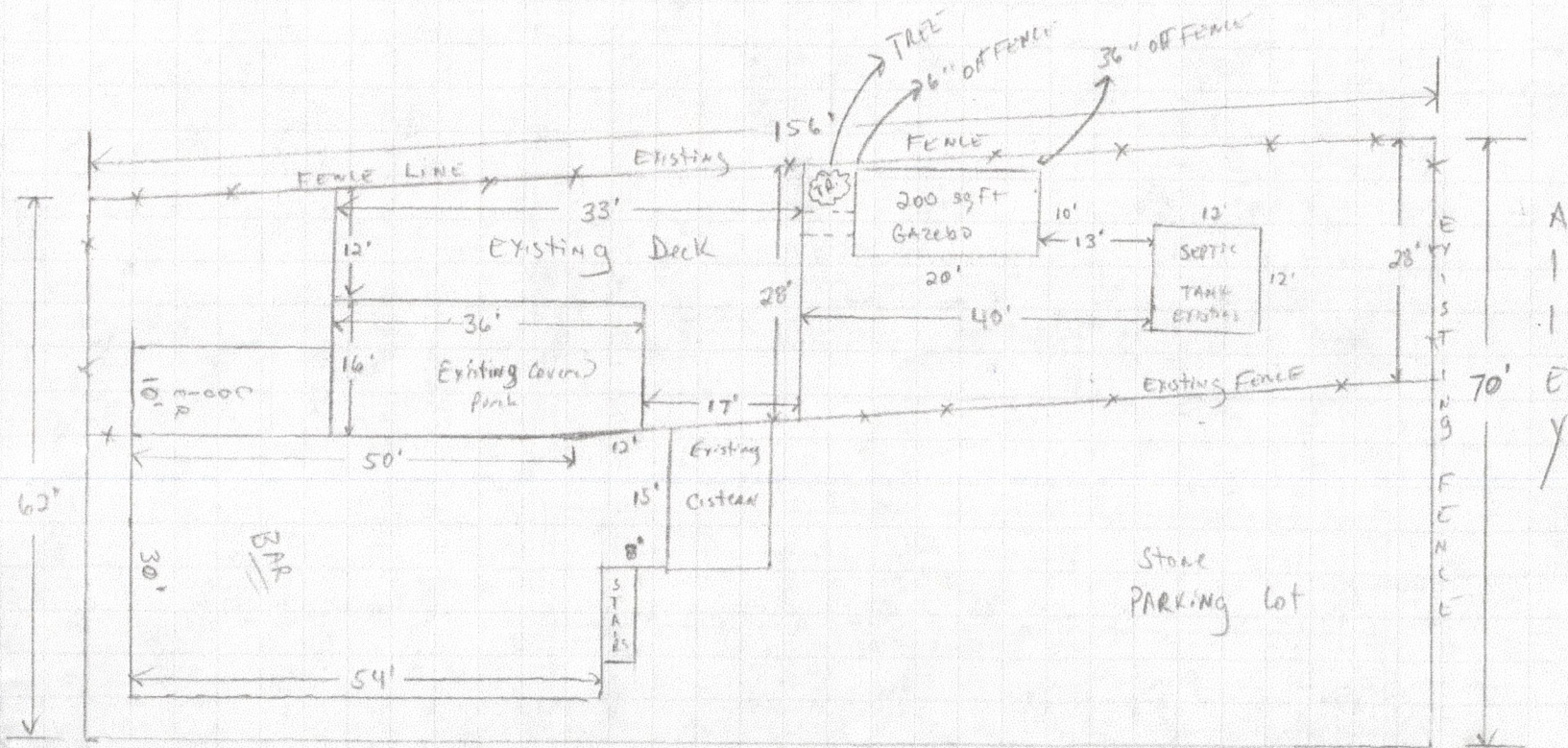
Email of Applicant: *[Email]*

This appeal form is to be used to assist the customer in gathering the information necessary to submit an application. However, the application shall be processed in person.

scale 1" = 20'

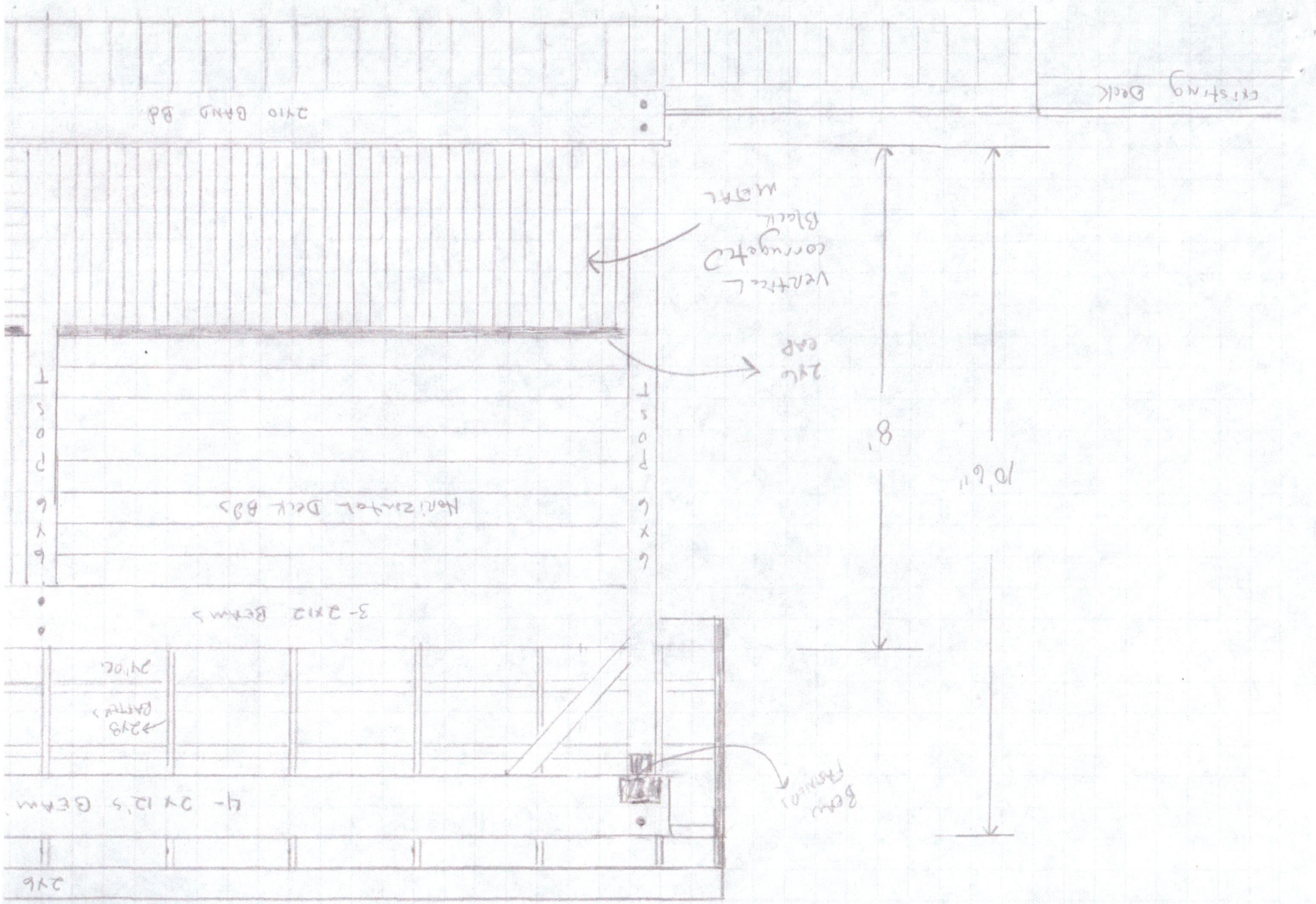
Plot PLAN - Gelyin Property -
ZERO - Lot Line

