

## BOARD OF APPEALS

July 24, 2024

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

### AGENDA

**AP2024-029:** An appeal was filed by Kimberly Smith Jr. for a variance from the required 20 ft. rear yard setback to 8 ft. for proposed roof over existing patio on the property owned by the appellant and located at 18009 Putter Drive, Hagerstown, Zoned Residential Multi-Family. - **GRANTED**

**AP2024-030:** An appeal was filed by Kimberly & Chad Harbaugh for a variance from the required 8 ft. side yard setback to 6 ft. for the installed above ground pool on the property owned by the appellants and located at 25424 Military Road, Cascade, Zoned Rural Village. - **GRANTED**

**AP2024-031:** An appeal was filed by Lee & Kelly Drosdak for a variance from the 100 ft. left side yard setback required for a banquet/reception facility to 50 ft. for a proposed new property line for a one lot residential subdivision on property owned by the appellants and located at 5601 Mount Carmel Church Road, Keedysville, Zoned Preservation. - **GRANTED**

**AP2024-032:** An appeal was filed by Obidi Holdings LLC for a request to modify specific condition of a previously approved special exception AP2022-029 on property owned by the appellant and located at 13316 Marsh Pike, Hagerstown, Zoned Residential Suburban. - **DENIED**

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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 July 15, 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.

Tracie Felker, Chairman

Board of Zoning Appeals



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: Robert & Kimberly Smith Jr
18009 Putter Drive
Hagerstown MD 21740

Docket No: AP2024-029

Tax ID No: 10028574

Zoning: RM

Appellant: Kimberly Smith
18009 Putter Drive
Hagerstown MD 21740

RB Overlay: No

Zoning Overlay:

Filed Date: 06/13/2024

Hearing Date: 07/24/2024

Property Location: 18009 Putter Drive
Hagerstown, MD 21740

Description Of Appeal: Variance from the required 20 ft. rear yard setback to 8 ft. for proposed roof over existing patio.

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: 10.5

Reason For Hardship: Townhouse was built on the setback requirement.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Townhome Proposed Use: Covered patio

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 Kimberly S. Smith

Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 13 day of June, 2024.

Handwritten signature of Notary Public

My Commission Expires

Notary Public

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





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: AP2024-029

State of Maryland Washington County, To Wit:

On 6/13/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Kimberly Smith and made oath in due form of law as follows:

Kimberly Smith 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 07/24/2024, 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 07/09/2024 and will remain until after the above hearing date.

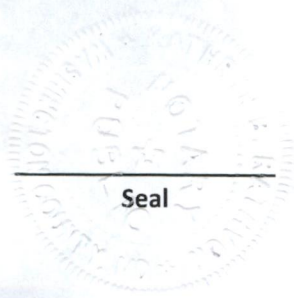
*Kimberly S. Smith*

Kimberly Smith

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

*Kathryn B. Rathvon*

Notary Public



Seal

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

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

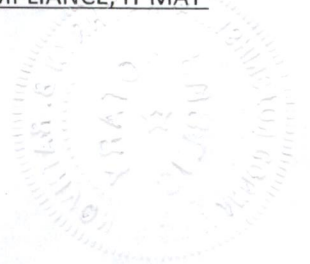
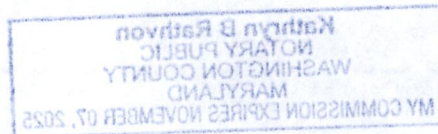
### ATTENTION!

### 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.



# Kimberly S. Smith

18009 Putter Dr  
Hagerstown, MD  
3017304030  
ksmith1863@msn.com

June 12, 2024

Board of Zoning Appeals  
747 Northern Avenue  
Hagerstown MD 21742

Dear Board of Zoning Appeals,

I am writing to you to request a variance to the property setback to install a roof over my patio for my residence at 18009 Putter Drive.

My back of my home ,when constructed, is only 20 feet from the property line. The patio extends 12 feet from the back of my home leaving only 8 feet from the patio to the property line. There is no modification that I can undertake to change this. I have many neighbors behind me and beside me that have roof coverings over their patio and I would like to have one as well.

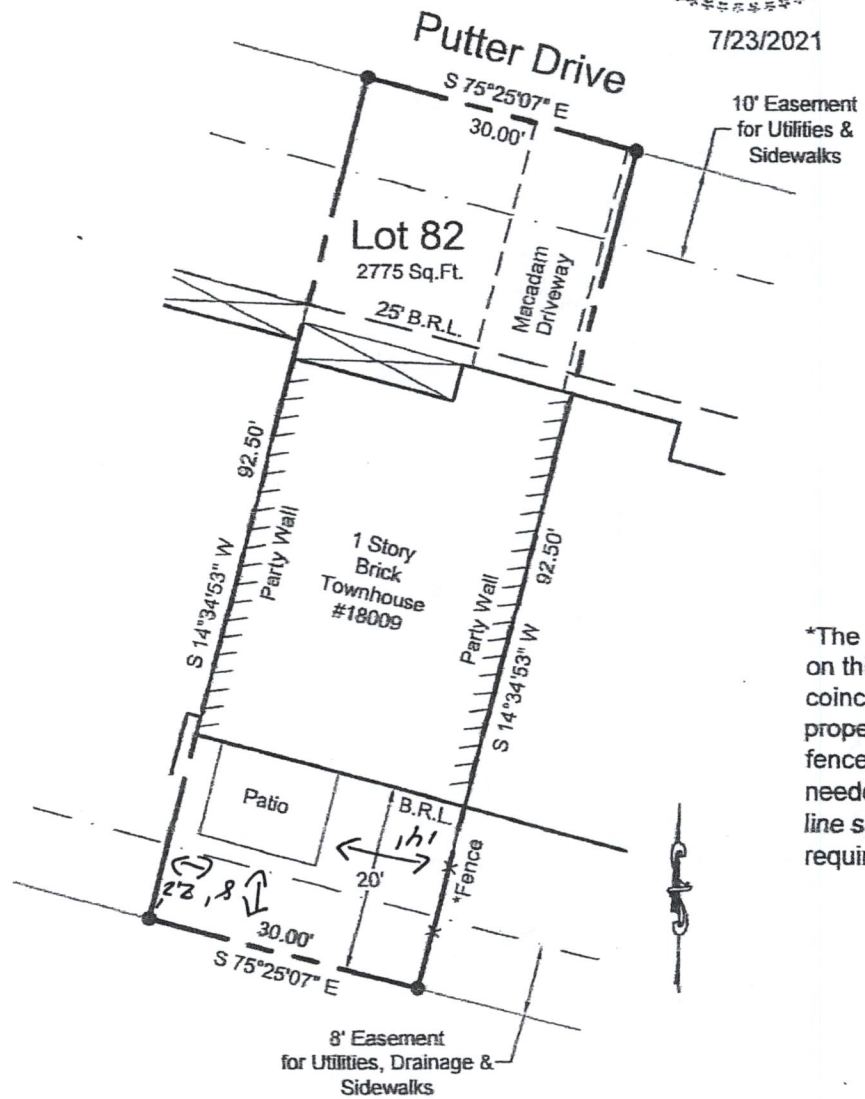
Therefore, I am requesting approval from the Board of Zoning appeals to approve the construction of a roof over my existing patio.

Sincerely yours,

*Kimberly S. Smith*  
Kimberly S. Smith



7/23/2021



\*The fence lines shown on this drawing may not coincide with the property lines. If exact fence locations are needed a full boundary line survey will be required.

- THIS DRAWING CANNOT BE RELIED UPON BY ANYONE TO SHOW WHERE THE PROPERTY'S BOUNDARIES ARE. THE ONLY PURPOSE OF A LOCATION DRAWING IS TO PROVIDE SOME ASSURANCE THAT THE IMPROVEMENTS ARE LOCATED ON THE PROPERTY.
- THIS DOCUMENT IS FOR THE SOLE BENEFIT AND USE OF THE PARTIES NAMED HEREIN AND IS NOT TO BE PUBLISHED OR RECORDED WITHOUT THE EXPRESS WRITTEN CONSENT OF FREDERICK, SEIBERT AND ASSOCIATES, INC.

TAX MAP: 57 2 559 DISTRICT: 10	
DRAWING NUMBER 01 OF 01	
DRAWN BY: JTK	DATE: 7/23/2021
CHECKED BY: JTK	DATE: 7/23/2021
SCALE: 1" = 20'	

**FREDERICK SEIBERT & ASSOCIATES, INC.**  
  
 © 2021

CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS • ENVIRONMENTAL  
 128 SOUTH POTOMAC STREET, HAGERSTOWN, MARYLAND 21740  
 20 WEST BALTIMORE STREET, GREENCASTLE, PENNSYLVANIA 17225  
 101 NORTH HANOVER STREET, CARLISLE, PENNSYLVANIA 17013  
 (301) 791-3650 (301) 416-7478 www.fsa-md.com (717) 597-1007 (717) 701-8111

JOB NUMBER:  
**HL-23336**



HOMETOWN HOME SERVICES LLC  
Smithsburg MD 21783

Km Smith  
18009 Potter Dr.  
Hagerstown, MD  
21740

Porch roof to  
be built over  
existing  
patio  
concrete

Footers  
16" x 16" x 36"  
Depth

12'

12'

12'

Shingle roof,  
return gable to  
be tied into existing  
house roof

double  
2x12's

12'

86"

6x6 PT  
Posts

6x6 PT  
Posts

Footers @ each  
corner 16" x 16" x  
36"  
depth

Grade

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

**KIMBERLY SMITH**  
**Appellant**

\*

\* **Appeal No.: AP2024-029**

\*

\*

\* \* \* \* \*

**OPINION**

Kimberly Smith (hereinafter “Appellant”) requests a variance to reduce the required rear yard setback from 20 feet to 8 feet, for a proposed roof to be constructed over the existing patio at the subject property. The subject property is located at 18009 Putter Drive, Hagerstown, Maryland and is zoned Residential, Multi-Family. The Board held a public hearing in this matter on July 24, 2024.<sup>1</sup>

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 her husband are the owners of the subject property, located at 18009 Putter Drive, Hagerstown, Maryland. The subject property is zoned Residential, Multi-Family.
2. The subject property consists of a one-story brick townhouse situated on a 2,275 square-foot lot. The lot is long is narrow and the home shares party walls on both sides with neighboring townhomes.
3. The total distance from the rear of the home to the rear property line is 20

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<sup>1</sup> The Board had three (3) members present which constitutes a quorum pursuant to the Ordinance and the Board’s Rules of Procedure.



feet. There is an existing patio area which extends 12 feet from the home.

4. Appellant proposes to construct a roof over the existing patio area.

5. There are other neighboring properties that have similar patio coverings, including two that were granted variance relief in prior appeals.

6. 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.<sup>2</sup> “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 10 of the Zoning Ordinance, the rear yard setback is 20 feet for the subject property. Appellant requested a reduction to 8 feet for the rear yard to accommodate the proposed roof over the existing patio.

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<sup>22</sup> “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).

The subject property is narrow, and the dwelling occupies the entire buildable envelope from front to back. Like many of the neighboring properties, Appellant has a patio that extends 12 feet from the home and stops just 8 feet from the property line. Appellant has a reasonable plan to construct a roof over the patio to enhance the outdoor living space. This is a benefit that other properties in the neighborhood enjoy and will not affect the immediate neighbors. Without variance relief, Appellant would not be able to build anything beyond the rear wall of the home as the dwelling is situated 20 feet from the rear property line. The Board finds that these circumstances create a practical difficulty and justify the variance relief requested. Appellant has satisfied the criteria for a variance and the requested relief should be granted.

Accordingly, the requested variance to reduce the required rear yard setback from 20 feet to 8 feet, for a proposed roof to be constructed over the existing patio at the subject property is GRANTED, by a vote of 3-0. 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: August 22, 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: Chad Rodney & Kimberly Sue Harbaugh
Appellant: Kimberly & Chad Harbaugh
Property Location: 25424 Military Road Cascade, MD 21719
Description Of Appeal: Variance from the required 8 ft. side yard setback to 6 ft. for the installed above ground pool.

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

Previous Petition/Appeal Docket No(s):
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 5D.3 (a) 3
Reason For Hardship: Moving pool will be costly and also limit access to the rear of the property.
If Appeal of Ruling, Date Of Ruling:
Ruling Official/Agency:

Existing Use: Single Family Dwelling, Proposed Use: Above Ground Pool
Previous Use Ceased For At Least 6 Months:
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 Kimberly S. Harbaugh, Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 1 day of July, 2024.

Handwritten signature of Notary Public

My Commission Expires: Notary Public RATHVON, WASHINGTON COUNTY, MARYLAND, MY COMMISSION EXPIRES NOVEMBER 07, 2025





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: AP2024-030

State of Maryland Washington County, To Wit:

On 7/1/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Kim Harbaugh and made oath in due form of law as follows:

Kim Harbaugh 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 07/24/2024, 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 07/09/2024 and will remain until after the above hearing date.

Kim Harbaugh

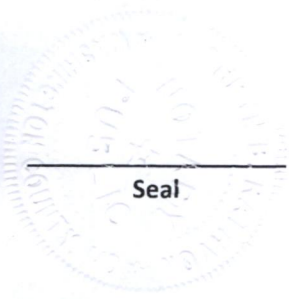
Sworn and subscribed before me the day and year first above written.

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

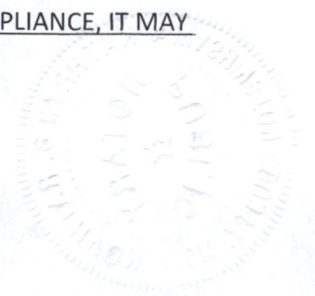
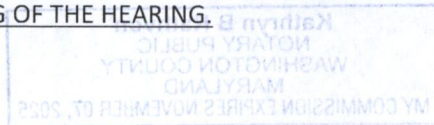
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4. The sign shall be maintained at all times by the applicant until after the public hearing. If a new sign is needed or required, please contact the Plan Review Department at 240-313-2460.
5. An affidavit certifying the property will be posted for 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.



June 30, 2024

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

RE: 25424 Military Rd, Cascade Variance Request

Zoning Appeals Board Members,

We respectfully request the variance to our side property setback from 8 feet to 6 feet to accommodate a new swimming pool. We began the permitting application in January 2024 to allow enough time to obtain the permit, purchase the pool, take delivery and install ourselves, hoping to be able to use the pool in 2024 summer. Information was requested from the permitting office on the proper permitting procedure and information was provided. Along with the application, we included a copy of our plot plan that we received over 31 years ago when we purchased the house. Following this plot plan, we laid off the placement of the pool in our yard and scheduled the setback inspection for March 5. The day before the inspection the inspector called and asked if we had installed the pool and when we said we had not, we were told there was no need for a setback inspection and to reschedule inspection once the pool was installed.

After the pool was installed, we scheduled an inspection for May 22. The day before the inspection we received another phone call from the inspector informing us we had a problem because we did not have a location survey performed before we started the pool. We were under the impression that since the plot plan was approved denoting the placement of the pool, we had provided all necessary documentation.

We then had a survey completed and it was determined that our initial plot plan and pin placement was incorrect and we had placed the pool only 6 feet from the side property setback. Our lot is only 100 feet wide, the new pool is oval in shape and 21 feet long, and with an existing garage on the other side of our property, it would not allow enough room to access the lower part of our property. There are no existing structures on the neighbor's property adjacent to where the pool was installed and the neighbor has indicated that the pool placement is of no issue to her.

Thank you for your consideration,

A handwritten signature in blue ink that reads "Kimberly Harbaugh". The signature is written in a cursive, flowing style.

Kimberly Harbaugh

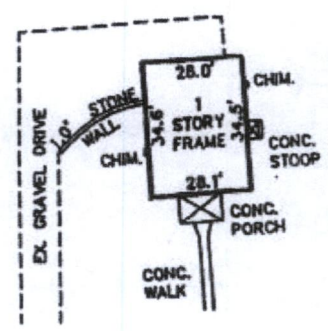
FLOOD NOTE: THIS LAND IS SITUATED IN ZONE "C". ZONE "C" IS NOT SUBJECT TO FLOODING AS SHOWN ON FIRM / HUD.



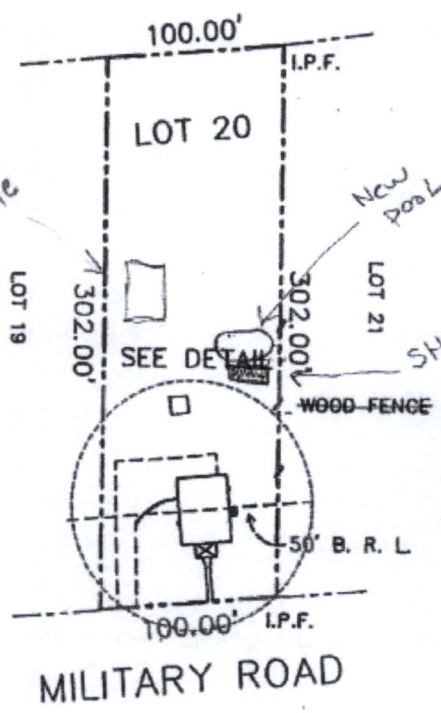
NOTE:

1. NO TITLE REPORT FURNISHED.
2. THIS PLAT IS NOT TO BE USED FOR THE CONSTRUCTION OF FENCES.

\* Pool SIZE 12x21



HOUSE DETAIL  
1" = 50'



- \* 128' - From Front
- \* 8' - From Right
- \* 162' - From BACK of property
- \* 71' - From Left

HOUSE LOCATION SURVEY  
LOT 20  
HIGHFIELD HEIGHTS  
25424 MILITARY ROAD  
WASHINGTON COUNTY, MD.