Draw. By _____
Date _____



154'

E
|
S
T
|
N
G
F
E
N
C
E
70' E
Y



Stringer Deck

2x10 BAND Bd

Vertical
Corrugated
Black
Metal

2x6
CAP

8'

10'6"

3-2x12 BEAMS

Horizontal Deck Bds

2x6
BEAM

4-2x12'S BEAM

2x10C

2x6
BATTEN

2x6

1
3
0
2
6
X
6

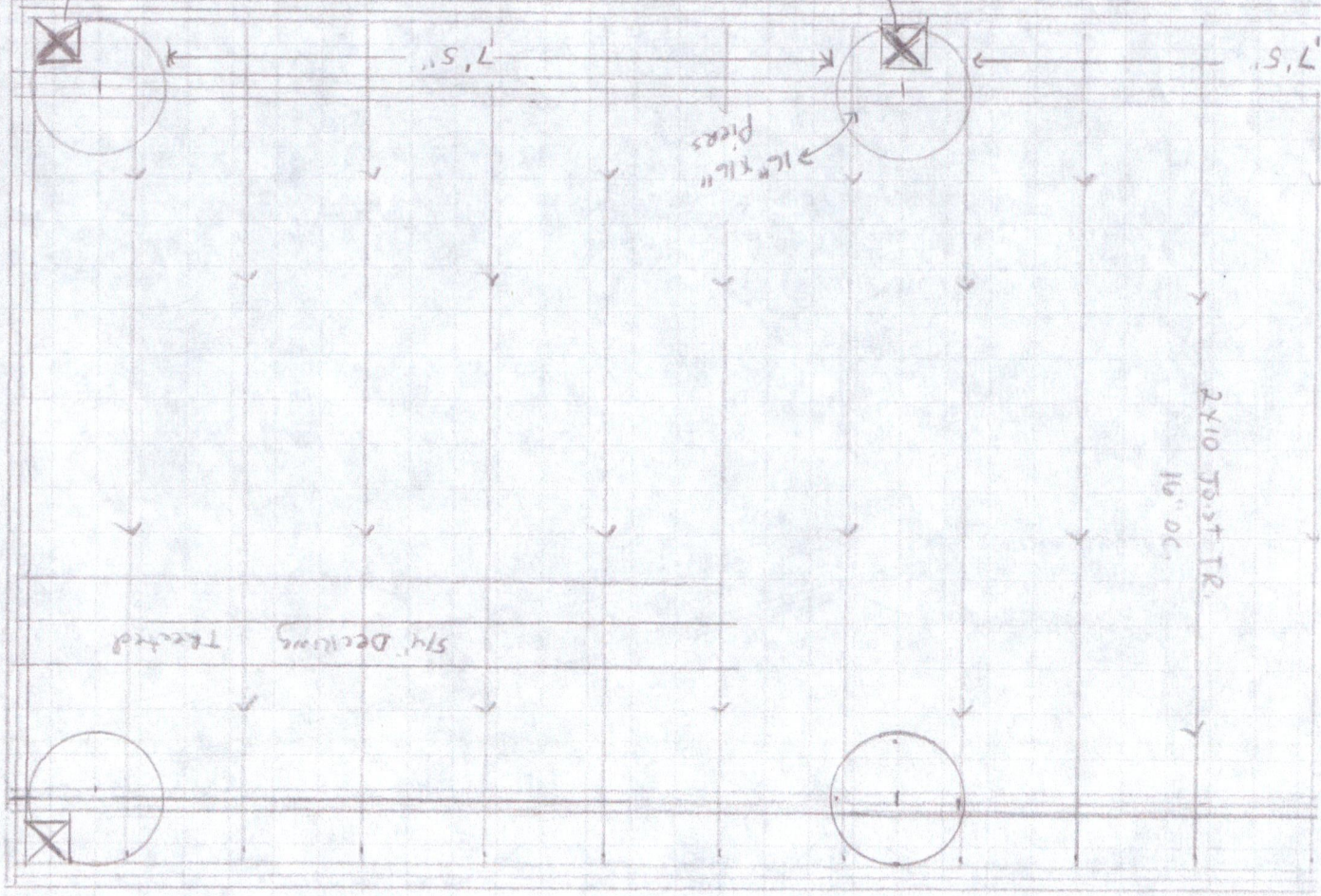
1
3
0
2
6
X
6

Customer Name _____

Address _____

Phone _____

Job Name _____



Top View GAZEBO
 FRONT

BACK of Gazebo

Pieces

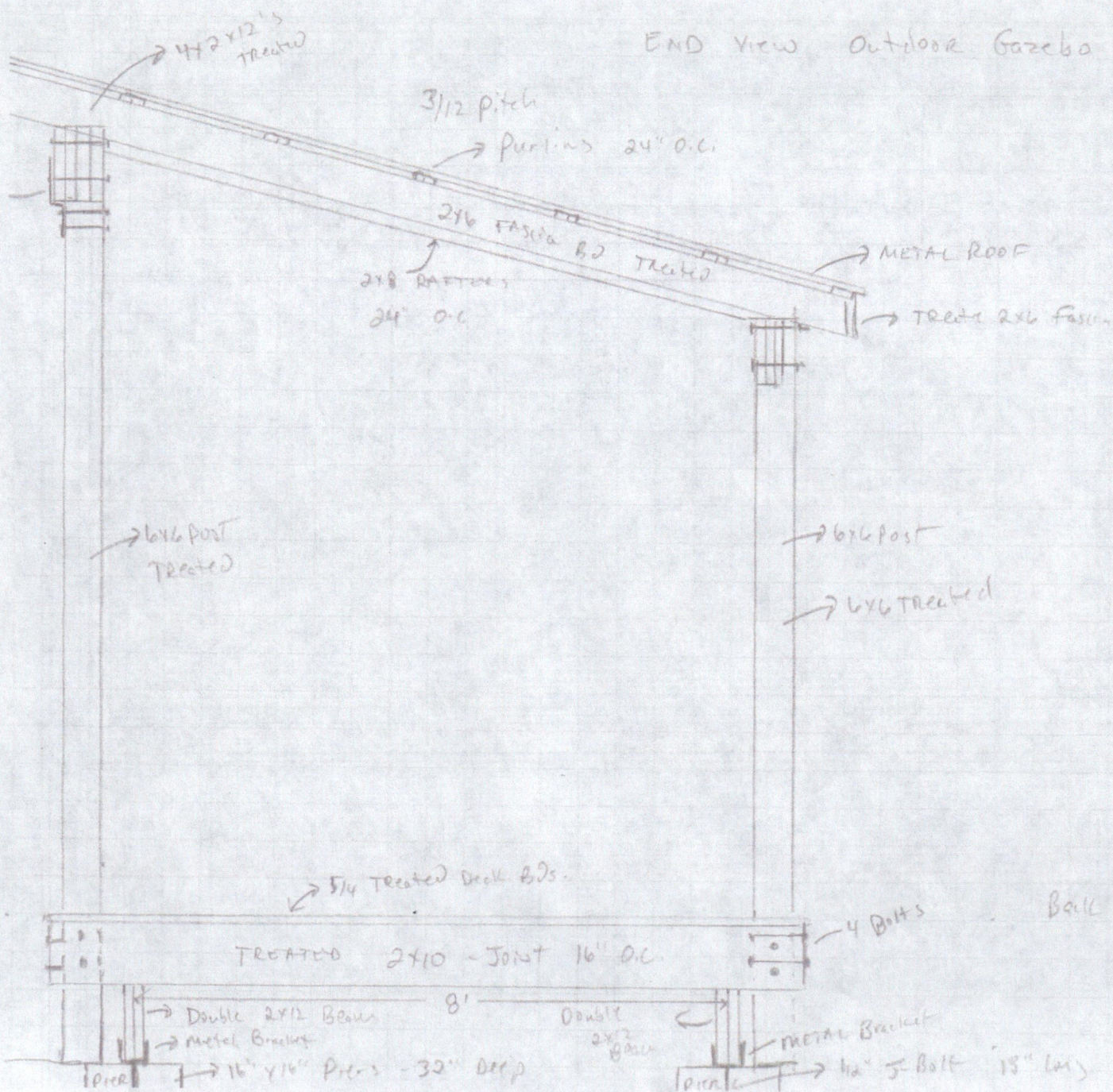
16" x 16" x 32"

Scale 1/2" = 1' 0"

6x6 post

Scale 1/2" = 1'0"

END view Outdoor Gazebo



**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

JOHN NORVELL

Appellant

*

*

Appeal No.: AP2024-025

*

*

* * * * *

OPINION

John Norvell (hereinafter “Appellant”) requests variances to reduce the required side yard setback on the north property line from 50 feet to 0 feet, and to reduce the required side yard setback on the east property line from 50 feet to 40 feet for a lean-to/gazebo to be used as a bandshell/stage at the subject property. The subject property is located at 21400 Leiter Street, Hagerstown, Maryland and is zoned Rural Village. The Board held a public hearing in this matter on June 26, 2024.¹

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellant and his wife are the owners of the subject property, located at 21400 Leiter Street, Hagerstown, Maryland. The subject property is zoned Rural Village.
2. The subject property consists of a 19th century structure that is the home of Leitersburg Tavern which has operated at the location for many years. The lot width is 62 feet, and the lot depth is 156 feet for the subject property.
3. The subject property is surrounded on all sides by residential properties.

¹ The Board had four (4) members present and Appellants were advised of the possibility of a tie vote which would result in a denial of the relief requested. Appellants elected to proceed with the appeal.

The property immediately to the north is vacant and in a state of disrepair.

4. In Case No. AP2008-049, previous owners of the subject property sought and obtained a variance for the existing deck and porch which were constructed in 1992.

5. Approximately ten (10) years ago, there was a stage structure at the property that was utilized for live music outside behind the tavern building. There is a hardscape area which serves as a dance floor and customers on the deck were able to enjoy live music performances.

6. Appellant completed construction of the gazebo structure in the summer of 2023 and learned of the need for a permit sometime in the fall of 2023.

7. The gazebo structure is located on the northern property line and 40 feet from the east property line which is the rear of the property.