RE: DANIEL B. & BONNIE M. SAUDER

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE POSITION OF ALL EXISTING IMPROVEMENTS ON THE ABOVE-DESCRIBED PROPERTY HAVE BEEN CAREFULLY ESTABLISHED BY A TRANSIT-TAPE SURVEY AND UNLESS OTHERWISE SHOWN THERE ARE NO VISIBLE ENCROACHMENTS

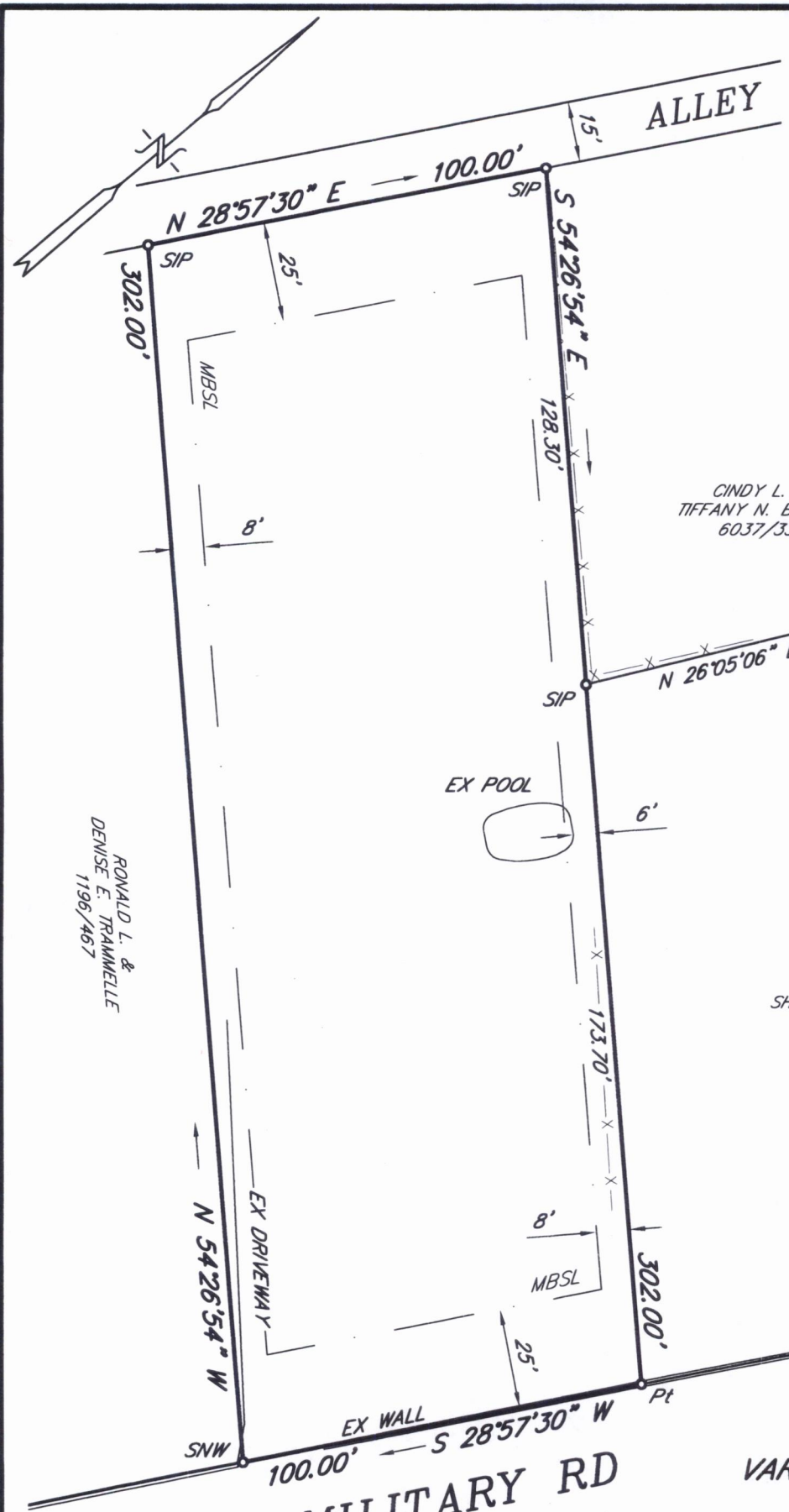
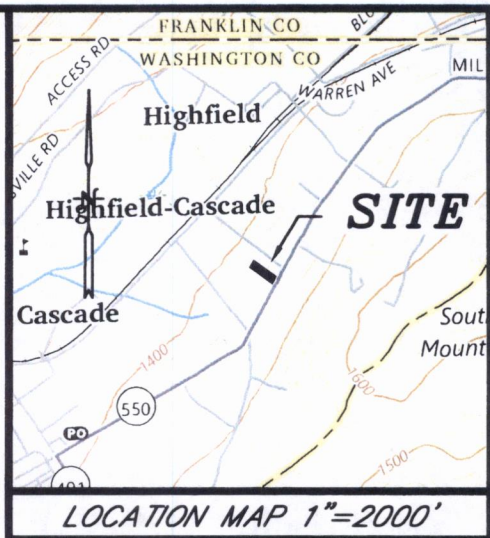
4/13/99  
DATE

*[Signature]*  
DANIEL P. LAVELLE R.L.S. NO. 10848

LAVELLE & ASSOCIATES INCORPORATED

10 NORTH JEFFERSON STREET SUITE 203  
FREDERICK, MD. 21701 (301) 695-9722  
FAX (301) 695-9766

1 REFERENCE	DRAWN BY: CB	CHECKED BY: PL
LIBER: 925	DATE: 04/15/93	FILE NO.:
FOLIO: 568	SCALE: 1" = 100'	93-068
PLAT NO.: 84		



CINDY L. &  
TIFFANY N. BUTLER  
6037/336

JOHN T. &  
SHARON F. OLSEN  
963/381

RONALD L. &  
DENISE E. TRAMMELLE  
1196/467

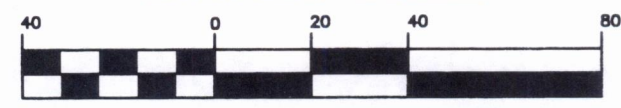
VARIANCE REQUEST PLAN  
FOR  
**RODNEY HARBAUGH**  
SITUATE IN  
ELECTION DISTRICT #14  
WASHINGTON COUNTY  
MARYLAND

ZONE RV - RURAL VILLAGE

EX DENOTES EXISTING  
Pt DENOTES POINT  
SIP DENOTES SET IRON PIN  
SNW DENOTES SET NAIL & WASHER

DEED REFERENCE: 1467/274  
TAX MAP 14 GRID 21 PARCEL 413

GRAPHIC SCALE



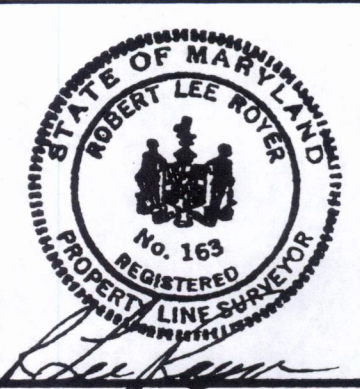
1 inch = 40 ft.



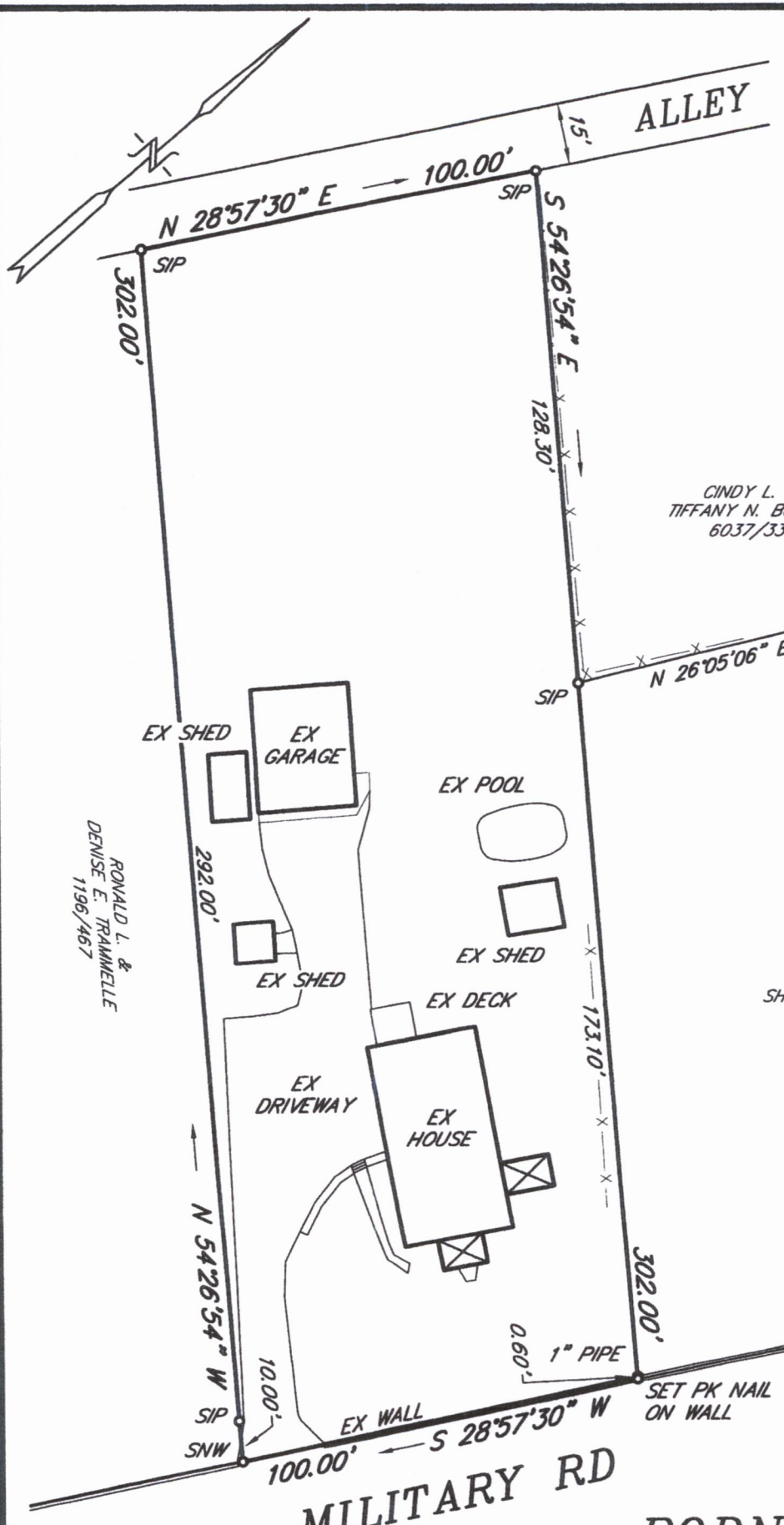
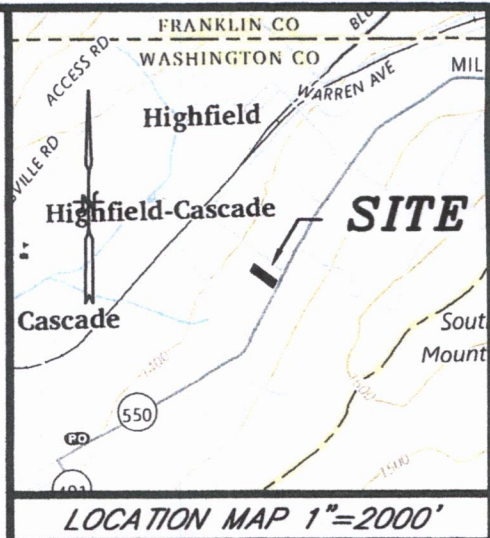
**R LEE ROYER & ASSOCIATES**  
SURVEYING

PENNSYLVANIA - MARYLAND  
10764 BUCHANAN TRAIL EAST  
WAYNESBORO, PA 17268  
717-762-5619

Area	0.69 Ac.
Scale	1" = 40'
Date	6/11/24
Drawn	DCS
Checked	PLB
File	9098







CINDY L. &  
TIFFANY N. BUTLER  
6037/336

RONALD L. &  
DENISE E. TRAMMELLE  
1196/467

JOHN T. &  
SHARON F. OLSEN  
963/381

EIP in  
concrete

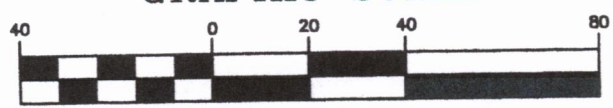
SPRINGDALE AVE

SURVEY OF LAND  
FOR  
**RODNEY HARBAUGH**  
SITUATE IN  
ELECTION DISTRICT #14  
WASHINGTON COUNTY  
MARYLAND

DEED REFERENCE: 1467/274  
TAX MAP 14 GRID 21 PARCEL 413

EX DENOTES EXISTING  
PT DENOTES POINT  
SIP DENOTES SET IRON PIN  
SNW DENOTES SET NAIL & WASHER

GRAPHIC SCALE



1 inch = 40 ft.



**R LEE ROYER & ASSOCIATES**  
SURVEYING

PENNSYLVANIA - MARYLAND  
10764 BUCHANAN TRAIL EAST  
WAYNESBORO, PA 17268  
717-762-5619

Area	0.69 Ac.
Scale	1" = 40'
Date	6/17/24
Drawn	DCS
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**BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND**

**KIMBERLY AND CHAD HARBAUGH**  
**Appellants**

**Appeal No.: AP2024-030**

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**OPINION**

Kimberly and Chad Harbaugh (hereinafter “Appellants”) request a variance to reduce the required side yard setback from 8 feet to 6 feet, for an installed above-ground pool at the subject property. The subject property is located at 25424 Military Road, Cascade, Maryland and is zoned Rural Village. The Board held a public hearing in this matter on July 24, 2024.<sup>1</sup>

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 25424 Military Road, Cascade, Maryland. The subject property is zoned Rural Village.
2. The subject property consists of a 100-foot wide lot improved with an existing dwelling, a detached garage, sheds and now an above-ground pool.
3. Appellants purchased the property 31 years ago and received a plot plan which indicated the location of the boundaries.
4. Appellants believed they had the requisite approvals based on the location

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<sup>1</sup> The Board had three (3) members present which constitutes a quorum pursuant to the Ordinance and the Board’s Rules of Procedure.

of the pool as drawn on their plot plan. They proceeded with constructing the pool.

5. During the permitting and inspection process but after the pool had been constructed, Appellants were advised they needed a location survey.

6. The location survey revealed that the newly constructed pool was only 6 feet from the side yard property line.

7. Appellants spoke to their neighbors who indicated they did not oppose the location of the pool.

8. 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.<sup>2</sup> “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).)

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<sup>2</sup> “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).

Pursuant to Section 5D.3(a)(3) of the Zoning Ordinance, the side yard setback is 8 feet for the subject property. Appellant requested a reduction to 6 feet for the rear yard to accommodate the existing above-ground pool.

It is clear from Appellants' testimony that this was an honest mistake. They believed they could rely upon the boundary locations in the original drawing given to them when they purchased their home. Unfortunately, those dimensions were off by as much as 2 feet. They proceeded with construction of the pool in good faith as their original drawing indicating the location of the pool was already approved. Their request for a relaxation of 2 feet is the minimum necessary to accommodate the existing pool and does not materially affect the neighboring properties. In this instance, strict compliance with the setback requirements would be unnecessarily burdensome and costly to Appellants. The Board finds that these circumstances create a practical difficulty and justify the variance relief requested.

Accordingly, the requested variance to reduce the required side yard setback from 8 feet to 6 feet, for an installed above-ground pool at the subject property is GRANTED, by a vote of 3-0. 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: August 22, 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: Kelly Drosdak
6733 Brandt Court
Frederick MD 21702
Appellant: Lee & Kelly Drosdak
6733 Brandt Court
Frederick MD 21702
Property Location: 5601 Mount Carmel Church Road
Keedysville, MD 21756
Description Of Appeal: Variance from the 100 ft. left side yard setback required for banquet/reception facility to 50 ft. for a proposed new property line for a one lot residential subdivision.

Docket No: AP2024-031
Tax ID No: 08002525
Zoning: P
RB Overlay: No
Zoning Overlay:
Filed Date: 07/02/2024
Hearing Date: 07/24/2024

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): AP2018-019
Applicable Ordinance Sections: Washington County Zoning Ordinance Section: 5C.6

Reason For Hardship: Owners want to orient the new dwelling in order to have a line of sight on the barn/venue to provide for security and allows the owners to visualize the operations of the small business.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Single Family Dwelling/Baquet/Reception Facility
Proposed Use: Future Subdivision

Previous Use Ceased For At Least 6 Months:
Area Devoted To Non-Conforming Use - Existing:
Proposed: Date Ceased:

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

Kelly L. Drosdak (Handwritten Signature)

Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 2 day of July, 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: AP2024-031

State of Maryland Washington County, To Wit:

On 7/2/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Lee & Kelly Drosdak and made oath in due form of law as follows:

Lee & Kelly Drosdak 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 07/24/2024, 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 07/09/2024 and will remain until after the above hearing date.

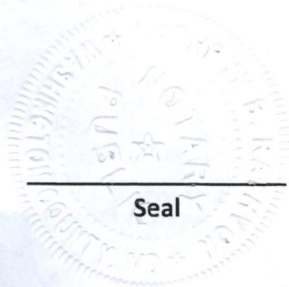
Lee & Kelly Drosdak

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

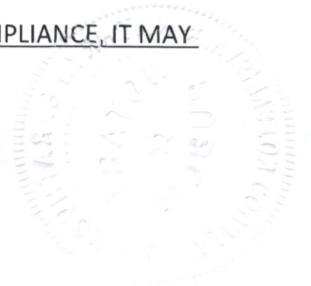
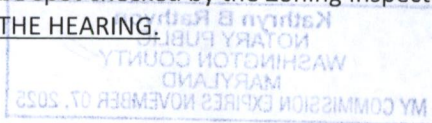
### ATTENTION!

### 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:** Lee & Kelly Drosdak Lot 1

**Owner/Applicant:** Lee & Kelly Drosdak  
6733 Brandt Ct  
Frederick, MD 21702

**Project Address:** 5607 Mt Carmel Road  
Keedysville, MD 21756

**Tax Map** 77 **Grid** 10 **Parcel** 189

**Account #** 08002525

**Zoning:** P-Preservation

**Variance request:** The variance request is from the table of bulk requirements in section 5C.6 of the Washington County Zoning Ordinance for Non-Residential Lot size and Bulk Dimensions (not covered in the RB District). **More specifically the 100 ft left side yard setback required for Banquet/Reception Facilities to 50 feet for a possible new property line for a one lot residential subdivision.** On July 11, 2018 under AP2018-019 the Washington County Board of Zoning Appeals granted a Special Exception and Variance to allow a 5,249 SF barn/tent area event center on a 35 acre parcel with conditions. The conditions imposed are as follows:

1. The use is limited to operation from April 1 to October 31 each year.
2. The use shall operate from Tuesday to Sunday and shall maintain hours of 9:30 AM until 10:30 PM.
3. The use shall not exceed 125 guests for an event.

The Board also approved two variances as follows:

1. Required parking spaces from 105 to 63.
2. 50 foot front yard setback to 0 feet.

As mentioned in the above case, the applicants intend to reside on the subject property. They determined that renovations to the existing house would not accommodate aging in place and have decided to construct a new home. The existing 35 acre parcel is improved with an existing home so in order to construct a new home a subdivision was necessary. As shown on the exhibit they have located 6 acres on the north west side of the property to create the lot and have determined this to be the most desirable location for the house as shown on the exhibit. This location was chosen for the following reasons:

1. Best location for septic to allow for gravity flow and avoid the surrounding wet season soils.
2. Best location for the well to be upgrade of septic.



3. Provides an efficient design to allow 4-5 acres to remain in agricultural production.
4. Provides a buffer between the event center and adjacent owners to the north.
5. Best vantage point to view the event complex and parking area.

A residential lot is a principal permitted use in the Preservation district and typically has 15' side yard setbacks. The zoning ordinance would require a 100' side yard setback from the parking area to the proposed new property line. As can be seen on the exhibit, the proposed house is approximately 140' from the parking area with the proposed septic reserve area in between. The existing parking lot for the event center is 10-15 feet lower than the proposed elevation of the house which provides a buffer in itself.

As the owners of the remaining land/event center and the proposed lot/house, they want to orient their home in order to have a line of sight on the barn/venue. This provides for security and allows the owners to visualize the operations of this small business. Strict compliance of the variance would eliminate the owners ability to grow and bale hay in keeping with their vision for agriculture preservation. Practical difficulty would be experienced if strict compliance would be enforced and unnecessarily burdensome. Denying the variance would do substantial injustice to the applicant and a lesser relaxation would not provide substantial relief. Granting the variance does observe the spirit of the ordinance and does secure public safety and welfare.

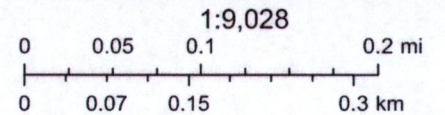
# Frederick Seibert & Associates, Inc.



7/1/2024, 9:41:42 AM

World Transportation  
MD\_SixInchImagery

Parcels Washington County



Esri Community Maps Contributors, Frederick County MD Government, WashCo MD, VGIN, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin,

Web AppBuilder for ArcGIS

Real Property Data Search ( )  
 Search Result for WASHINGTON COUNTY

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

Special Tax Recapture: AGRICULTURAL TRANSFER TAX  
 Account Identifier: District - 08 Account Number - 002525

**Owner Information**

Owner Name: DROSDAK KELLY      Use: COMMERCIAL  
 Mailing Address: 6733 BRANDT CT      Principal Residence:NO  
 FREDERICK MD 21702-0000      Deed Reference: /04582/ 00110

**Location & Structure Information**

Premises Address: 5607 MT CARMEL CHURCH RD      Legal Description: 35.09 ACRES  
 KEEDYSVILLE 21756-0000      5607 & 5611 MT CARMEL CHURCH RD  
 5601 BANQUET/RECEPTION HALL

Map:	Grid:	Parcel:	Neighborhood:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0077	0010	0189	30000.22	0000				2024	
									Plat Ref:

Town: None

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1910	2,386 SF		35.0900 AC	

Stories	Basement	Type	Exterior Quality	Full/Half Bath	Garage	Last Notice of Major Improvements
2	YES	STANDARD UNIT	BRICK/ 3	2 full	1 Attached	

**Value Information**

	Base Value	Phase-in Assessments		
		Value	As of	As of
Land:	111,900	180,200	01/01/2024	07/01/2023
Improvements	185,900	251,100		07/01/2024
<b>Total:</b>	<b>297,800</b>	<b>431,300</b>	<b>297,800</b>	<b>342,300</b>
Preferential Land:	14,400	14,000		

**Transfer Information**

Seller: FLORY EVELYN S	Date: 07/08/2013	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /04582/ 00110	Deed2:
Seller: FLORY DONALD E	Date: 07/08/2013	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /04582/ 00105	Deed2:
Seller:	Date:	Price: \$0
Type: NON-ARMS LENGTH OTHER	Deed1: /00548/ 00586	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: AGRICULTURAL TRANSFER TAX

**Homestead Application Information**

Homestead Application Status: Approved 02/03/2009

**Homeowners' Tax Credit Application Information**

Homeowners' Tax Credit Application Status: No Application      Date:

EXEMPT FROM DOCUMENTARY STAMPS AND RECORDATION TAXES  
PURSUANT TO ANN. CODE OF MD. TAX-PROPERTY ARTICLE § 12-108(c)(1)(ii)

NO TITLE EXAM

THIS DEED, Made this 5<sup>th</sup> day of July 2013, by EVELYN S. FLORY, Grantor, to EVELYN S. FLORY, KELLY L. DROSDAK, if living, and JEFFREY L. FLORY, if living, Grantees.

WITNESSETH: That for no monetary consideration, Evelyn S. Flory, Grantor, does hereby grant and convey unto Evelyn S. Flory, Grantee of a life estate interest, and Kelly L. Drosdak, if living, and Jeffrey L. Flory, if living, Grantees of the remainder interest as tenants in common, provided, however, if neither Kelly L. Drosdak nor Jeffrey L. Flory are living at the time of the death of Evelyn S. Flory, in that event the remainder interest shall immediately vest in the children of Kelly L. Drosdak, per stirpes, in all that tract or parcel of land situate, lying and being between old Route No. 67 and new Route No. 67, near Mt. Carmel, in Election District No. 8, Washington County, State of Maryland, and being more fully described according to a survey made and description prepared by J. B. Ferguson and Co., Inc., Engineers on or about the 17<sup>th</sup> day of September, 1963, as follows:

Beginning for the same at a point set at the intersection of the Western marginal line of relocated Route #67 with the 17<sup>th</sup> or South 87 degrees West 73  $\frac{3}{4}$  perch line of Parcel No. 1 in a deed to Paul C. Ellis and wife from George P. Haller and wife dated March 28, 1952, and running thence with the closing line of said deed as presently established by an existing fence, North 89 degrees 38 minutes West 95.12 feet to a post; thence North 84 degrees 28 minutes West 772.20 feet to a post; thence North 72 degrees 40 minutes West 98.55 feet to a post; thence North 62 degrees 24 minutes West 82.35 feet to a post; thence North 51 degrees 58 minutes West 93.61 feet to a post in the Eastern marginal line of Old Route #67; thence with said marginal line, North 38 degrees 46 minutes East 71.67 feet to a gate post standing in the Southern boundary of a lot reserved by George P. Haller and wife in the aforementioned deed, and running thence with the fences bounding said lot, South 55 degrees 33 minutes East 200.94 feet to a post; thence North 16 degrees 19 minutes East 255.26 feet to a post; thence North 86 degrees 15 minutes West 157.21 feet to a post in the Eastern marginal line of Old Route #67; thence with said marginal line as marked by existing fences, North 24 degrees 19 minutes East 296.03 feet to a point; thence by a curve to the left having a radius of 974.93 feet, an arc length of 287.28 feet, and a chord bearing North 15 degrees 52 minutes 30 seconds East 286.24 feet to a point; thence North 07 degrees 26 minutes East 183.34 feet to a point; thence leaving the marginal line of Old Route #67 and running by a line of division now made, North 76 degrees 08 minutes East 1485.49 feet to intersect the Western marginal line of relocated Route #67; thence with the right of way as shown on State Roads Plats 19724 and 19723 recorded among the State Roads Plats in the Office of the Clerk of the Circuit Court for Washington

4582 0112

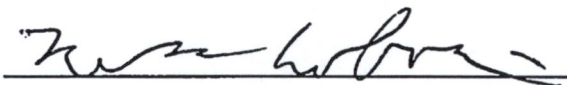
CLERK OF THE CIRCUIT COURT  
WASHINGTON COUNTY

To have and to hold the aforesaid property together with the improvements and appurtenances unto Grantees, their heirs, successors and assigns in fee simple subject to any conditions, reservations, restrictions, covenants, limitations, streets, alleys, easements and rights of way of record.

TO HAVE AND TO HOLD the property with full power, right and authority hereby granted unto Evelyn S. Flory, to sell, lease, exchange, encumber and/or convey the said property, either in whole or in part, upon such terms and conditions and for such consideration, or no consideration, as Evelyn S. Flory may in the discretion of Evelyn S. Flory deem advantageous, with the further right to subdivide and re-subdivide said property and to dedicate such portions thereof for public use as Evelyn S. Flory shall deem desirable, together with the right to grant licenses and easements for utility or other purposes across, over and under said property, and Evelyn S. Flory is hereby empowered to execute, acknowledge and deliver such deed, deeds of trust, leases and other instruments necessary to carry out the foregoing powers, and there shall be no obligation or liability upon purchaser or purchasers, lessee or lessees of said property, or any part thereof, or upon any party or parties making any loans secured by deed or deeds of trust upon said property, or any part thereof, to see to the proper application of the proceeds of such sale, lease or loan.

AND, I, the said Evelyn S. Flory, do hereby covenant that I will warrant specially the property hereby conveyed and that I will execute such other and further assurances as may be requisite.

WITNESS my hand and seal:

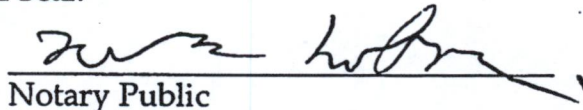


Evelyn S. Flory (SEAL)  
Evelyn S. Flory, Grantor

STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

I HEREBY CERTIFY, that on this 5<sup>th</sup> day of JULY, 2013, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Evelyn S. Flory, Grantor, who acknowledged that she executed the foregoing deed for the purposes therein contained.

WITNESS my hand and Official Notarial Seal.

  
Notary Public

My Commission Expires:

**RUSS ROBINSON**  
**NOTARY PUBLIC**  
**WASHINGTON CO., MARYLAND**  
**COMM. EXP. 12-6-2014**

WASHINGTON COUNTY CLERK OF THE CIRCUIT COURT (LAW RECORDS) WWW.COURT.GOV DATE AVAILABLE 07/11/2013 14:14:23

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

**KELLY DROSDAK**  
**Appellant**

**Appeal No. AP2018-019**

**OPINION**

This appeal is a request for a special exception to establish a banquet/reception facility, and for variances from the minimum 50 foot front yard setback to 0 feet, variance from the paved parking requirement of 3,400 and a variance to reduce the required parking spaces from 105 to 63 spaces. The subject property is located at 5607 Mount Carmel Church Road, Keedysville, Maryland; is owned by the Appellant; and is located in the Preservation District. The Board held a public hearing on the matter on July 11, 2018.

**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 proposes the establish banquet/reception facility for events at the subject property which is located in the Preservation District. Appellant inherited the property in 2017 and it has been in her family since 1972.

2. Appellant proposes to utilize an existing barn structure and outdoor space for weddings, parties and other planned events. The barn structure was constructed in 1857 and is in need of repair and restoration. Appellant is in the process of undertaking the restoration work, regardless of the outcome of this case.

3. Appellant intends to operate the facility from April 1<sup>st</sup> to October 31<sup>st</sup> each year and will be open Tuesday through Sunday, from 9:30 a.m. to 10:30 p.m. There will be no employees at the facility; all services will be provided by outside vendors. Appellant will utilize portable toilets for events. Vehicle parking would be in grassy areas with the only impervious areas reserved for walkways.

4. Appellant has self-imposed a maximum capacity of 125 guests for an

event.

5. Appellant and her husband plan to move into and reside at the subject property.

**Rationale**  
*The Special Exception*

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.

The proposed use is a permitted special exception use in this zone, and one that has been adopted in number of other areas in the county. The specific concerns raised about this proposed use centered on traffic along Mount Carmel Road and noise pollution onto neighboring properties. Appellant presented evidence from a sound study that concluded that projected sound levels from events were within reasonable limits and would not adversely affect or pollute neighboring properties. There was testimony that the traffic counts on Mount Carmel Road average approximately 170 cars per day. The road itself is a low volume country road which typically experiences only destination traffic. While there was concern for increased traffic, it appears to be mitigated by the limitation on hours of operation, seasonal nature of the use and the fact that not all vehicles will be coming and going at one time. Appellant has self-imposed a maximum capacity to control any perceived adverse effects from the intended use. Noise and traffic are common concerns for banquet and reception facilities and Appellant has addressed them such that the facility will not have 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).

Accordingly, the special exception request is GRANTED, by a vote of 4-1, with the following conditions:

1. The proposed use is limited to operation from April 1 to October 31 each year;
2. The proposed use shall operate from Tuesday to Sunday and shall maintain hours of 9:30 a.m. until 10:30 p.m.; and

3. The proposed use shall not exceed 125 guests for an event.

### *The Variance*

This Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56. <sup>1</sup> "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). In the instant case, Appellant requests variances from the Ordinance for the front yard setback, paved parking requirements and the number of parking spaces.

Pursuant to Article 5C.6 of the Ordinance, the required front yard setback for the subject property is 50 feet. The barn on the subject property is approximately 22 feet from the center line of Mount Carmel Church Road and approximately 7 feet from the roadbed itself. The barn was constructed in 1857, well before the Ordinance existed and thus before there were any setback requirements. To conform with the setback requirements, Appellant would have to move the barn from its current location. This is unduly burdensome and would impose an extreme hardship on Appellant.

Pursuant to Article 22.12(f)(10)(iv), the proposed use requires 3,400 square feet of paved parking area. If Appellant were to comply with this requirement, there would be a large impervious surface which is only in use for approximately one-half of the year. This surface would have a detrimental effect on stormwater and surface water runoff and disrupt the natural landscape and environment. Maintaining a grass parking area without paved surfaces is more consistent with the intended preservation of the rural characteristics of the property and furthers the intent of the Preservation District. Requiring strict compliance with the paved parking requirements imposes practical difficulty on Appellant.

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<sup>1</sup> "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).



Pursuant to Article 22.12(b)(1) of the Ordinance, the proposed use requires one (1) parking space per 50 square feet of the facility. The aggregate square footage of the barn and outdoor space is approximately 5,249 square feet, which would require 105 parking spaces. However, Appellant reasonably figures two (2) guests per vehicle based on the nature of the venue being used mostly for wedding events. This coupled with the self-imposed maximum capacity of 125 guests, reduces the number of spaces needed to 63 parking spaces. Strict imposition of the Ordinance requirements would result in a designated parking area that is almost twice as large for a seasonal operation that is intended to blend in with the rural nature of the surrounding properties. This is the very definition of practical difficulty and to impose such requirements is to assert form over substance and consistency with the intent of the Ordinance.

Accordingly, the variance requests are both GRANTED, by a 5-0 vote. The setback variance is granted for the actual distance the barn is from the roadway which per the testimony was +/- 7 feet.

BOARD OF APPEALS

By: Paul Fulk, Chair

Date Issued: August 1, 2018

*WASHINGTON COUNTY ZONING ORDINANCE*  
**ARTICLE 5C – "P" PRESERVATION DISTRICT<sup>61</sup>**

Section 5C.0 Purpose

The purpose of this district is to prescribe a zoning category for those areas where, because of natural geographic factors and existing land uses, it is considered feasible and desirable to conserve open spaces, water supply sources, woodland areas, wildlife and other natural resources. This district includes the County's designated Rural Legacy Area, federal lands, state parks, state wildlife management areas, county parks, Edgemont Watershed, and most of the mountaintops and the Potomac River.

Section 5C.1 Principal Permitted Uses and Accessory Uses

See the Table of Land Uses [Section 3.3, Table No. 3.3(1)]

Section 5C.2 Special Exceptions

See the Table of Land Uses [Table No. 3.3(1)] and any other use the Board of Appeals finds is functionally similar to any permitted use or special exception listed in the table for this district. The Board of Appeals shall not grant any special exception that is inconsistent with the purpose set forth for this district.

Section 5C.3 Criteria

The maximum density in the Preservation zoning district shall be one (1) dwelling unit per thirty (30) acres of land owned minus the lot area taken off under section 5C.4.

Section 5C.4 Exemptions

- (a) Each parcel of land of sufficient size as of October 29, 2002, shall be permitted to subdivide up to three (3) lots, which may be increased to five (5) lots based on a sliding scale of one additional lot for each fifty (50) acres of land. The minimum lot size shall be the minimum lot size for the zoning of the property prior to the effective date of this amendment. Additional lots permitted under the zone will then be calculated on the remaining acreage based on one lot for every thirty (30) acres.
  
- (b) Additional exemptions are available for the preservation of historic properties listed on the County Inventory of Historic Sites, the National Register of Historic Places or the Maryland Historical Trust's Inventory of Historic Sites. A lot may be created around the existing historic site/structure along with two additional lots on the original parcel upon the owner requesting and the Board of County Commissioners approving the placement of an "HP" Historic Preservation District Overlay designation on the lot with the historical site or structure.