8. There was opposition presented by a neighbor.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.² “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape,

²² “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).)

Pursuant to Section 5E.5 of the Zoning Ordinance, the side yard setback is 50 feet from a property zoned or occupied by a Residential Land Use. Given the subject property’s location among residential properties the side yard setback for the north and east property lines is 50 feet.³ Appellant requested a reduction to zero (0) feet for the north side yard and to forty (40) feet for the east side to accommodate the existing gazebo structure.

Appellant testified that he was unaware of the need for a variance when the gazebo structure was constructed. He thought he was simply replacing the previous structure with something safer and better constructed. He did not have an explanation for why it took so long to apply for a variance, but he filed his appeal as directed. Appellant testified that the gazebo structure is integral to the business operation as they promote live music on Fridays and Saturdays during the good weather months. He testified that the hardship was that the gazebo was already constructed and that there was no place to move it that would fit with the current operation of the property. There was opposition presented by a neighbor related to the use of the property, specifically as to noise and the disruption to peace and enjoyment.

While the Board understands the difficulties created by having already constructed the structure, it nevertheless must conform to the bulk dimensional requirements for the property. The subject property is exceptionally small for the existing use which already includes an approved deck and porch by way of variance relief. The current variance requests seem excessive for the small area of the subject property and

³ Although the east property line is the rear of the property, it is located on a corner making it a side yard line instead of a rear yard line. Regardless, the 50-foot setback requirement would still apply.

would further crowd the limited open space. Moreover, the Board has not been presented with evidence of practical difficulty aside from the argument that it will be costly and inconvenient to move the structure. The Board finds that Appellant has failed to satisfy the criteria for variance relief and the variance requests should be denied.

Accordingly, the requested variances to reduce the required side yard setback on the north property line from 50 feet to 0 feet, and to reduce the required side yard setback on the east property line from 50 feet to 40 feet for a lean-to/gazebo to be used as a bandshell/stage at the subject property are DENIED, by a vote of 3-1.

BOARD OF APPEALS

By: Robert Meyers, Acting Chair

Date Issued: July 25, 2024

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: Steven & Cherith Griffin
20402 Jefferson Boulevard
Hagerstown MD 21742
Appellant: Steven & Cherith Griffin
20402 Jefferson Boulevard
Hagerstown MD 21742
Property Location: 20402 Jefferson Boulevard
Hagerstown, MD 21742
Description Of Appeal: Variance from the 100 ft. setback requirement for animal husbandry for the existing structures on the property: West property line the closest structures are 12 ft. East property line the closest structure is 50 ft.

Docket No: AP2024-026
Tax ID No: 18011840
Zoning: RT
RB Overlay: No
Zoning Overlay:
Filed Date: 05/29/2024
Hearing Date: 06/26/2024

Appellant's Legal Interest In Above Property: Owner: Yes
Contract to Rent/Lease: No
Lessee: No
Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s):
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 22.94 (a)
Reason For Hardship: Width of property makes it impossible to meet the required setback for structures.
If Appeal of Ruling, Date Of Ruling:
Ruling Official/Agency:
Existing Use: Single Family Dwelling
Proposed Use: Animal Husbandry
Previous Use Ceased For At Least 6 Months:
Date Ceased:
Area Devoted To Non-Conforming Use -
Existing:
Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Handwritten signature of Steven C. Griffin
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 29 day of May, 2024.

Kathryn B Rathvon
Notary Public
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

Handwritten signature of Notary Public
Notary Public





WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-026

State of Maryland Washington County, To Wit:

On 5/29/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Steven & Cherith Griffin and made oath in due form of law as follows:

Steven & Cherith Griffin will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 06/26/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

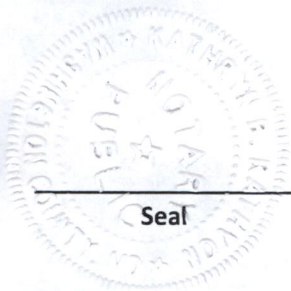
Sign(s) will be posted on 06/04/2024 and will remain until after the above hearing date.

Steven & Cherith Griffin

Sworn and subscribed before me the day and year first above written.

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

Notary Public



Seal

My Commission Expires



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

BOARD OF ZONING APPEALS

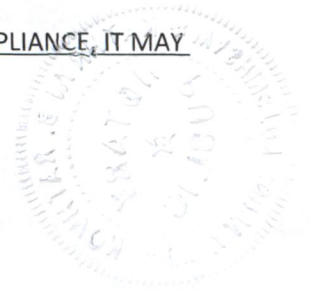
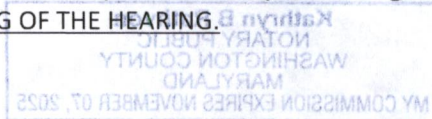
ATTENTION!

Posting Instructions

The premises MUST be posted in accordance with the following rules:

1. The sign must be posted a minimum of fourteen (14) days prior to the public hearing
Section 25.51(c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
2. The sign must be placed on the property within ten (10) feet of the property line which abuts the most traveled public road.
3. The sign must be posted in a conspicuous manner not over six (6) feet above the ground level, and affixed to a sturdy frame where it will be clearly visible and legible to the public.
4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for the minimum of fourteen (14) days prior to the public hearing date.

Proper posting of the sign will be spot checked by the Zoning Inspector. IF SIGN IS NOT IN COMPLIANCE, IT MAY RESULT IN RESCHEDULING OF THE HEARING.



Washington County
Board of Zoning Appeals
747 Northern Avenue
Hagerstown, MD 21742

To the Board of Zoning Appeals,

Thank you for the opportunity to submit a request for variance in regard to the structures located in the backyard of 20402 Jefferson Blvd. Hagerstown, MD 21742, currently owned by Steven and Cherith Griffin. When we put these structures up, we were unaware of the ordinance. However we understand that these ordinances are in place for the betterment of Washington County residents and greatly appreciate your time and consideration.

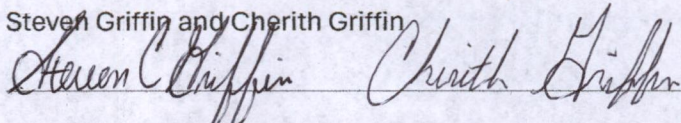
We moved out to this 1 ½ acre property in Washington County in September of 2022 for several reasons. One of the main reasons for our move was so that we could learn how to raise our own food and animals while teaching our children all of the important skills that are associated with this lifestyle. (Responsibility, animal care and maintenance, budgeting, gardening...etc) . This was part of the dream of living further out in the "country". The reason for our request for variance today falls under section _____ of the Washington County Zoning Ordinance. Though it has come to our attention that the ordinance requires structures to be set back 100 feet from all property lines, our property is only 108 feet wide. As shown on the drawing submitted, we were able to comply with this ordinance on 2 sides of our property, the front and back, and have done so. **From the right side** of our property, the current structures in question are roughly **50 feet and 82 feet** from the property line. **From the left side**, this means the structures are about **40 feet** and **12 feet** from the property line.

The most obvious reason for our variance request is that it is impossible (given the width of our property) to comply with the ordinance. However, the reason we chose this specific location on our property was due to the safety concern of our animals. Placing these structures any further from our line of sight created a concern for their safety as we have seen predators on our property (such as fox, other dogs and hawks) and have already lost one of our animals to the fox. Today, we are requesting a variance, for the sake of our animals safety and well being as well as our ability to make reasonable use of our property.

We thank you in advance for your time and consideration of our request.