<sup>61</sup>

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Revision 14, Article 5C added 7/26/05 (RZ-03-005)

Section 5C.5 Residential Lot Size and Bulk Dimensions<sup>62</sup>

	Lot Area	Lot Width	Lot Area/Family	Front Yard	Side Yard	Rear Yard	Height
Dwelling, Single Family	40,000 sq. ft.	100 ft.	40,000 sq. ft.	40 ft.	15 ft.	50 ft.	40 ft.
Dwelling, Two-Family	40,000 sq. ft.	100 ft.	20,000 sq. ft.	40 ft.	15 ft.	50 ft.	40 ft.
Dwelling, Semi-Detached**	20,000 sq. ft.	50 ft.	20,000 sq. ft.	40 ft.	15 ft.	50 ft.	40 ft.

\*\* Semi-detached dwellings are special exception uses in this district and require Board of Zoning Appeals approval

Section 5C.6 Non-Residential Lot Size and Bulk Dimensions (not covered in Rural Business)<sup>63 64</sup>

This section covers uses listed in the Table of Land Uses [Table No. 3.3(1)] that are principally permitted and that are not governed by the Rural Business floating zone.

	Lot Area	Lot Width	Front Yard	Side Yard	Rear Yard
Banquet/Reception Facilities	5 acres	300 ft.	50 ft.	100 ft.	50 ft.
Schools, Elementary	15 Acres	400 ft.	150 ft.	100 ft.	50 ft.
Schools, Middle	30 Acres	500 ft.	150 ft.	100 ft.	50 ft.
Schools, High	60 Acres	500 ft.	150 ft.	100 ft.	50 ft.
Churches	2 Acres	200 ft.	100 ft.	50 ft.	50 ft.
Other Principal Permitted or Conditional Uses	3 Acres	300 ft.	50 ft.	50 ft.	50 ft.

Section 5C.7 Special Provisions<sup>65</sup>

1. New development adjacent to existing Industrial Mineral (IM) zoning district shall have a setback of 200 feet from all shared property lines.
2. Developments opting to use the clustering provision outlined in Article 22 Division VIII of this Ordinance may reduce side yard setbacks to a minimum of 15 feet from adjacent property lines created by the new development.
3. Side yard setbacks for residential use lots shall be minimum of 50 ft. for lots thirty (30) acres or greater in size.

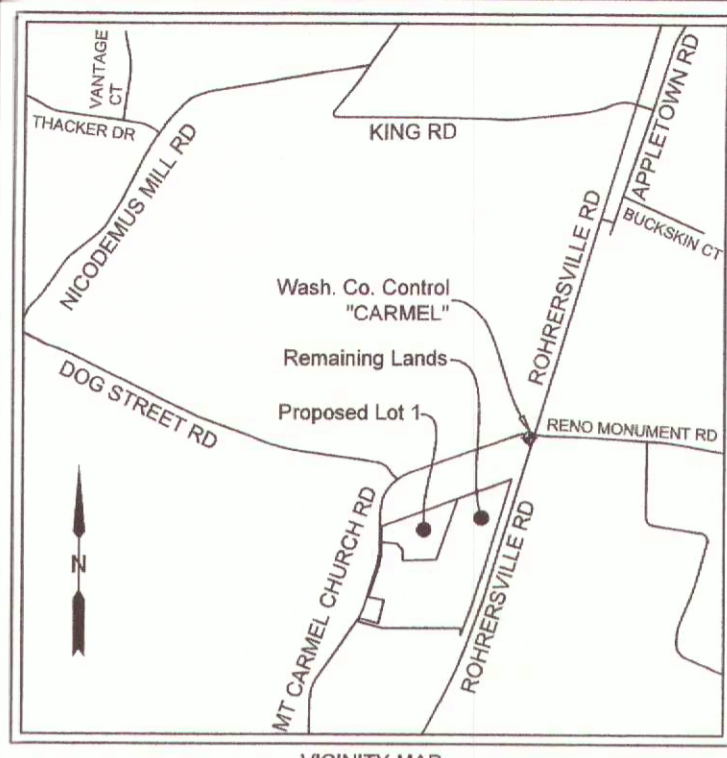
<sup>62</sup> Revision 16, Section 5C.5 amended 8/4/09 (RZ-09-001)

<sup>63</sup> Revision 15, Section 5C.6 amended 9/19/06 (RZ-06-007)

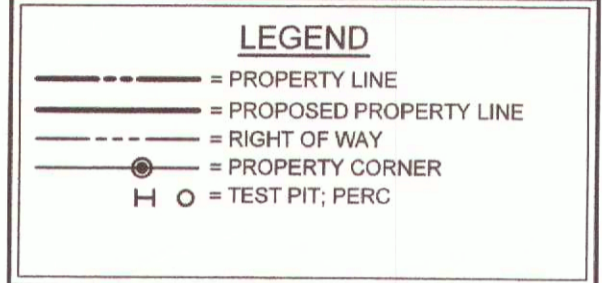
<sup>64</sup> Revision 18, Section 5C.6 amended 1/16/18 (RZ-07-007/ORD-208-13)

<sup>65</sup> Revision 16, Section 5C.7 amended 8/4/09 (RZ-09-001)

4. Side yard setbacks for residential use lots that are contiguous to parcels with permanent easements or parcels in areas designated as priority agricultural preservation areas or transferable development rights sending areas shall have minimum setbacks of 50 feet.
5. The Planning Commission may increase minimum setbacks up to 50 feet for properties adjacent to parcels that are being actively farmed or parcels with an Agricultural district designation.



VICINITY MAP  
SCALE 1"=2000'



**Tracking Notes**

- This residential subdivision plat is subject to all applicable local, state and federal laws and regulations. Any further potential of subdivision of any lots or remaining lands created by this subdivision is subject to the requirements of the Maryland Annotated Code, Environment Article, Section 9-206 and all applicable local, state and federal laws and regulations.
- In accordance with the requirements of the Maryland Annotated Code, Environment Article, Section 9-206, upon recordation of this plat, a total of 1 residential lots, plots, building sites, or other division of land have been created from the parent parcel or tract since October 1, 2012. In accordance with Maryland Annotated Code, Environment Article, Section 9-206, and subject to all other applicable local, state and federal laws, there are not more than 6 (remaining) residential lots, plots, building sites, or other divisions of land allowed as a subdivision.
- This residential minor subdivision may not be resubdivided or further subdivided into an additional building lot(s). Please note, for a simplified plat, notes 1 and 2 will apply. However, any new lot created under a simplified plat and denoted "not for development" will not be counted toward the 7 lot limit until such lot is submitted as a residential subdivision final plat.

**Address Assignments**

Lot 1 -

Note: Each address is based on the entrance as shown on this plat. If the driveway is constructed at a different location from that shown hereon, the address listed above may VOID and the owner/developer of the lot must reapply to the Planning Commission for a new address assignment.

**Intrafamily Transfer Declaration of Intent**

Account #: 002525 District: 08 Map: 77 Grid: 10 Parcel: 189  
 Property Owner(s) Name(s): Evelyn S. Flory, Kelly L. Drosdak, Jeffrey L. Flory  
 Permanent Mailing Address: 6733 Brandt Ct, Frederick MD, 21702  
 Recipients Name(s): Kelly L. Drosdak  
 Recipients Relationship to Owner(s): Self  
 Property Location: 5607 Mt. Carmel Church Road, Keedysville MD, 21756  
 Current deed reference(s): Liber: 4582, folio: 110

We, Evelyn S. Flory, Kelly L. Drosdak, Jeffrey L. Flory, the owner(s) of the real property located at the above referenced location, and described in the above referenced deed(s) hereby declare my (our) intention to invoke the intrafamily transfer exemption for the above property, in accordance with the provisions of the Washington County Forest Conservation Program and COMAR 08.19.01.04, for a period of at least five (5) consecutive full taxable years following this date.

This declaration grants an exemption for the purpose of constructing a dwelling house intended for the use of the owner, or an immediate family member of the owner based on the Washington County Forest Conservation Program. If the lands does not remain in the possession of an immediate family member for a period of five (5) years the Owner must notify the Washington County Planning Commission and may lose this exemption. If the Owner makes application for an activity regulated under the Forest Conservation Program, clears more than 20,000 square feet of forest, or violates the requirements of a previous Forest Conservation Plan all or part of the lot within the five (5) year period, Washington County may require the owner to meet the forest conservation threshold established in the Forest Conservation Program and COMAR 08.19.03, and may also assess a noncompliance fee for forested areas cut in violation of this exemption.

I (we) declare, under the penalties of law, that this declaration, including any accompanying forms and statements, has been examined by me (us) and the information contained herein, to the best of my (our) knowledge, information and belief, is true, correct and complete.

Signature(s): *Kelly L. Drosdak*  
 Kelly L. Drosdak, Owner / Recipient  
 Date: 6-17-24

**Dedication for Individuals**

I/we do hereby certify, for ourselves and our personal representatives, heirs and assigns, that I/we are the legal and true owner(s) of the property shown and described on this plat and that I/we hereby adopt the plan of subdivision shown hereon, hereby establish the minimum building restriction lines shown hereon, hereby dedicate to public use all utility and drainage easement areas and all alley, street, and road rights of way designated on this plat, hereby agree to keep open all spaces and recreation areas shown hereon and hereby agree that said dedication shall not impose any responsibility on the Board of County Commissioners of Washington County regarding the subjects of such dedications until legal acceptance thereof by said Board, and I/we hereby reserve the fee simple title to the land underlying said easements, rights of way, open spaces and recreation areas and with regard to said easements and rights of way, hereby agree to convey the same to said Board for the use of said Washington County, without consideration, upon the legal acceptance of said easements and/or rights of way by said Board.

This deed and agreement of dedication shall be binding upon my/our grantees, assigns, successors, heirs, and personal representatives.

There are no suits, actions at law, leases, liens, mortgages, trusts, easements, or rights of way affecting the property included on this plan of subdivision except the following:

and all parties having an interest therein have here unto affixed their signatures, indicating their assent to this plan of subdivision.

I/We do hereby assent to this plan of subdivision.

Witness our hands and seals this date: 6-17-2024

*Kelly L. Drosdak*  
 Owner: Kelly L. Drosdak (Seal)

Witness: *[Signature]*

**Certificate of Approval of Individual Water Supply and Individual Sewage System**

I hereby certify that the minimum ownership area complies with the minimum width and minimum area requirements specified in C.O.M.A.R. 28.04.03.03. Such minimum ownership shall remain equal to the minimum width and minimum area set forth in C.O.M.A.R. 28.04.03.A (2) until community sewerage and water have been made available. Not more than one principle building may be erected or constructed on a lot or lots contained in the minimum ownership areas established by C.O.M.A.R. 28.04.03.A (2) until community sewerage has been made available.

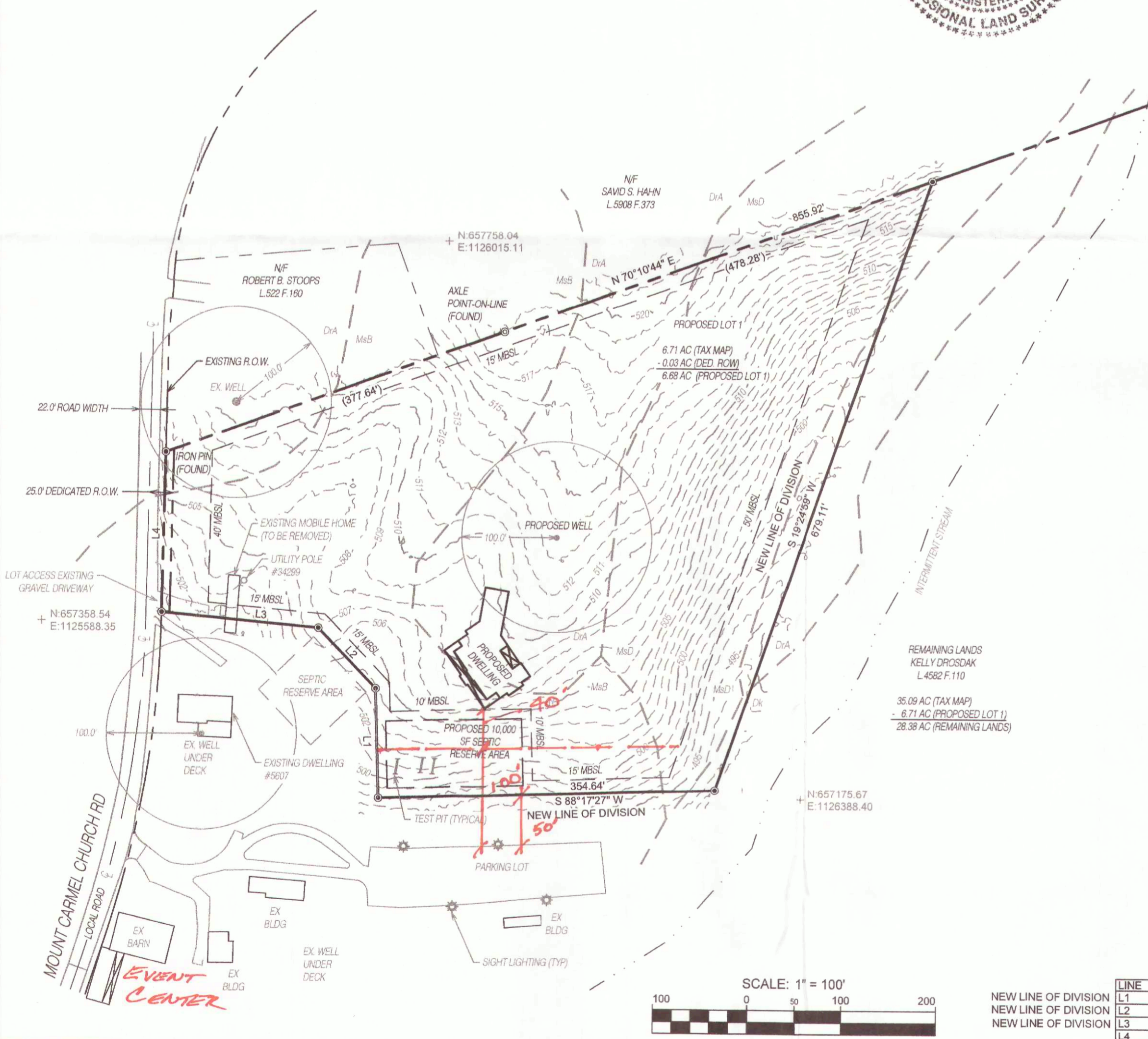
Date: \_\_\_\_\_ County Health Officer: \_\_\_\_\_

**Land Surveyor's Certification**

I hereby certify that the plan shown hereon is correct; that it is a subdivision of part of the lands conveyed by Evelyn S. Flory, to Evelyn S. Flory, Kelly L. Drosdak, Jeffrey L. Flory, by deed dated July 5, 2013, and recorded in the Land Records of Washington County, Maryland in Liber No. 4582, folio 110; and that stones marked D and/or bars marked O have been placed as indicated.

I hereby certify that these documents were prepared by me or under my responsible charge, and that I am a duly licensed Professional Land Surveyor under the Laws of the State of Maryland, License No. LS-10731 Expiration Date 1/18/2026.

Date: 6-18-2024  
 Professional Land Surveyor: *[Signature]*



**General Notes**

- 10,000 square feet is hereby reserved for sewage disposal. No permanent physical objects are permitted in this area.
- There is a 10 ft. wide drainage and utilities easement along all front lot lines and an 8 ft. wide drainage and utilities easement along all side and rear lot lines hereby reserved unless otherwise shown hereon.
- Bearings, distances and coordinates are based on MD Grid NAD83.
- Soil types are as shown hereon.
- Minimum Building Setbacks: front yard-40'; side yard-15'; rear yard-50'. Minimum Building Setback Lines are based on the current Washington County Zoning Ordinance. Accessory structures may be constructed in accordance with Section 4.10 and Section 23.5 (b). Accessory Structures are not permitted without the placement of the principal permitted structure. Zone P.
- Total upstream watershed affecting this subdivision: is less than 400 Acres.
- This parcel does not lie in the 100 year flood plain per FEMA Flood Insurance Rate Map, Community Panel No. 24043C0381D dated August 15, 2017, Flood Zone X.
- Contours based on Washington County Aerial Topography and boundary is based on a field survey performed by FSA, Inc. under the direct supervision of Fred M. Frederick on 02-29-2024.
- There are no floodplains, steep slopes, streams, and other related buffers, or habitat of threatened or endangered species as required to be shown by Sections 306, 307 and 314 of the Washington County Subdivision Ordinance and Section 4.21 (C&D) of the Washington County Zoning Ordinance. This subdivision is not within 1000' of the Appalachian Trail.
- This subdivision is not within the Edgemont Reservoir Watershed, Smiltsburg Reservoir Watershed, or the Upper Beaver Creek Drainage Basin per Washington County Watershed Mapper. This site is within the Antietam Watershed #02140502.
- No other wells or septic lie within 100 feet of the Lot Lines except as shown hereon.
- All grading on each lot, done either before or after the construction of a dwelling or their appurtenances, shall be the full responsibility of the lot owner.
- No permanent structures (fences, sheds, play equipment, retaining walls, etc.) shall be permitted within any storm drainage easement, either shown or described, on the Final Plat of Subdivision.
- This plat has been reviewed and approved per the P Zoning District. Any development/construction shall be in accordance with the Washington County Zoning Ordinance currently being enforced.
- This plat was prepared without the benefit of a title report and therefore may not indicate all encumbrances on this property.
- Any development must comply with the Washington County Stormwater Management, Grading, Soil Erosion and Sediment Control Ordinance.
- The proposed well location shown hereon is for general purposes only and are not to be construed as the only approved location for a proposed well. The proposed well location must be at least 100 feet away from any septic area or reserve septic area on any lot, at least 10 feet away from any property line, 30 feet away from the house foundation, and feet away from any road or right-of-way. Furthermore, the proposed well should also be a minimum of 100 feet away from any stormwater management facility or dry well (if required) as part of the building permit for the proposed house.
- The proposed structure(s) shown hereon is for general purposes only and are not to be construed as the only approved location for a proposed structure(s).
- An additional right of way 25 feet in width as measured from the centerline of Mount Carmel Church Road is hereby dedicated for the purpose of future road widening.
- Lot 1 as shown on this subdivision plat is zoned P and has been determined to be an exemption lot per section 5C.4 of the Washington County Zoning Ordinance. Lot 1 does not meet density requirements per Section 5C.3 of the Zoning Ordinance, thus it cannot be further subdivided. Density and Exemption lot status in the A(R), EC and P districts became effective on October 29, 2002.