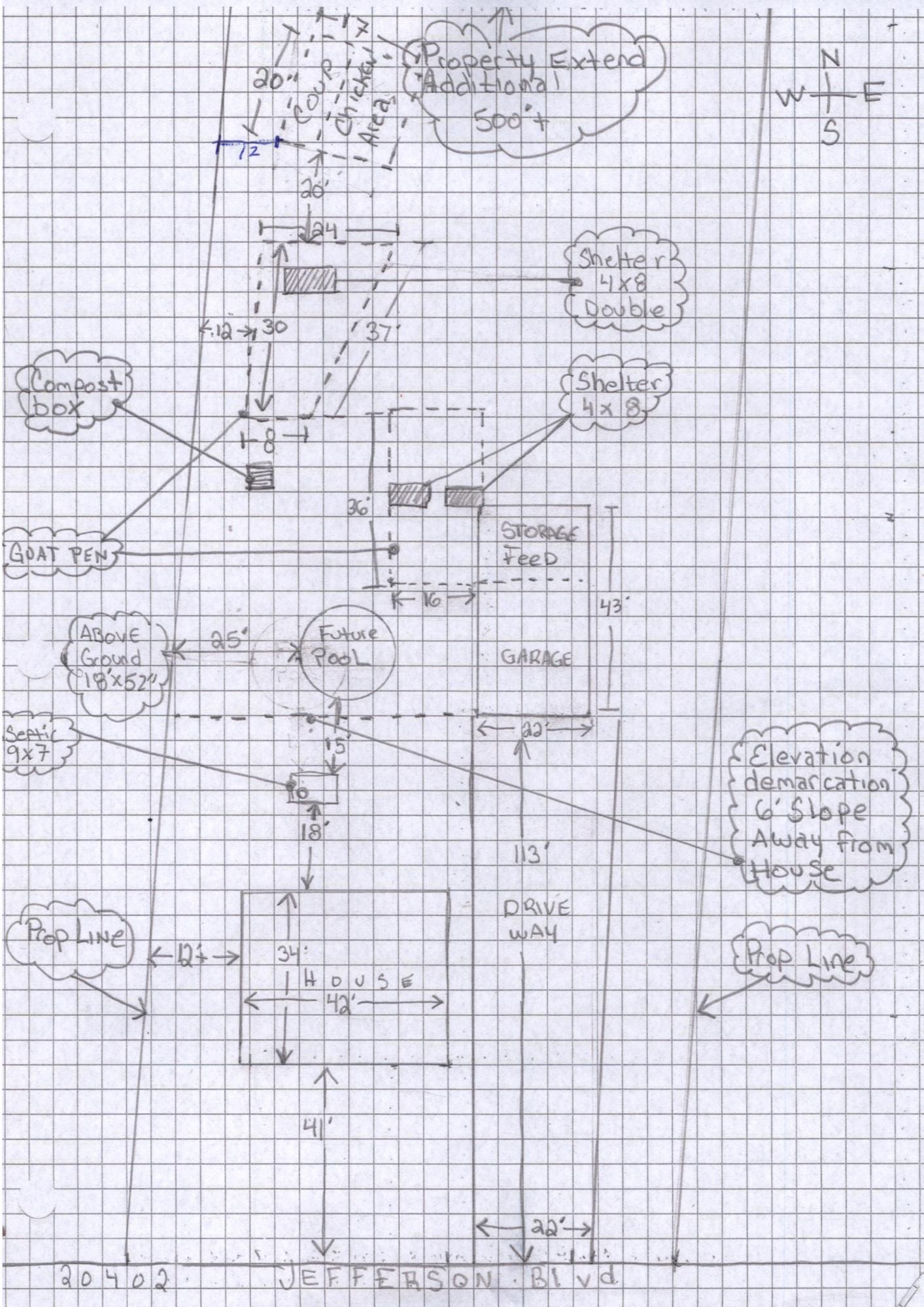
Sincerely,

Steven Griffin and Cherith Griffin



20402, Jefferson Blvd, Hagerstown, MD 21742

443-789-2778



20402 JEFFERSON Blvd

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

STEVEN AND CHERITH GRIFFIN
Appellant

Appeal No.: AP2024-026

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*

* * * * *

OPINION

Steven and Cherith Griffin (hereinafter “Appellants”) requests variances to reduce the required setback on the west property line from 100 feet to 12 feet, and to reduce the required setback on the east property line from 100 feet to 50 feet for existing structures related to animal husbandry at the subject property. The subject property is located at 20402 Jefferson Boulevard, Hagerstown, Maryland and is zoned Residential, Transition. The Board held a public hearing in this matter on June 26, 2024.¹

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellants are the owners of the subject property, located at 20402 Jefferson Boulevard, Hagerstown, Maryland. The subject property is zoned Residential, Transition.
2. Appellants purchased the subject property in 2022. It consists of long, narrow lot improved with a dwelling, detached garage, and several small accessory

¹ The Board had four (4) members present and Appellants were advised of the possibility of a tie vote which would result in a denial of the relief requested. Appellants elected to proceed with the appeal.

buildings to be used for animal husbandry. The lot is only 108 feet wide.

3. Appellants home school their children and incorporate an agricultural component to that educational, which would include animal husbandry.

4. Appellants proposed to have 16 chickens, 1 rooster, and 6 goats at the subject property.

5. The rear area of the yard is difficult to see from the home and Appellants are unable to ensure animal safety in this area. They have observed predators in that area of the property and have lost an animal to a fox.

6. There was no opposition presented except for a letter submitted to the Board on behalf of several neighbors.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.² “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access

²² “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).)

Pursuant to Section 22.94(a) of the Zoning Ordinance, “animal waste storage and management systems associated with an animal husbandry facility and/or any structure housing animals shall have a minimum building setback of 100 feet from the property line or public right-of-way...” Appellants are seeking to establish animal husbandry facilities among the existing structures at the subject property thus requiring 100-foot setback from the east and west property lines. Appellants requested a reduction to twelve (12) feet for the west side and to fifty (50) feet for the east side to accommodate the existing structures.

Appellants testified that the subject property is too narrow to comply with the strict setback requirements and thus they are requesting variance relief. When asked about moving the structures, Appellants noted that the rear of the yard was out of sight and increased the risk for predator attacks. In addition, moving toward the rear of the property would not alleviate the need for side yard setback relief given the narrowness of the lot. There was opposition presented by a neighbor related to the noise from roosters, the proximity of the structures to adjacent properties and the general noise and smell resulting from the animals on the property.

The Board is persuaded that practical difficulty exists at the subject property. The narrow width of the lot prevents any meaningful setback for structures. Appellants have proposed a reasonable animal husbandry operation and with the removal of multiple roosters, one that is more conducive to the residential neighborhood. The requests appear to be the minimum necessary to afford relief and do not confer any special benefit upon Appellants. The Board finds that Appellants have satisfied the criteria for variance relief and the variance requests should be granted.

Accordingly, the requested variances to reduce the required setback on the west property line from 100 feet to 12 feet, and to reduce the required setback on the east property line from 100 feet to 50 feet for existing structures related to animal husbandry at the subject property are GRANTED, by a vote of 4-0. The variance is granted upon the general condition that the use is consistent with the testimony and evidence presented.

BOARD OF APPEALS

By: Robert Meyers, Acting Chair

Date Issued: July 25, 2024

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

ZONING APPEAL

Property Owner: Ear & Maria Brown Jr
308 Landis Road
Hagerstown MD 21740
Appellant: Earl & Maria Brown
14023 Maugansville Road
Maugansville MD 21767
Docket No: AP2024-027
Tax ID No: 13007039
Zoning: RS
RB Overlay: No
Zoning Overlay:
Filed Date: 05/30/2024
Hearing Date: 06/26/2024
Property Location: 14023 Maugansville Road & 18005 Showalter Road
Maugansville, MD 21767
Description Of Appeal: Variance from the lot size requirements and setbacks for two single family dwellings in the Residential Suburban district on the same parcel for future subdivision.

Appellant's Legal Interest In Above Property: Owner: Yes
Contract to Rent/Lease: No
Lessee: No
Contract to Purchase: No
Other:

Previous Petition/Appeal Docket No(s):
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 8.5 (a)
Reason For Hardship: See justification statement
If Appeal of Ruling, Date Of Ruling:
Ruling Official/Agency:

Existing Use: Two Single Family Dwellings on One Lot
Proposed Use: Subdivision for Two Residential Lots
Previous Use Ceased For At Least 6 Months:
Date Ceased:
Area Devoted To Non-Conforming Use -
Existing:
Proposed:

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

[Handwritten Signature]
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 7 day of May, 2024.

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

[Handwritten Signature]
Notary Public



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-027

State of Maryland Washington County, To Wit:

On 5/30/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Frederick Seibert & Associates Inc and made oath in due form of law as follows:

Frederick Seibert & Associates Inc will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 06/26/2024, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 06/04/2024 and will remain until after the above hearing date.

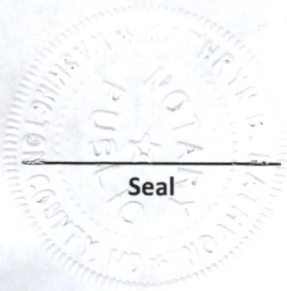
Frederick Seibert & Associates Inc

Sworn and subscribed before me the day and year first above written.

Notary Public

Kathryn B Rathvon
NOTARY PUBLIC
WASHINGTON COUNTY
MARYLAND
MY COMMISSION EXPIRES NOVEMBER 07, 2025

My Commission Expires



Seal



WASHINGTON COUNTY BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742-2723 | P:240.313.2430 | F:240.313.2431 | Hearing Impaired: 7-1-1

BOARD OF ZONING APPEALS

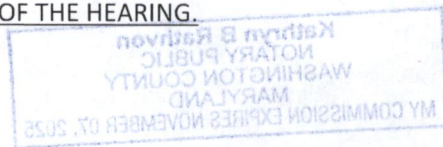
ATTENTION!

Posting Instructions

The premises MUST be posted in accordance with the following rules:

1. The sign must be posted a minimum of fourteen (14) days prior to the public hearing
Section 25.51(c) Property upon which the application or appeal is concerned shall be posted conspicuously by a zoning notice no less in size than twenty-two (22) inches by twenty-eight (28) inches at least fourteen (14) days before the date of the hearing.
2. The sign must be placed on the property within ten (10) feet of the property line which abuts the most traveled public road.
3. The sign must be posted in a conspicuous manner not over six (6) feet above the ground level, and affixed to a sturdy frame where it will be clearly visible and legible to the public.
4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for the minimum of fourteen (14) days prior to the public hearing date.

Proper posting of the sign will be spot checked by the Zoning Inspector. IF SIGN IS NOT IN COMPLIANCE, IT MAY RESULT IN RESCHEDULING OF THE HEARING.



Project Name: Earl & Maria Brown

Owner/Applicant: Earl & Maria Brown

Project Address: 14023 Maugansville Rd & 18005 Showalter Road

Tax Map 241 **Grid** _____ **Parcel** 1539

Account # 13007039

Zoning: RS, Residential Suburban

Variance request:

Reduce the lot area and front yard setbacks as enumerated in table 8.5 of the Washington County Zoning Ordinance for a proposed future subdivision of the above referenced property currently improved with two dwelling units.

- 1. Proposed Lot 1- Reduce minimum the lot size in the RS district from 10,000 SF to 8,640 SF due to Right of Way dedication and the front yard setback from 20 ft to 13.6 ft from the proposed dedicated Right of Way.**
- 2. Proposed Lot 2- Reduce minimum the lot size in the RS district from 10,000 SF to 3,875 SF due to Right of Way dedication and the front yard setback from 20 ft to 16.5 ft from the proposed dedicated Right of Way.**

The property owners wish to subdivide the subject property to separate the two existing dwellings on the property so that each can be sold independently of each other. Both dwellings were constructed in the 1950s, well before Zoning or Subdivision regulations were adopted by Washington County. These dwellings were also constructed prior to the construction of I-81 and the interchange road improvements with Showalter Road. The existing lot is very long and narrow and is only 60 ft deep running perpendicular to Showalter Road. On a macro scale the County Highway Plan indicates a 50ft from centerline dedicated right of way. In order to subdivide the plan must conform to the County Highway plan. The Planning Dept and Engineering Dept reviewed the applicants request to reduce the right of way to 25 ft from the centerline and granted the request. Additional relief is being requested of the Board of Zoning Appeals, without said relief the subdivision would not be permitted and both dwellings would remain as a single parcel which is also a zoning infraction.



Washington County Board of Zoning Appeals Owner's Representative Affidavit

This is to certify that ED SCHREIBER
is authorized to file an appeal with the Washington County Board of Appeals for VARIANCE TO REDUCE LOT AREA & FRONT YARD SETBACK
on property located 18005 SHAWALTER ROAD
The said work is authorized by EARL & MARIA BROWN
the property owner in fee.

PROPERTY OWNER

Earl + Maria Brown
Name
14023 Maugansville Rd
Address
Maugansville, MD 21767
City, State, Zip Code

[Signature]
Owner's Signature

Sworn and subscribed before me this 6 day of May, 2024.

[Signature]
Notary Public

My Commission Expires: 9/15/2024

AUTHORIZED REPRESENTATIVE

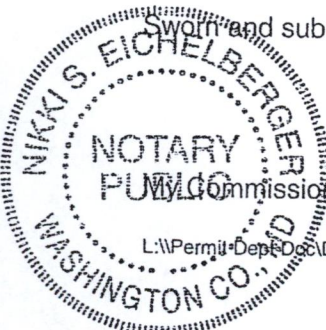
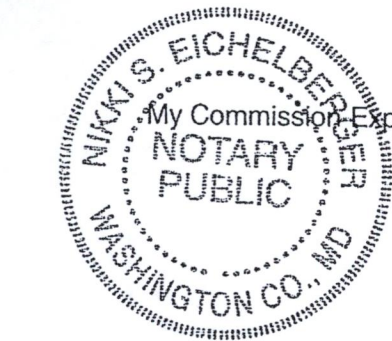
ED SCHREIBER OR FRED FREDERICK
Name
128 S. POTOMAC ST
Address
HAGERSTOWN MD 21740
City, State, Zip Code

[Signature]
Authorized Representative's Signature

Sworn and subscribed before me this 24 day of May, 2024.