**Soil Table**

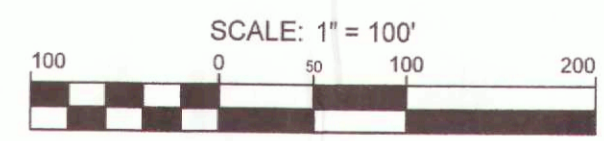
Soil	Area (Ac.)	%
DrA	1.80	26.83
MsB	2.62	39.05
MsD	2.26	33.68
Dk	0.03	0.44

**Certificate of Approval  
 FINAL APPROVAL GRANTED**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Washington County Planning Commission  
 Final Approval good for one hundred eighty (180) days from above date

**PLAT NO** \_\_\_\_\_  
**DATE** \_\_\_\_\_  
**WASHINGTON COUNTY**



LINE	BEARING	DISTANCE
L1	N 01°42'33" W	114.53'
L2	N 43°38'17" W	87.56'
L3	N 84°30'27" W	165.64'
L4	N 01°16'58" E	167.17'

P:\8485\FILES\PROJECTS\2023\2023-06-08-0855-000\SUBDIVISION PLAT - 2024.DWG 2024-06-18

Owner:  
 Kelly L. Drosdak  
 6733 Brandt Ct.  
 Frederick MD, 21702  
 301-748-9509

PROJECT NO. 2023-0365

DWN BY MTJ DATE 03-12-2024

PROJECT MANAGER: FFrederick

EMAIL: FFrederick@fsa-inc.com

PROPERTY INFORMATION / ACCT # 77-10-189 / 08-002525

SCALE 1" = 100'

SHEET TITLE

**SUBDIVISION PLAT**

**LEE & KELLY DROSDAK, LOT 1**

5607 MT CARMEL CHURCH ROAD  
 KEEDYSVILLE MD, 21756

WASHINGTON COUNTY, MARYLAND

FOR  
 LEE & KELLY DROSDAK  
 6733 BRANDT COURT, FREDERICK MD, 21702  
 301-748-9509

fsa-inc.com

**FSA**

FREDERICK SEIBERT & ASSOCIATES, INC.

CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS

15 EAST HANOVER STREET  
 NEW BLOOMFIELD, PA 17068  
 717.295.3531

505 SOUTH HANOVER STREET  
 CARLEISLE, PA 17013  
 717.761.8111

20 WEST BALTIMORE STREET  
 GREENBELT, MD 21726  
 717.567.1007

128 SOUTH POTOMAC STREET  
 FREDERICK, MD 21701  
 301.791.8888



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

**LEE AND KELLY DROSDAK**

**Appellants**

\*

\*

**Appeal No.: AP2024-031**

\*

\*

\* \* \* \* \*

**OPINION**

Lee and Kelly Drosdak (hereinafter “Appellants”) request a variance to reduce the required side yard setback from 100 feet to 50 feet, for a proposed new property line for a one lot residential subdivision at the subject property. The subject property is located at 5601 Mount Carmel Church Road, Keedysville, Maryland and is zoned Preservation. The Board held a public hearing in this matter on July 24, 2024.<sup>1</sup>

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. Kelly Drosdak is the owner of the subject property, located at 5601 Mount Carmel Church Road, Keedysville, Maryland. The subject property is zoned Preservation.

2. The subject property consists of approximately 35.09 acres of land improved by a dwelling, a barn which is used as a banquet/reception facility, various accessory buildings and a parking lot for event use. There is also a mobile home which is designated to be removed from the property.

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<sup>1</sup> The Board had three (3) members present which constitutes a quorum pursuant to the Ordinance and the Board’s Rules of Procedure.

3. The subject property was the subject of a previous appeal in AP2018-019 wherein the Board granted a special exception for a banquet/reception facility and a variance for parking and the front yard setback.

4. Appellants originally planned to renovate the existing dwelling so that they could reside at the subject property. However, even with the renovations, the home was not conducive to age in place and they have determined they need to construct a separate residence to be their forever home.

5. Appellants have selected a 6.68-acre area in the northwest corner of the subject property to subdivide for a residential lot.

6. 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.<sup>2</sup> “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.

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<sup>22</sup> “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).



502, 514 (1994).)

Pursuant to Section 5C.6 of the Zoning Ordinance, the required side yard setback for a banquet/reception facility is 100 feet. Appellant requested a reduction to 50 feet to subdivide the subject property and create a new residential lot.

Appellants testified that the location of the proposed subdivided lot is ideal for maintaining line of sight for the banquet/reception facility use. They have chosen the location for the new dwelling based on the proximity to the existing well and the location of the septic reserve area. It also maximizes the amount of land that can remain in agricultural use. While the variance request would reduce the setback by half, Appellants are the only ones affected by the subdivision.

Appellants also pointed out that the proposed new dwelling will still be approximately 140 feet from the parking area. The Board is persuaded that the requested variance is necessary to properly locate the proposed dwelling and will have minimal impact on the adjacent property. In order to comply with the setback requirements, Appellants would have to move the proposed subdivision line north which would impact the proposed septic reserve area and would move construction to some difficult topography. The Board finds that these circumstances create a practical difficulty and justify the variance relief requested.

Accordingly, the requested variance to reduce the required side yard setback from 100 feet to 50 feet, for a proposed new property line for a one lot residential subdivision at the subject property is GRANTED, by a vote of 3-0. 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: August 22, 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: Obidi Holdings LLC
303 Memorial Boulevard West
Hagerstown MD 21740
Appellant: Obidi Holdings LLC
303 Memorial Boulevard West
Hagerstown MD 21740
Property Location: 13316 Marsh Pike, Unit#
Hagerstown, MD 21742
Description Of Appeal: Request to modify specific condition of a previously approved special exception AP2022-029.

Docket No: AP2024-032
Tax ID No: 27016243
Zoning: RS
RB Overlay: No
Zoning Overlay:
Filed Date: 07/03/2024
Hearing Date: 07/24/2024

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): AP2024-020, AP2022-029, AP2021-026
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 8.2 (e)

Reason For Hardship:
If Appeal of Ruling, Date Of Ruling:
Ruling Official/Agency:

Existing Use: Vacant Commerical Building Proposed Use: New Commerical Building for Physicians Office
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]
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 3 day of July, 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: AP2024-032

State of Maryland Washington County, To Wit:

On 7/3/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared JD Law Company Inc and made oath in due form of law as follows:

JD Law Company 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 07/24/2024, 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 07/10/2024 and will remain until after the above hearing date.

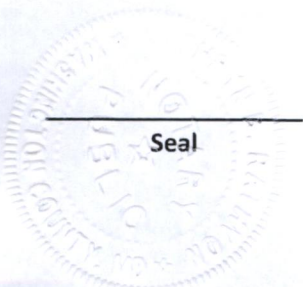
JD Law Company Inc

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



## BOARD OF ZONING APPEALS

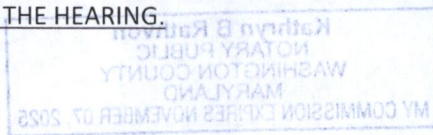
### ATTENTION!

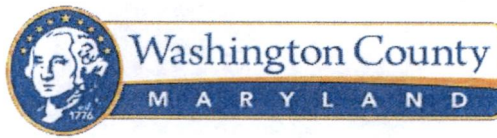
### Posting Instructions

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.





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 Special Exception

Appeal is hereby made for a special exception under the Washington County Zoning Ordinance as follows:

Location 13316 Marsh Pike, Hagerstown, MD 21742

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

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

Use Proposed: Full Service Physician's Office

Zoning Ordinance section and subsection(s) providing for proposed use: §8.2(e) permitting Doctors' Offices by Special Exception in RS zoning

If filing functionally similar to a principal permitted use or special exception use, please list the use and describe the use similarities:

Provide Detailed Explanation on Separate Sheet

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

X Yes No

If yes, give docket number(s): AP2022-029

Additional comments, if any: Request is to modify specific conditions of previously approved special Exception, NOT a new special Exception. See Attached letter

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

Signature of Appellant Attorney

Email of Appellant jolivebiss@andbiss.com

Obidi Holdings LLC 303 Memorial Blvd. Hagerstown, MD 21740 Address of Appellant

(301) 791-7060 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.

<b>ADJACENT PROPERTY OWNERS</b>					
	<u>NAME</u>	<u>PREMISES ADDRESS</u>	<u>LIBER/FOLIO</u>	<u>MAILING ADDRESS</u>	<u>TAX MAP/PARCEL</u>
1	Church Hebron Mennonite Inc	13315 Highline St.	691/519	13315 Highlane St., Hagerstown, MD 21741	25/740
2	Howe, Cecil H & Robin L	13308 Marsh Pike	6721/152	13308 Marsh Pike, Hagerstown, MD 21742	25/507
3	Grossnickle, John W & Sandra R	13312 Marsh Pike	1397/1028	13312 Marsh Pike, Hagerstown, MD 21742	25/818
4	Skaggs, John E & Catherine A	13322 Marsh Pike	1051/425	13322 Marsh Pike, Hagerstown, MD 21742	25/796
5	Maddox, Brianna A	13306 Marsh Pike	6451/290	13306 Marsh Pike, Hagerstown, MD 21742	25/245
6	Livingspace Inc	13324 Marsh Pike	1520/729	19707 Bluebell Ct., Hagerstown, MD 21740	25/130
7	Damore, Anthony J & Kelly A	13368 Marquise Dr	6425/292	13368 Marquise Dr., Hagerstown, MD 21742	25/832
8	Mellow, Bernadette	13366 Marquise Dr	6573/11	13366 Marquise Dr., Hagerstown, MD 21742	25/832
9	Bauroth, Alan & Judy	13362 Marquise Dr	6276/111	19629 Maddelena Cir., Estero, FL 33967	25/832
10	Melby, Catherine S	13356 Marquise Dr	6080/379	13356 Marquise Dr., Hagerstown, MD 21742	25/832
11	Ridgley Richard F & Geraldine G	13354 Marquise Dr	6098/219	13354 Marquise Dr., Hagerstown, MD 21742	25/832
12	Albowicz, Julianna M	13350 Marquise Dr	6980/53	13350 Marquise Dr., Hagerstown, MD 21742	25/832
13	Messer, Theresa M & Larry R	13348 Marquise Dr	5634/304	13348 Marquise Dr., Hagerstown, MD 21742	25/832
14	Nichols, Thomas E & Knoll Shawn	13344 Marquise Dr	5316/449	13344 Marquise Dr., Hagerstown, MD 21742	25/832
15	Elliot, William D & Juanita B	13342 Marquise Dr	5147/475	13342 Marquise Dr., Hagerstown, MD 21742	25/832
16	Gosnell Wayne S & Antoinette P	13338 Marquise Dr	4799/87	13338 Marquise Dr., Hagerstown, MD 21742	25/832

July 2, 2024

Washington County Board of Appeals  
80 West Baltimore Street  
Hagerstown, Maryland 21740

**Re: Obidi Holdings, LLC - Physician's Office - 13316 Marsh Pike**

**Request to Modify Conditions of Previously Approved Special Exception (AP2022-029) - Specifically, "the condition that the proposed use be consistent with the testimony and evidence presented ...."**

Dear Board Members:

My client, Dr. Emeka Obidi of Partners in Pediatrics & Family Health and Obidi Holdings, LLC, a Maryland limited liability company (the "**Applicant**"), is the owner of the property located at 13316 Marsh Pike, Hagerstown, Maryland consisting of +/- 0.826 acres (TM 25, Parcel 128) (the "**Property**") and currently improved by a vacant +/- 8,522 sf. two-story, mixed-use commercial / residential building (the "**Existing Building**").

### Past Uses / Zoning

Historically, the Property was designed and used for the conduct of a dairy business and principal residence of the owners/operators of that business. In 1983 a request for Special Exception and setback variances was approved (AP-1447) so the Property could be converted to and used for a local garden-tractor, lawnmower, kerosene heater, and accessories retail goods and service business. See attached 1983 Board of Zoning Appeals case.

Most recently, the Property was used by Red Hill Tactical for the sale of firearms and related accessories.

Despite this extensive history of commercial uses, the Property is zoned RS (Residential, Suburban). A copy of the current parcel and zoning map is attached hereto.

### 2022 Special Exception

In 2022, at the request of the Applicant, who was then the contract purchaser, the Board approved a Special Exception to use the Property as a full-service physicians' office (the

“2022 Approval”) in addition to maintaining the 2<sup>nd</sup> floor residential unit. A copy of the Board’s decision in that case (AP2022-029) is attached hereto.

As per the last paragraph in the Board’s Amended Opinion dated December 22, 2022:

The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein ... (p. 3)

In general, the Special Exception use approved in 2022 has not changed; Applicant still intends to operate a full-service physician’s office. Therefore, there is no need to request a brand-new Special Exception from this Board.

However, certain details of the Applicant’s intended use of the Property have changed since the Board rendered its decision in 2022, primarily the intent to re-use the Existing Building. Thus, the need for a modification to the Board’s 2022 Approval.

### Project Changes Since 2022

#### *New Building v. Re-Use of Existing*

As recited in the Board’s decision: “ Aside from asbestos remediation, there are no major changes planned for the building at the subject property. Appellant intends to maintain the residence on the second floor of the building.” (p. 2)

Unfortunately, due to the discovery of significant structural deficiencies, it was determined that renovation and re-use of the Existing Building was not cost effective and building new was the only option.

Attached hereto are (i) a Site Plan drawing showing the footprint and layout of the new +/- 9,508 sf. building (the “**New Building**”); (ii) an additional Site Plan drawing showing the Existing Building in red overlay for comparison purposes with the New Building; and (iii) a color rendering showing the exterior façade and appearance of the proposed New Building.

Also attached is a floor plan showing the design and layout of the interior spaces of the New Building, including the inclusion of a 2<sup>nd</sup> floor residential unit the same as has been present on the Property since at least the 1960’s.

**Because the 2022 Approval was conditioned upon “the proposed use be[ing] consistent with the testimony and evidence presented” and the prior testimony and evidence was that the Existing Building would be re-used, Applicant has returned to request the Board’s approval of a modification to the 2022 Approval that would permit the same Special Exception use, full-service physicians’ office, to be conducted in the proposed New building rather than the Existing Building.**



*Additional, Secondary Changes*

In addition to the fundamental change from re-use of the Existing Building to construction of a New building, the details of Applicant's use have also changed in the following, much less significant ways that we wish to bring to the Board's attention and make part of the within request to modify the 2022 Approval:

	<u>2022 Approval</u>	<u>Requested Modification</u>
<b>Hours of Operation</b>	M-F 8:00 a.m. – 5:00 p.m. Sat. 9:00 a.m. – 1:00 p.m.	M-F 8:00 a.m. – 5:30 p.m. Sat. 9:00 a.m. – 1:00 p.m.
<b>Employees</b>	4-6 Total (3 providers; 1-3 staff)	7-8 Total (3 providers; 4-5 staff)
<b>Parking Spaces</b>	10 existing + unspecified "more to accommodate the proposed medical practice" (2022 Approval Decision, p. 2)	43 regular + 2 handicap (as required by Zoning Ordinance, § 22.12(b) <sup>1</sup>

**No Material Change to Potential Impact**

In 2022, the Board determined and found as follows with regard to the Applicant's proposed Special Exception use:

The proposed use will not produce any noise, odor, gas, dust, or light that would adversely impact neighboring properties. Other than the coming and going of patient traffic, there will be no outward impact of the medical practice's operation. The use certainly serves the community and fits into the surrounding neighborhood. 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, secures public safety and welfare and upholds the spirit of the Ordinance

**Use of the New Building, rather than the Existing Building; slight modification to the details of Applicant's medical office use (a natural reflection of having a newer, modern building and layout); and complying with the Zoning Ordinance**

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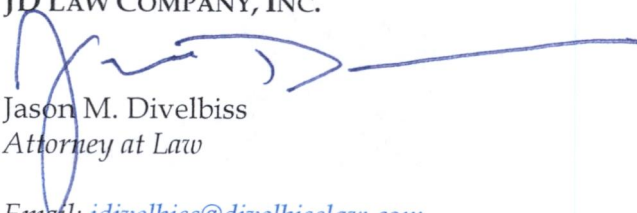
<sup>1</sup> In the event the within modification request is approved by the Board, Applicant anticipates either (i) coming back to the Board to request a variance to significantly reduce the parking space requirement to 20 or less and/or (ii) requesting from Staff and/or the Planning Commission a modification to the Site Plan that would allow the parking area to be built in phases as needed or with pervious pavement or other means less impactful to the site.

requirements for parking<sup>2</sup> do not materially change the projected impact of Applicant's approved Special Exception use.

As such, Applicant believes it's request for modification to the 2022 Approval should be granted and approved by the Board.

I look forward to discussing the Applicant's Project and the details of the within request at the Board's next available meeting.

Very truly yours,  
JD LAW COMPANY, INC.