[Signature]
Notary Public

My Commission Expires: 9/15/2024



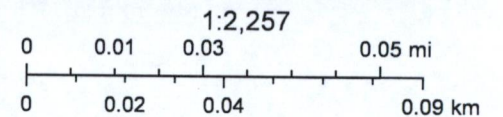
Frederick Seibert & Associates, Inc.



5/29/2024, 2:01:15 PM

World Transportation
MD_SixInchImagery

Parcels Washington County MD_washington_dem_ft
2144.75
207.349



Esri Community Maps Contributors, WashCo MD, West Virginia GIS, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph,

ZONING DATA

ZONING DISTRICT	A(R) - AGRICULTURAL RURAL DISTRICT
MINIMUM YARD SETBACK:	
FRONT	50 FT.
SIDE	50 FT.
REAR	50 FT.

SITE DATA

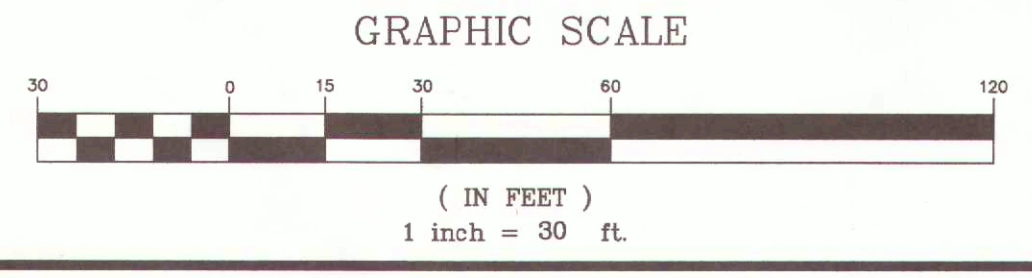
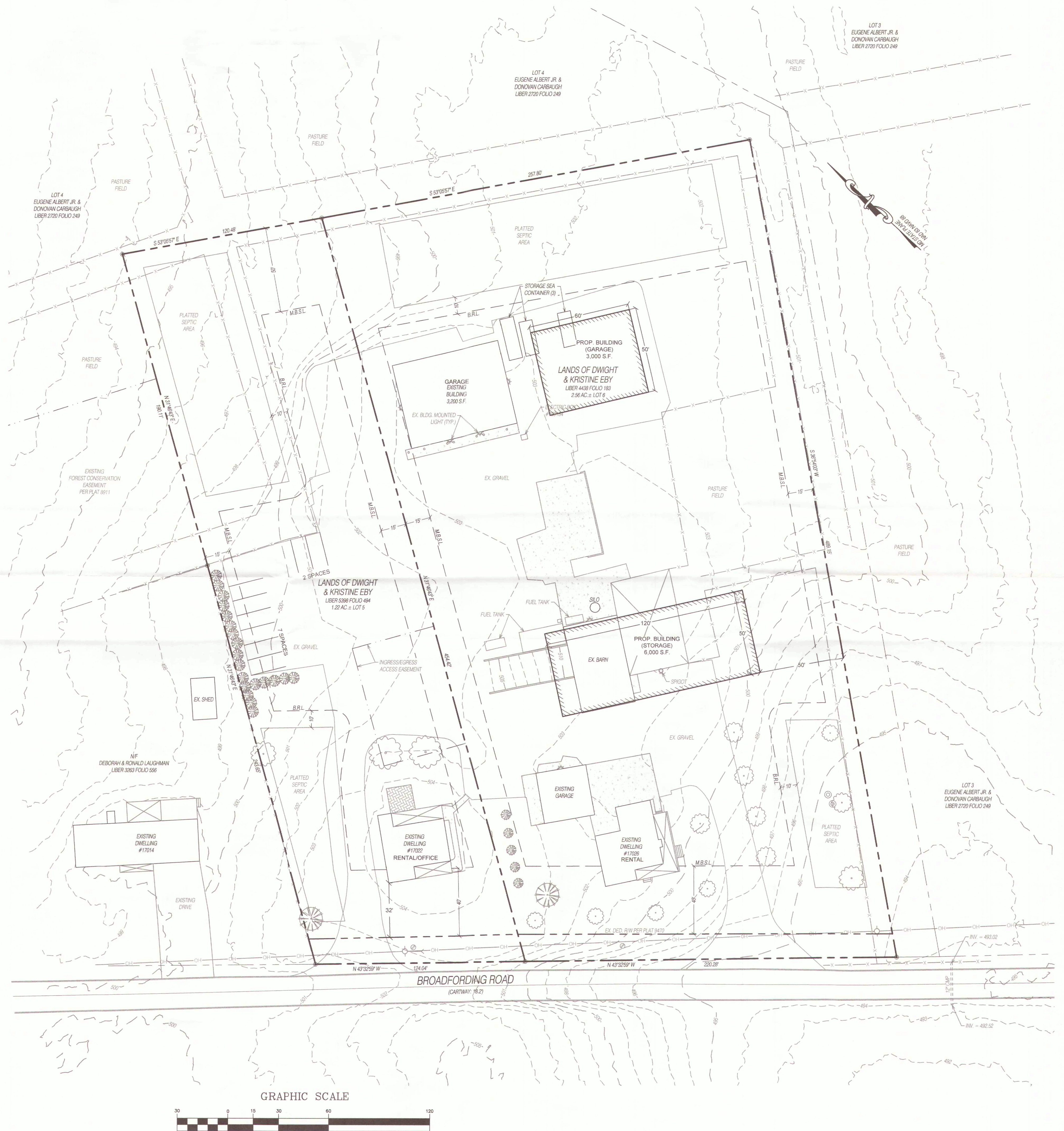
TAX MAP - GRID - PARCEL	0023-0023-0568
ELECTION DISTRICT	13
ACCOUNT NUMBER	002223, 036470
LIBER / FOLIO	04438 / 00183, 05398 / 00494
AREA SUMMARY	3.78 AC ±
LOT 5	1.22 AC ±
LOT 6	1.56 AC ±
EXISTING IMPERVIOUS	67,201 S.F. / 1.54 AC. (41%)
PROPOSED TOTAL IMPERVIOUS	NO NEW IMPERVIOUS AREA
BUILDING FOOTPRINT	3,400 S.F.
PROPOSED USE	CONTRACTOR EQUIPMENT STORAGE
HOURS OF OPERATION	8AM - 5PM, MON - FRI
EMPLOYEE SUMMARY	8
WATER & SEWER USAGE:	
WATER PROVIDED	WASHINGTON COUNTY
SEWER PROVIDED	PRIVATE SEPTIC
WASTE & RECYCLABLES:	
SOLID WASTE REMOVAL	DUMPSTER
RECYCLE REMOVAL	TRASH CANS PRIVATE HAULER
SITE LIGHTING:	
EXISTING	BUILDING MOUNTED
PROPOSED	NONE
SITE SIGNAGE:	
EXISTING	NONE
PROPOSED	NONE
ADDRESS ASSIGNMENT	17026 & 17022 BROADFORDING ROAD
ROAD CLASSIFICATION:	
MINOR COLLECTOR	BROADFORDING ROAD
FEMA PANEL #	24043C0120D

PARKING, LOADING & BICYCLE DATA

USE	REQUIREMENT	CALCULATION	REQUIRED
CONTRACTOR	1 SPACE PER EMPLOYEE	8	8 SPACES

TOTAL REQUIRED SPACES 8 SPACES
 TOTAL PROVIDED PARKING SPACES 9 SPACES

NOTE: THE CONTRACTOR USE DOES NOT INCLUDE ANY RETAIL OR SHOWROOM SPACE AND THEREFORE DOES NOT GENERATE ANY CUSTOMER VISITS.



Professional Certification:
 I hereby certify that these documents were prepared or approved by me, and that I am a duly licensed professional under the laws of the State of Maryland. License # 4866
 Expiration Date 08/31/2024

FSAI
 FREDERICK SEIBERT & ASSOCIATES, INC.
 CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS
 150 SOUTH HANOVER STREET
 GREENCASTLE, PA 17038
 717.257.8800
 717.257.8811

DATE	DESCRIPTION

HARD ROCK EXCAVATION
 SITUATE AT 17026 BROADFORDING ROAD
 WEST OF SALEM CHURCH ROAD AND EAST OF GREENCASTLE PIKE
 WASHINGTON COUNTY, MARYLAND
 HARD ROCK EXCAVATION
 17026 BROADFORDING RD. HAGERSTOWN, MD 21740
 ATTN: DWIGHT EBY (301) 981-8462

PROJECT NO.	4976.1
DWN BY	DWH
DATE	01-29-2024
PROJECT MANAGER	ADAM HAGER
EMAIL	AHAGER@FSAI-INC.COM
TAX MAP-GRID-PARCEL	0023-0023-0568
SCALE	1" = 30'
SHEET TITLE	BZA EXHIBIT

**BEFORE THE BOARD OF APPEALS
FOR WASHINGTON COUNTY, MARYLAND**

EARL AND MARIA BROWN
Appellant

Appeal No.: AP2024-027

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OPINION

Earl and Maria Brown (hereinafter “Appellants”) requests variances to reduce the required minimum lot size from 10,000 to 8,640 square feet and to reduce the front yard setback from 20 feet to 13.6 feet for proposed Lot 1, and to reduce the required minimum lot size from 10,000 to 3,875 square feet and to reduce the front yard setback from 20 feet to 16.5 feet for proposed Lot 2, as part of a future subdivision at the subject property. The subject property is located at 14023 Maugansville Road and 18005 Showalter Road, Maugansville, Maryland and is zoned Residential, Suburban. The Board held a public hearing in this matter on June 26, 2024.¹

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

Findings of Fact

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellants are the owners of the subject property, located at 14023 Maugansville Road and 18005 Showalter Road, Maugansville, Maryland. The subject property is zoned Residential, Suburban.

¹ The Board had four (4) members present and Appellants were advised of the possibility of a tie vote which would result in a denial of the relief requested. Appellants elected to proceed with the appeal.

2. The subject property consists of a narrow, rectangular-shaped lot that is situated along Showalter Road between the intersections with Maugansville Road and Weaver Avenue. The lot has depth of 60 feet extending back from Showalter Road and there is a 25-foot right-of-way from the centerline of the roadway.

3. The subject property is improved by two dwelling units, constructed circa 1947, which predates the construction of Interstate 81 and the interchange road improvements, and the adoption of the Zoning Ordinance.

4. Appellants propose to subdivide the subject property to create two lots, each with a dwelling and separate water service.

5. There is an area in the northeast corner of proposed Lot 1 that has utilities crossing to serve proposed Lot 2.

6. The proposed subdivision would require a dedication of the right-of-way for Showalter Road.

7. There was no opposition presented to this appeal.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.² “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

² “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994.)

Pursuant to Section 8.5 of the Zoning Ordinance, the minimum required lot area for the subject property is 10,000 square feet. In addition, the front yard setback for the subject property is 20 feet. Appellants have requested to reduce the lot area to 8,640 square feet and the front yard to 13.6 feet for proposed Lot 1 and to reduce the lot area to 3,875 square feet and the front yard to 16.5 feet for proposed Lot 2.

The Board is persuaded that practical difficulty exists at the subject property. The narrow depth of the lot and the existence of two (2) dwellings make conformance with traditional bulk dimensional requirements impossible. The proposal for subdivision appears to be the only solution to cure the multiple dwelling issue, which by necessity will create two (2) smaller lots. The requests appear to be the minimum necessary to afford relief and do not confer any special benefit upon Appellants. Furthermore, the variances are consistent with the spirit of the Ordinance as they seek to resolve the larger, dwelling nonconformance issue. The Board finds that Appellants have satisfied the criteria for variance relief and the variance requests should be granted.

Accordingly, the requested variances to reduce the required minimum lot size from 10,000 to 8,640 square feet and to reduce the front yard setback from 20 feet to 13.6 feet for proposed Lot 1 at the subject property are GRANTED, by a vote of 3-1. The requested variances to reduce the required minimum lot size from 10,000 to 3,875 square feet and to reduce the front yard setback from 20 feet to 16.5 feet for proposed Lot 2 at the

subject property are also GRANTED, by a vote of 3-1. All of the variances are granted subject to the following conditions:

1. That proposed Lot 2 shall incorporate the private utility are shown as an easement on the Subdivision Concept Plan dated May 6, 2024 and prepared by Frederick, Seibert & Associates; and
2. A general condition that the use is consistent with the testimony and evidence presented.

BOARD OF APPEALS

By: Robert Meyers, Acting Chair

Date Issued: July 25, 2024

Notice of Appeal Rights

Any party aggrieved by a final order of the Authority in a contested case, whether such decision is affirmative or negative in form, is entitled to file a petition for judicial review of that order to the Circuit Court for Washington County within thirty (30) days of the date of the order.