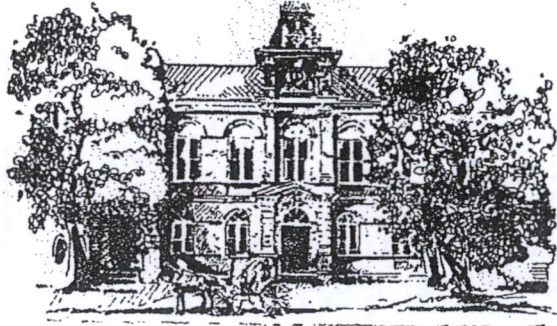
Jason M. Divelbiss  
*Attorney at Law*

*Email: [jdivelbiss@divelbisslaw.com](mailto:jdivelbiss@divelbisslaw.com)*

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<sup>2</sup> If Applicant had proceeded further with a plan to re-use the existing Building and a Site Plan were required based upon a change in the use of the Property, or otherwise, it is likely that the parking requirement for that re-use would have been the same as or very close to the current requirement for use of a new building.

WASHINGTON COUNTY  
BOARD OF ZONING  
APPEALS  
33 WEST WASHINGTON STREET  
HAGERSTOWN, MARYLAND 21740  
Telephone: (301) 791-3071



*The Court House*

SERVING WASHINGTON COUNTY SINCE 1873

BOARD OF ZONING APPEALS DECISION

TO: Richard R. Baer  
Route # 5 Box 469  
Hagerstown, MD 21740

DOCKET NUMBER AP-1447  
HEARING DATE November 16, 1983  
DATE December 16, 1983

Dear Mr. Baer:

A disposition of your appeal case has been made by the Board of Zoning Appeals. Following the public hearing and pursuant to a consideration of all the facts and testimony, the Board hereby grants your appeal as set forth in the attached opinion.

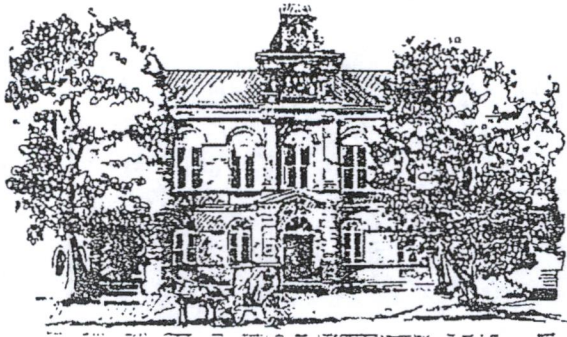
Respectfully yours,

*Pamela D. Nause*  
Secretary

cc: Warren Stultz, Attorney, Reba J. Shank, Lynn Eichelberger

NOTE: If the appeal has been disapproved, the appellant may appeal this decision to the Circuit Court within thirty (30) days of the date of disapproval as well as any person aggrieved if the appeal is approved.

WASHINGTON COUNTY  
DEPARTMENT OF PERMITS  
INSPECTIONS  
WEST WASHINGTON STREET  
HAGERSTOWN, MARYLAND 21740  
phone: (301) 791-3070



*The Court House*

SERVING WASHINGTON COUNTY SINCE 1873

December 12, 1983

Richard R. Baer  
Route # 5 Box 469  
Hagerstown, MD 21740

Dear Mr. Baer:

Enclosed is your copy of the Board of Appeals decision granting your appeal and a copy of the Board's opinion for the case. This decision is the Board's approval of your request only, but it is not authorization for the start of any construction nor is it authorization for the utilization of the building for the new requested use.

Before beginning any work or before commencing business operations, it will be necessary for you to make application for approval with the Department of Permits and Inspections and receive certification that all conditions are met that pertain to both the County Building Code and Zoning Ordinance.

In the meantime, if you have any questions concerning what is needed for obtaining the permit, please call.

Sincerely,

Robert L. Coble  
Director

RLC/psh

RICHARD R. BAER

\* AP-1447  
\* BOARD OF ZONING APPEALS  
\* FOR WASHINGTON COUNTY

OPINION

This is an appeal made by Richard R. Baer charging error in administrative ruling or action and/or special exception for the purpose of conducting a small, primarily local, garden-tractor, lawn mower, kerosene heater, and accessories sales and service business, and a variance from the required 50 foot rear yard depth to a 13 to 25 foot rear yard, on property owned by Calvin H. Shank and located at 2329 Marsh Pike, Paramount, zoned Residential, Suburban.

A hearing was held by this Board on November 16, 1983 at which the following members of the Board were present: Nancy A. Stiles, Joseph T. Kulpinski, Jr., Lloyd W. Hanlin, and Richard W. Hebb. Board member Thomas A. Wade was not present and did not take part in the making of this opinion. The applicant was present at the hearing together with Mr. Warren Stultz, Attorney, with no opposition present. All individuals present at the hearing were granted an opportunity to be heard and to present any evidence they desired.

Upon the testimony given at the hearing, consideration of the evidence presented and its study of the subject property and the neighborhood in which it is located, the Board makes the following findings of fact:

1. As to the purpose of the Zoning Ordinance as set forth therein, in relationship to the charge of administrative error made by the applicant: The Board finds the area zoned properly in its review of said application. With this review the Board acknowledges the limits and powers bestowed unto its care and understands if any error did exist the Washington County Planning and Zoning Commission and the Board of County Commissioners are the appropriate governing bodies to act on such a matter.
2. As to the nonconforming use application of said property and building the Board finds that the lack of activity from the date of sale (dairy business) to the retail marketing of the property did, in fact, not constitute a continuing nonconforming use.

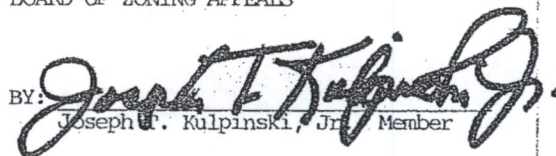
RICHARD R. BAER  
AP-1447  
PAGE TWO

3. As to the special exception request before this Board: from the testimony given of the history of the building and its location, neighbors most affected, petitions presented, type of business requested, and character of the applicant, the Board finds that the special exception be granted and also limited to the type of business, hours of operation, number of people working or residing at this location, parking areas designated as described in the applicants formal presentation and testimony of November 16, 1983.

4. As to the variances requested, the Board finds that such variances be granted.

BOARD OF ZONING APPEALS

BY:

  
Joseph C. Kulpinski, Jr. Member

October 27, 1983

Board of Appeals  
Washington County, Maryland

Dear Members of the Board:

The undersigned has contracted with the Estate of Calvin H. (Mike) Shank to buy an approximate 2 acre tract of land with improvements known as 2329 Marsh Pike at Paramount near Hagerstown, Washington County, Maryland. The improvements consist of a two story concrete block and asbestos siding building which, until 1972, was used by Mike Shank as a dairy with a residence above. Much of the dairy equipment and some of the trucks are still stored in the first floor area of the building and Mr. Shank's widow, Reba J. Shank, still resides in the second floor apartment.

The undersigned presently conducts a small, primarily local, garden-tractor, lawn-mower, kerosene heater, and accessories sales and service business at his father's garage property known as Baer's Garage at 2407 Marsh Pike, also at the Village of Paramount. It is the desire and need of the undersigned, because of the seriously crowded conditions at his father's garage, to relocate his said business to the Shank's Dairy property mentioned above which is only some 3 or 4 blocks away from said garage. Upon making his application for a permit to use the said dairy property for his sales and service business, the Zoning Administrator refused to issue the permit stating that it was not an authorized use. In addition, the Zoning Administrator refused to give the undersigned a variance from the 50 feet rear yard depth required in the Zoning Ordinance and permission to erect a small sign at the front of the property and to keep a small display of garden-tractors and other equipment thereat.

The purpose of this letter is to explain the position of the undersigned in this matter and, especially, the extreme hardships which both Mrs. Shank and the undersigned will suffer if the decisions of the Zoning Administrator are allowed to stand by this Board.

The Zoning Ordinance, among other things, requires that this Board, in considering the undersigned's requests, take into consideration the people in the area, the orderly growth of that area, traffic conditions therein, the enjoyment of those people in their homes as affected by the proposed uses, the effect on property values resulting from such uses, the effect of odors and similar emissions from such uses on the values of neighboring properties and their uses, the most appropriate use of the subject land and structure and the effect on the use of structures in the area where public gatherings are held.

The undersigned submits that, in considering all of the above matters, this Board's findings should be the same, namely: that the people who live or work in the area would not be adversely affected by the proposed uses; an informal canvassing of the adjoining property owners disclosed no objections; that the orderly growth of the area would not be adversely effected because of the continued convenience to local property owners and any new ones who may move into the area afforded by keeping the undersigned's business in close proximity to their properties while located on land that for many years was commercial or semi-commercial in use; that the vehicular traffic at the subject property would be no greater than the traffic at the site if it were converted into multiple housing, an admitted use to which the subject property could be put under the Ordinance; that, as hereinbefore mentioned, the undersigned's business would be low profile in nature and, except for the occasional stutter of a small equipment's engine and any slight emission of odor therefrom, and a modest sign and equipment display well back off of Marsh Pike to the front, the undersigned's proposed use of the subject property could not adversely effect others in their use of their properties or in the values thereof, in this primarily rural area of Washington County; that the building on the subject land was, except for the living area above, designed for the conduct of a dairy business therein and, therefore, the most appropriate use of the subject land and building would be for a similarly, rurally oriented business such as that of the undersigned.

The undersigned has been informed by Mrs. Shank that she is relying on the sale of the subject property as a source of income for her retirement years and that, although she has made every effort since her husband's death, to sell said property for its reasonable value, efforts which included the services of a realtor and others who have advised her that conversion to additional housing units is impracticable, has been unable to find a buyer. The undersigned can assure the Board that Mrs. Shank is at her wits' end concerning a reasonable sale of the property and her worry over having enough money for a decent living in her older years.

As for the undersigned, he too feels that he and his customers will suffer a hardship if the Board upholds the decisions of the Zoning Administrator. As a small businessman serving the immediate needs of a local community, the undersigned feels that both he and his neighbors will suffer a needless hardship if he is required to leave the Paramount area in order to find the facilities needed for the relocation of his business. The Board will understand that, in his quest for a suitable location in the same or nearby communities, the undersigned has been confronted with many practical problems, zoning prohibitions and entrance safety questions; prohibitions and problems which have, to date, prevented him from finding a practical solution to his relocation dilemma.



In conclusion, the undersigned respectfully states that both he and Mrs. Shank will suffer needless hardship if the decisions of the Zoning Administrator are upheld and that both the spirit of the Zoning Ordinance under the circumstances of this case and the needs of the community dictate that the requests of the undersigned be granted.

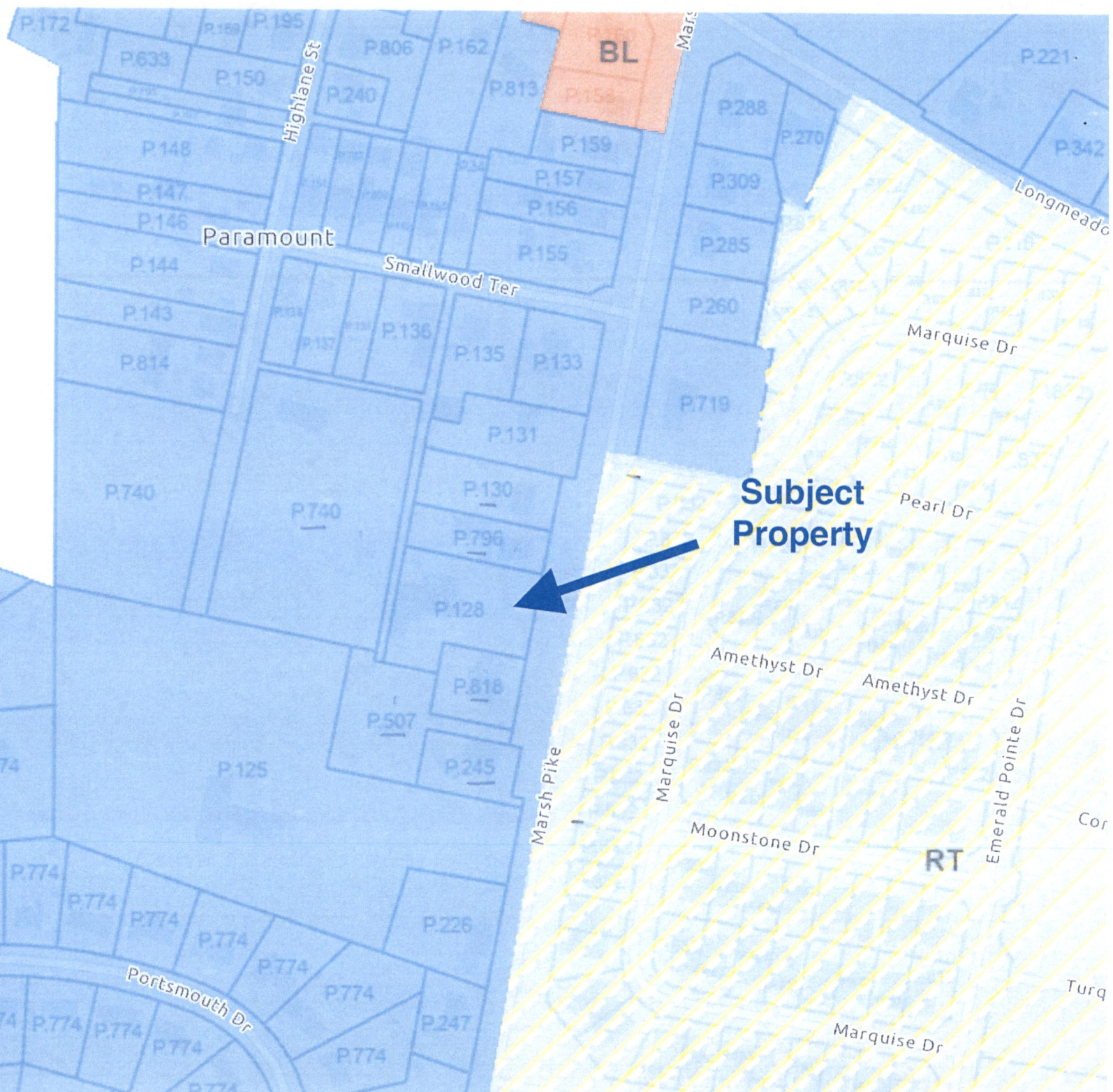
Very truly yours,

*Richard R. Baer*

Richard R. Baer

CSX Railroad

IG



BL

Paramount

Smallwood Ter

**Subject Property**

Marquise Dr

Pearl Dr

Amethyst Dr

Amethyst Dr

Moonstone Dr

RT

Emerald Pointe Dr

Cor

Turq

Marquise Dr

Newport Ct

Portsmouth Dr

Portsmouth Dr

Marsh Pike

Marquise Dr

Longmeado

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BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND

OBIDI HOLDINGS, LLC  
Appellant

\*  
\* Appeal No.: AP2022-029  
\*  
\*

\* \* \* \* \*

OPINION

Obidi Holdings, LLC (hereinafter "Appellant") requests a special exception to establish a full-service physicians' office in a commercial building at the subject property. The subject property is located at 13316 Marsh Pike, Hagerstown, Maryland and is zoned Residential Suburban. The Board held a public hearing in this matter on July 6, 2022.

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. The subject property is located at 13316 Marsh Pike, Hagerstown, Maryland and is owned by FHCPM, LLC. The subject property is zoned Residential Suburban.
2. FHCPM, LLC has given its authorization for Appellant to make this special exception request for the subject property. Appellant is the contract purchaser of the subject property.
3. Appellant currently operates a family medical practice on Memorial Boulevard in Hagerstown, Maryland. The proposed office would be a second location for the practice.

4. The proposed medical practice would be open Monday through Friday from 8:00 a.m. to 5:00 p.m. and 9:00 a.m. to 1:00 p.m. on Saturday.

5. Appellant plans to have between three (3) and six (6) providers plus staff at the proposed second office. In the beginning there may be between four (4) and six (6) total people working at the practice.

6. The proposed medical practice is by appointment only and at any given time, it is expected there would be a maximum of nine (9) to ten (10) cars in the parking lot. Appellant expects a maximum of eight (8) to nine (9) patients in any given hour.

7. Aside from asbestos remediation, there are no major changes planned for the building at the subject property. Appellant intends to maintain the residence on the second floor of the building.

8. The subject property currently has ten (10) parking spaces and Appellant will have to create more to accommodate the proposed medical practice.

9. There was no opposition presented to this appeal.

#### **Rationale**

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.

Appellant is seeking the Board's approval to establish a second office for its family medical practice in a commercial building at the subject property. Appellant testified that they would need additional parking as part of the site plan review process, but that there are no other material changes proposed for the existing building. Any additional parking requirements would be handled at the site plan review stage, and if necessary, would

have to come before this Board in another appeal. The medical practice will serve as a second location and plans to be operate fully during normal business hours each week. The proposed use will not produce any noise, odor, gas, dust, or light that would adversely impact neighboring properties. Other than the coming and going of patient traffic, there will be no outward impact of the medical practice's operation. The use certainly serves the community and fits into the surrounding neighborhood. 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, secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a special exception to establish a machine shop facility to make and repair items for agricultural equipment at the subject property is GRANTED, by a vote of 4-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein, and that Appellant utilize downward facing lighting subject to site plan design requirements.

BOARD OF APPEALS

By: Jay Miller, Chair

**Date Issued: August 4, 2022**

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.

BEFORE THE BOARD OF APPEALS  
FOR WASHINGTON COUNTY, MARYLAND

OBIDI HOLDINGS, LLC  
Appellant

\*  
\* Appeal No.: AP2022-029  
\*  
\*

\* \* \* \* \*

AMENDED OPINION

Obidi Holdings, LLC (hereinafter "Appellant") requests a special exception to establish a full-service physicians' office in a commercial building at the subject property. The subject property is located at 13316 Marsh Pike, Hagerstown, Maryland and is zoned Residential Suburban. The Board held a public hearing in this matter on July 6, 2022. The Board subsequently held a public hearing on November 16, 2022 and voted unanimously that this Amended Opinion be issued to correct a typographical error in the original Opinion.

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. The subject property is located at 13316 Marsh Pike, Hagerstown, Maryland and is owned by FHCPM, LLC. The subject property is zoned Residential Suburban.
2. FHCPM, LLC has given its authorization for Appellant to make this special exception request for the subject property. Appellant is the contract purchaser of the subject property.

3. Appellant currently operates a family medical practice on Memorial Boulevard in Hagerstown, Maryland. The proposed office would be a second location for the practice.

4. The proposed medical practice would be open Monday through Friday from 8:00 a.m. to 5:00 p.m. and 9:00 a.m. to 1:00 p.m. on Saturday.

5. Appellant plans to have between three (3) and six (6) providers plus staff at the proposed second office. In the beginning there may be between four (4) and six (6) total people working at the practice.

6. The proposed medical practice is by appointment only and at any given time, it is expected there would be a maximum of nine (9) to ten (10) cars in the parking lot. Appellant expects a maximum of eight (8) to nine (9) patients in any given hour.

7. Aside from asbestos remediation, there are no major changes planned for the building at the subject property. Appellant intends to maintain the residence on the second floor of the building.

8. The subject property currently has ten (10) parking spaces and Appellant will have to create more to accommodate the proposed medical practice.

9. There was no opposition presented to this appeal.

#### **Rationale**

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.

Appellant is seeking the Board's approval to establish a second office for its family medical practice in a commercial building at the subject property. Appellant testified that

they would need additional parking as part of the site plan review process, but that there are no other material changes proposed for the existing building. Any additional parking requirements would be handled at the site plan review stage, and if necessary, would have to come before this Board in another appeal. The medical practice will serve as a second location and plans to be operate fully during normal business hours each week. The proposed use will not produce any noise, odor, gas, dust, or light that would adversely impact neighboring properties. Other than the coming and going of patient traffic, there will be no outward impact of the medical practice's operation. The use certainly serves the community and fits into the surrounding neighborhood. 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, secures public safety and welfare and upholds the spirit of the Ordinance.

Accordingly, the request for a special exception to establish a to establish a full-service physicians' office in a commercial building at the subject property is GRANTED, by a vote of 4-1. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein, and that Appellant utilize downward facing lighting subject to site plan design requirements.

BOARD OF APPEALS

By: Jay Miller, Chair

**Date Issued: December 22, 2022**

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.



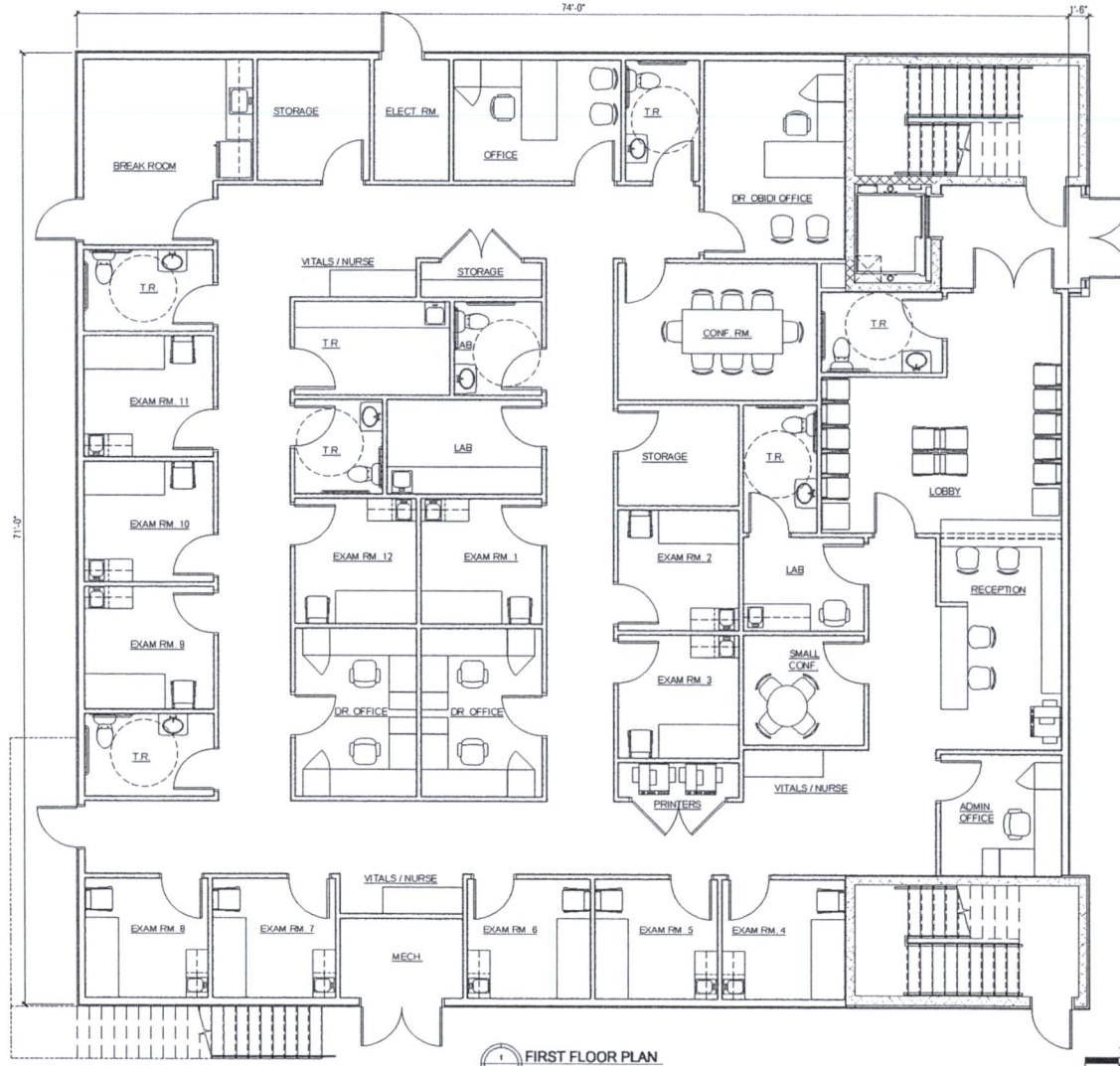
10/27/23

**WADE**  
ARCHITECTURE  
HARRINGTON, DE 302-483-4400

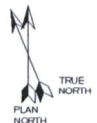
CLIENT REVIEW ONLY  
NOT FOR CONSTRUCTION  
NOT FOR PERMITS

Partners in Pediatrics Medical Office  
13318 Marsh Pike Hagerstown, MD  
FIRST FLOOR PLAN

AREA CALCULATIONS	
COMMERCIAL	
1st FLOOR	5,254 S.F.
2nd FLOOR	2,472 S.F.
SUB-TOTAL	7,726 S.F.
RESIDENTIAL	
APARTMENT	1,234 S.F.
TOTAL	9,508 S.F.



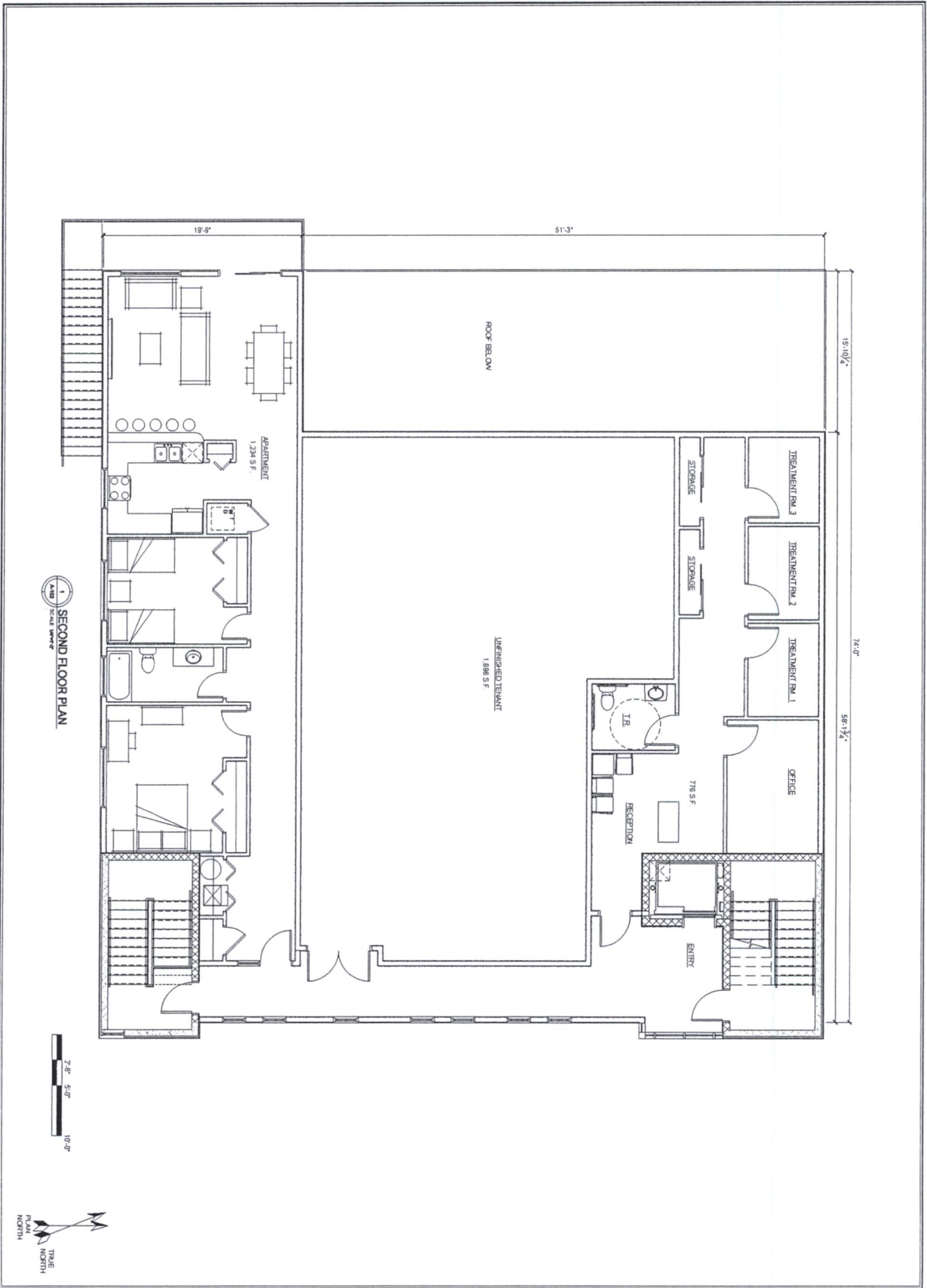
**FIRST FLOOR PLAN**  
SCALE: 1/8" = 1'-0"



REV.	DESCRIPTION	DATE

PROJECT NUMBER	
DATE	
DESIGNED BY	
CHECKED BY	
SHEET NO.	

**A-101**



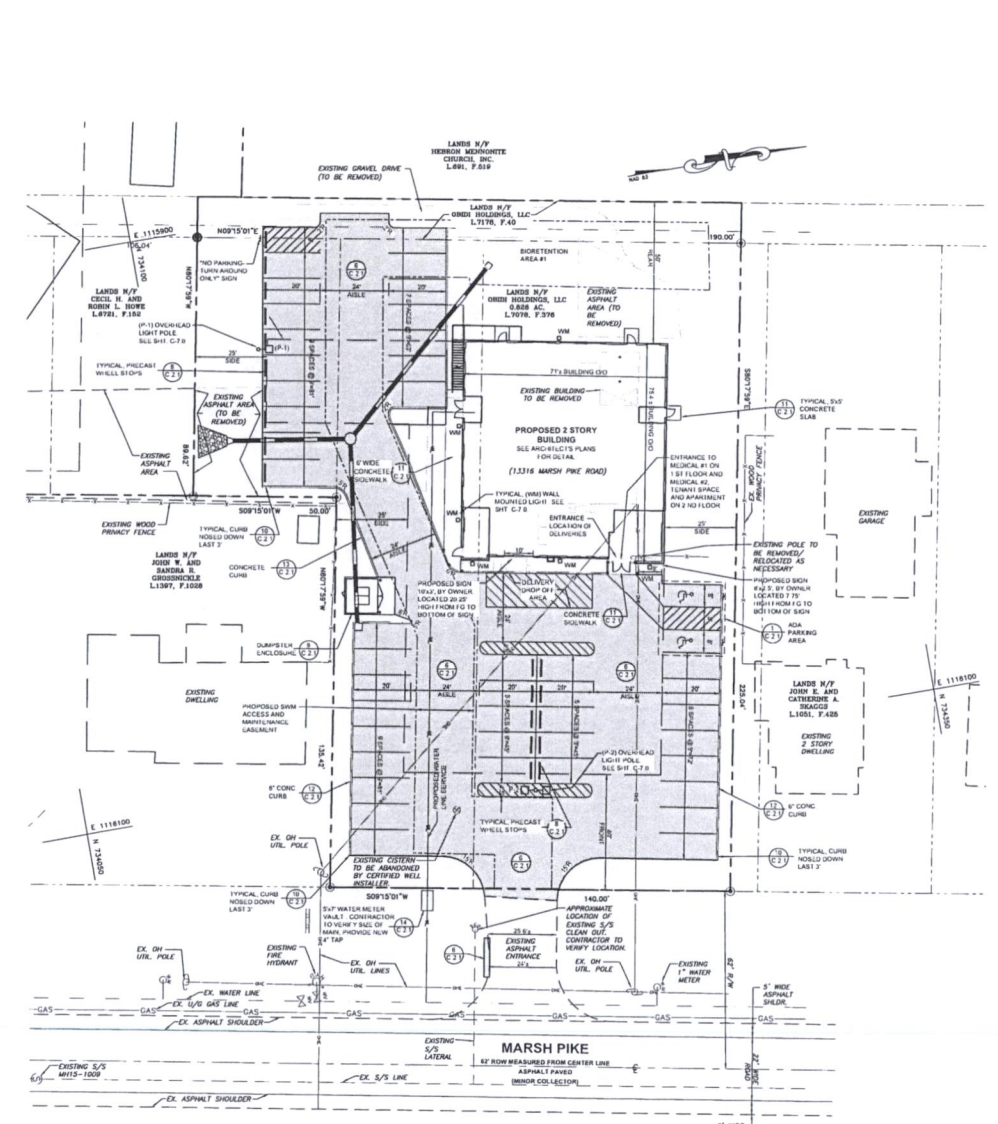
<b>WADE</b> ARCHITECTURE <small>ARCHITECTS &amp; INTERIORS</small>	<b>CLIENT REVIEW ONLY</b> <small>NOT FOR CONSTRUCTION</small> <small>NO ALTERATIONS</small>	<b>Partners In Pediatrics Medical Office</b> 13316 Marsh Pike Hagerstown, MD	SHEET NO.
	<b>SECOND FLOOR PLAN</b>	A-102	TITLE

**GENERAL NOTES**

- TAX MAP 0025, GRID 0018, PARCEL 0128
- ELECTION DISTRICT 37
- TOTAL SITE AREA = 8.28 ACRES
- DEED REFERENCE: REFERENCE TO THE LANDS CONVEYED BY FROM, LLC INTO OBI HOLDINGS, LLC BY DEED DATED AUGUST 7, 2002 AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND AT LIBER 7078 FOLIO 376. ALSO BEING ALL THAT PORTION OF AN UNIMPROVED 10 FOOT WIDE ALLEY AS INDICATED BY A DEED, THE LANDS CONVEYED BY FROM, LLC INTO OBI HOLDINGS, LLC AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND AT LIBER 7738 FOLIO 45.
- PLAN REFERENCE: THE PROPERTY BOUNDARY SHOWN AS WESTERLY 842 FEET OF LOT 3, ALL OF LOT 4, ALL OF LOT 5 AND THE SOUTHERLY 45 FEET OF LOT 6, ON A PLAN OF SUBDIVISION TITLED "PLAN OF BOUNDARY ADJUSTION, 'PARAMOUNT' NO. 1" RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND AT LIBER 7738 FOLIO 45.
- THE PROPERTY LINES SHOWN HEREON ARE FROM DEEDS/DATS OF RECORD. BOUNDARY SURVEY HAS BEEN PERFORMED BY GEORGE L. CLUMP AND ASSOCIATES.
- TOPOGRAPHIC FEATURES SHOWN HEREON ARE FROM 2010 WASHINGTON COUNTY PLANNING U.S. DATA AND SUPPLEMENTS WITH A TOPOGRAPHIC SURVEY PERFORMED BY GEORGE L. CLUMP AND ASSOCIATES, WITH THE LAST DATE OF FIELD WORK COMPLETION BEING AREA 13 LIST.
- SITE 202000 "R" - RESIDENTIAL SUBURBAN DISTRICT
- EXISTING USAGE IS A GUN SHOP WHICH IS A PRINCIPAL PERMITTED USAGE WITHIN THE "R" DISTRICT PER ARTICLE 1 SECTION 1 OF THE WASHINGTON COUNTY ZONING ORDINANCE.
- PROPOSED USAGE IS A DWELLING UNIT MEDICAL OFFICE, WHICH IS SPECIAL EXCEPTION USAGE WITHIN THE "R" DISTRICT PER ARTICLE 8 SECTION 8 OF THE WASHINGTON COUNTY ZONING ORDINANCE. EXISTING USAGE WAS PREVIOUSLY A GUN SHOP AND A SMALL GARAGE.
- PURPOSE OF THIS SITE PLAN IS FOR A CHANGE OF USE, TO BE USED AS MEDICAL OFFICES AND DWELLING UNIT. REFERENCE IS HEREBY MADE TO THE BOARD OF ZONING APPEALS FOR THE FOLLOWING DOCKET NUMBER AP 1447 GRANTING SPECIAL EXCEPTION FOR PROPOSED USE AND A VARIANCE FROM A REAR YARD DEPTH OF 15 FEET. DOCKET NUMBER AP 2164 GRANTING A VARIANCE FROM A REAR YARD DEPTH OF 30 FEET TO 2 FEET MINIMUM LOT REQUIREMENTS PER SECTION 9(A) OF THE WASHINGTON COUNTY ZONING ORDINANCE.
- TABLE:
 

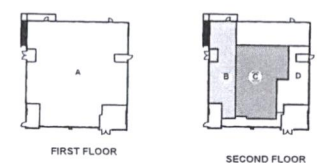
LOT AREA	LOT WIDTH	FRONT YARD	SIDE YARD	REAR YARD
28,800 SF	180 FEET	40 FEET	25 FEET	30 FEET
- HOURS OF OPERATIONS: MONDAY THRU FRIDAY 9:30 AM TO 4:30 PM, SATURDAY 9 AM TO 11 PM
- NUMBER OF EMPLOYEES: 2 PER 8 HOUR SHIFT
- PARKING REQUIREMENT PER SECTION 21.1(1)(B) OF THE WASHINGTON COUNTY ZONING ORDINANCE:
  - MEDICAL #1: 1 SPACE REQUIRED/200 sq. ft. OF (GFA) 1st FLOOR TENANT 4,971 SF (200-25 SPACES)
  - MEDICAL #2: 1 SPACE REQUIRED/200 sq. ft. OF (GFA) 2nd FLOOR TENANT 7,917 SF (200-39 SPACES)
  - MEDICAL #3: 1 SPACE REQUIRED/200 sq. ft. OF (GFA) 3rd FLOOR (FUTURE) TENANT 16,584 SF (200-83 = 83 SPACES)
  - 1 DWELLING UNIT TENANT: 2 SPACES PER UNIT
  - TOTAL SPACES REQUIRED=40 TOTAL SPACES PROVIDED=43 REGULAR AND 2 HC
- 16 SITE IS SERVED BY A PUBLIC SANITARY SEWER SYSTEM PROVIDED BY WASHINGTON COUNTY DEPARTMENT OF WATER QUALITY.
- 17 SITE IS SERVED BY PUBLIC WATER SYSTEM PROVIDED BY THE CITY OF HAGERSTOWN WATER AND SEWER DEPARTMENT.
- 18 SIGN TO BE PLACED/UPDATED AT EXISTING SIGN LOCATION. SIGN SHALL MEET THE REQUIREMENTS PER ARTICLE 21.03(B)(8)(A) OF THE WASHINGTON COUNTY ZONING ORDINANCE.
- 19 TRASH AND RECYCLABLES WILL BE COLLECTED AT THE PROPOSED DUMPSTER LOCATION SHOWN, AND REMOVED FROM SITE BY A LICENSED COMMERCIAL HAULER AND TAKEN TO AN APPROVED DISPOSAL FACILITY.
- 20 NO NEW EXTERIOR LIGHTING IS PROPOSED FOR THIS PLAN.
- 21 THERE ARE NO CREEKS/LAKES ON THE SITE PER MAPS BY THE U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, PER THE NATIONAL WETLANDS INVENTORY DATED JUNE 30, 2001.
- 22 THERE ARE NO HABITATS OF THREATENED OR ENDANGERED SPECIES IDENTIFIED BY THE U.S. FISH AND WILDLIFE SERVICE PER SPECIES REQUIRED TO BE SHOWN BY SECTION 31A OF THE WASHINGTON COUNTY ZONING ORDINANCE AND SECTION 4.1 OF THE WASHINGTON COUNTY ZONING ORDINANCE.
- 23 THERE IS NO INTERMITTENT STREAM DRAINAGE ASSOCIATED WITHIN THE PROJECT LIMITS AS SHOWN ON SHEET NUMBER 25 OF 44 OF THE SOIL SURVEY OF WASHINGTON COUNTY, MARYLAND.
- 24 THERE ARE NO AREAS OF STEEP SLOPES AS DEFINED BY ARTICLE 28.031 OF THE WASHINGTON COUNTY ZONING ORDINANCE ON THE LANDS SHOWN HEREON.
- 25 THIS SITE IS NOT WITHIN THE LIMITS OF THE APPALACHIAN TRAIL CORRIDOR OR THE WATERBEDS OF THE EDEMONT-SPRINGFIELD RESERVOIR OR THE UPPER BEAVER CREEK DRAINAGE BASIN.
- 26 THIS SITE IS NOT AFFECTED BY THE 100-YEAR FLOOD PLAN AS SHOWN ON FEMA COMBINED PANEL NO. 22040C12D DATED AUGUST 15, 2011. SITE IS IN ZONE X.
- 27 THIS SITE IS EXEMPT FROM THE WASHINGTON COUNTY FOREST CONSERVATION ORDINANCE BECAUSE THE AREA OF LAND DISTURBANCE IS LESS THAN 20,000 sq. ft.
- 28 DELIVERY REQUIREMENTS: DELIVERIES WILL BE DONE BY ONE BOX TRUCK PER WEEK AND TWO GENERAL DELIVERIES PER DAY. DELIVERIES TO FRONT ENTRANCE AS SHOWN AND LABELLED IN PLAN VIEW DELIVERY DROP OFF AREA AT FRONT OF BUILDING AS SHOWN PER PLAN.
- 29 SITE COVERAGE IMPERVIOUS AREA (GROSS SITE AREA):
  - TOTAL AREA OF TAX ACCOUNT ID #27-018243-1 = 8,898 AC / 38,728 SF
  - TOTAL AREA OF SITE PLAN (GROSS) = 8,884 AC / 38,633 SF
  - TOTAL EX IMPERVIOUS AREA (GROSS) = 8,881 AC / 38,364 SF
  - PERCENT EX IMP AREA (GROSS) = 85.81 AC/ 89 AC / 100 = 73.2%
  - TOTAL NEW IMPERVIOUS AREA (GROSS) = 0.862 AC / 25,359 SF
  - PERCENT OVERALL IMP AREA (GROSS) = 85.862 AC/ 89 AC / 100 = 95.3%
- 30 EACH ADDRESS IS BASED ON ENTRANCE LOCATION IF DRIVEWAYS ARE CONSTRUCTED AT A DIFFERENT LOCATION, THE ADDRESS FOR THAT LOT IS VOID, AND THE OWNER / DEVELOPER OF THE LOT MUST REPLY TO THIS OFFICE FOR A NEW ADDRESS ASSIGNMENT.
- 31 SITE PROPERTY IS IN A PFA PRIORITY FUNDING AREA.
- 32 THE OWNER, OBI HOLDINGS, LLC, WILL BE RESPONSIBLE FOR PROPERTY MAINTENANCE, INCLUDING THE ENTRANCES AND PARKING AREAS.

CURRENT WATER ALLOCATION (1" METER)	= 400 GPD
PROPOSED ADDITIONAL WATER ALLOCATION	= 1100 GPD
TOTAL	= 1500 GPD
CURRENT SEWER ALLOCATION	= 400 GPD
PROPOSED ADDITIONAL SEWER ALLOCATION	= 1100 GPD
TOTAL	= 1500 GPD



ADDRESS ASSIGNMENTS - KEY MAP

- A 13318 MARSH PIKE - SUITE 100 MEDICAL #1 (FIRST FLOOR)
- B 13318 MARSH PIKE - SUITE 200 APARTMENT (SECOND FLOOR)
- C 13318 MARSH PIKE - SUITE 201 TENANT SPACE (SECOND FLOOR)
- D 13318 MARSH PIKE - SUITE 202 MEDICAL #2 (SECOND FLOOR)

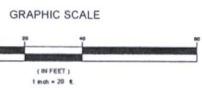


FIRST FLOOR SECOND FLOOR

**WASHINGTON COUNTY DEPARTMENT OF WATER QUALITY**

I, THE APPROVER, DO FOR GENERAL CONFORMANCE WITH THE COUNTY'S REQUIREMENTS FOR DESIGN AND LAYOUT OF PROPOSED SEWER AND/OR WATER SYSTEM IMPROVEMENTS OR EXTENSIONS. ALL SEWER AND/OR WATER SYSTEM IMPROVEMENTS OR EXTENSIONS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE COUNTY'S LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR CONSTRUCTION OF SEWER, DRAINAGE AND/OR WATER LINES. THE APPROVER DOES NOT GUARANTEE ACCURACY OF OTHER ENGINEER DRAWINGS. SEWER AND/OR WATER SERVICE AVAILABILITY IS SUBJECT TO COMPLIANCE WITH ALL RULES, ORDINANCES AND REGULATIONS ESTABLISHED BY THE COUNTY AND IN EFFECT AT THE TIME APPLICATION FOR SERVICE IS MADE, AND/OR THE AVAILABILITY OF ALLOCATION PERMITTED IN OTHER JURISDICTION. EXCESSIVE FEE MAY BE CHARGED TO THE CREDIT. THIS APPROVAL SHALL BE VALID FOR A PERIOD OF TWO YEARS.

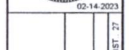
BY: \_\_\_\_\_ DATE: \_\_\_\_\_



**TRIAD ENGINEERING, INC.**  
 1075-D SHERMAN AVENUE  
 HAGERSTOWN, MD 21740  
 PH: 301.797.5400 FAX: 301.797.2424

NO.	DATE	DESCRIPTION
1	01-05-2023	PER WATER QUALITY COMMENTS
2	01-11-2023	PER WATER QUALITY COMMENTS
3	01-11-2023	PER CITY OF HAGERSTOWN PLANNING DEPARTMENT COMMENTS
4	01-11-2023	PER CITY OF HAGERSTOWN WATER COMMISSION COMMENTS
5	01-11-2023	PER WASHINGTON COUNTY ZONING DEPARTMENT COMMENTS

DESIGNED BY	DRYDEN
CHECKED BY	DRYDEN
DRAWN BY	DRYDEN
SCALE	1"=20'
DATE	01-05-2023



**OBIDI HOLDINGS, LLC.**  
 13318 MARSH PIKE  
 HAGERSTOWN, MD 21740

**SITE PLAN**

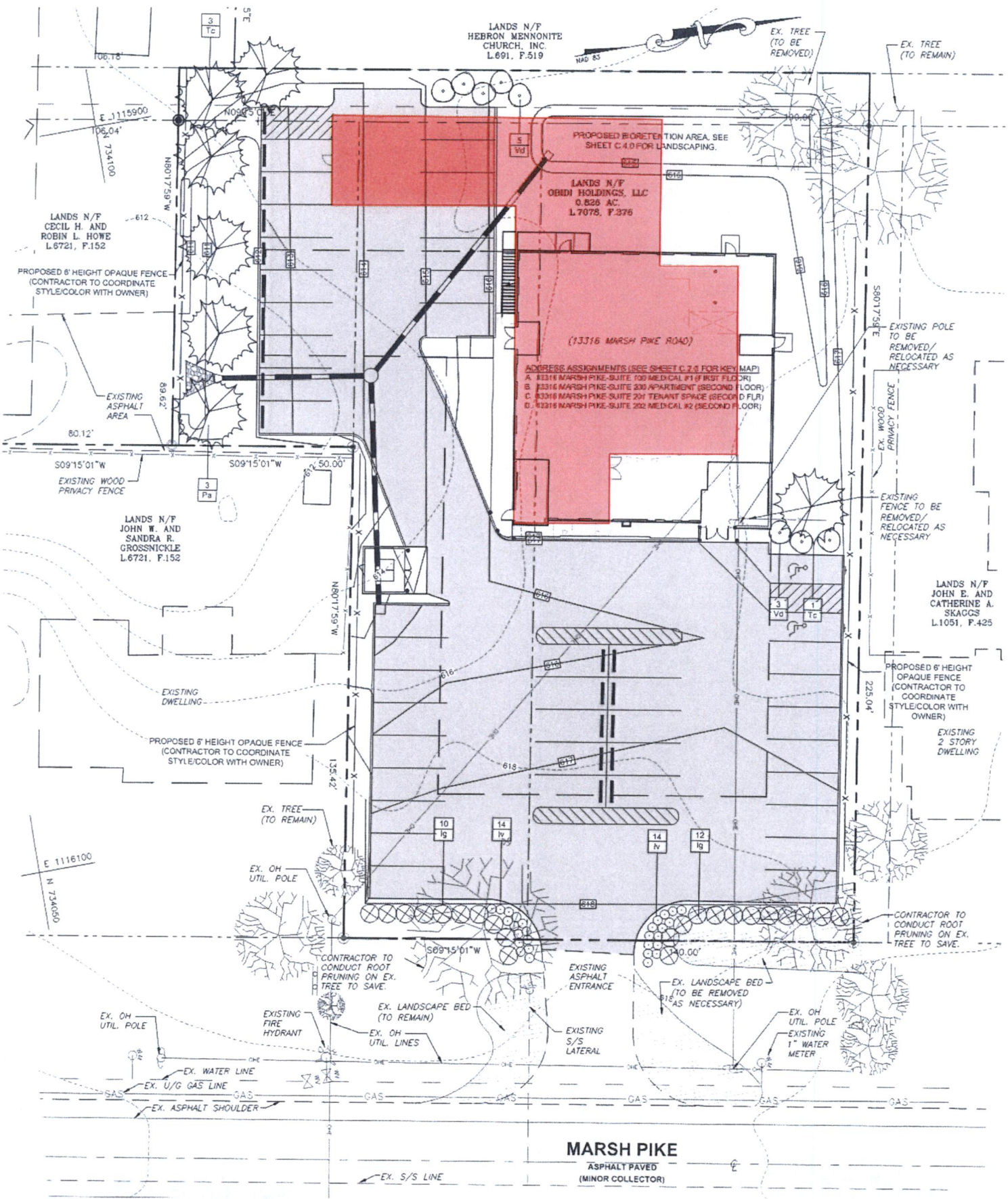
ZONING: RS WATERBED CODE 07-042002  
 TAX MAP: 0025 GRID: 0018 PARCEL: 0128 ELEC. DIST: 37

**TRIAD ENGINEERING, INC.**  
 303 MEMORIAL BLVD W  
 HAGERSTOWN, MD 21740  
 PHONE: 301.798.3500  
 CHURCHVIEW@TRIAD-ENG.COM

SHEET NUMBER: **C-2.20**  
 JOB NO: 03-22-0877

COUNTY REFERENCE NO. SP-23-005

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

**OBIDI HOLDINGS, LLC**

**Appellant**

**Appeal No.: AP2024-032**

\* \* \* \* \*

**OPINION**

Obidi Holdings, LLC (hereinafter “Appellant”) requests a modification of the previously approved special exception to establish a full-service physicians’ office in a new commercial building at the subject property. The subject property is located at 13316 Marsh Pike, Hagerstown, Maryland and is zoned Residential Suburban. The Board held a public hearing in this matter on July 24, 2024.<sup>1</sup> Jason Divelbiss, Esq. represented Appellant at the hearing before the Board.

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 is the owner of the subject property, which is located at 13316 Marsh Pike, Hagerstown, Maryland. The subject property is zoned Residential Suburban.
2. The subject property consists of approximately .82 acres improved by a commercial building and situated among multiple surrounding mixed uses including

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<sup>1</sup> The Board had three (3) members present which constitutes a quorum pursuant to the Ordinance and the Board’s Rules of Procedure.

several residences, a senior living community, a salon, a bank, two (2) churches and an elementary school.

3. Appellant operates a family medical practice on Memorial Boulevard in Hagerstown, Maryland. Appellant proposes to construct another office at the subject property as a second location for the practice.

4. Appellant originally planned to renovate the existing building at the subject property and retain the residence on the second floor. The original plan included asbestos remediation but was otherwise to re-purpose the existing building elements. However, it was determined that certain portions of the building were not constructed sufficiently resulting in stability issues for the planned renovations. There are significantly increases costs to reinforce structural elements and bring the building into compliance with current code requirements.

5. Appellant proposes to demolish the existing building and construct a new building with a smaller footprint at the subject property. The building would have two (2) floors, with the medical practice on the first floor and a residence and tenant space on the second floor. The first floor would have twelve (12) patient exam rooms.

6. The proposed design has approximately forty-five (45) parking spaces assigned for the new building, pursuant to the Ordinance requirements. Appellant does not expect to need even half of those spaces for the proposed medical practice.

7. The proposed medical practice would be open Monday through Friday from 8:00 a.m. to 5:30 p.m. and 9:00 a.m. to 12:00 p.m. on Saturday.

8. Appellant plans to have three (3) providers, four (4) to five (5) in-office staff at the proposed second office.

9. Patients will be seen by staggered appointment only and at any given time, it is expected there would be a maximum of nine (9) to ten (10) cars in the parking lot. Appellant expects a maximum of three (3) to four (4) patients in any given hour.

10. The Board approved Appellant's special exception request to establish a full-service physicians' office in an existing commercial building at the subject property in Case No. AP2022-029.<sup>2</sup>

11. Appellant's neighbor John Skaggs, who lives immediately to the north testified that he was in support of the proposed project.

12. Appellant's neighbor, John Grossnickle testified that he is now opposed to the project because it does not fit the character of the neighborhood.

13. Appellant's neighbor, Cecil Howe testified that he had concerns about design, the amount of parking to fit on the property and the effect on property values.

### **Rationale**

#### ***Procedural History***

Appellant initially applied for special exception approval for the subject property in the summer of 2022. The matter came before the Board on July 6, 2022 and the special exception was granted pursuant to a written decision dated August 4, 2022. The Board subsequently voted to amend typographical errors in the original opinion on November 30, 2024 and the Amended Opinion was issued on December 22, 2022.

Appellant began the planning and development process and was ultimately issued a demolition permit in 2024. As demolition work was set to begin, County staff discovered that Appellant's plan had changed from a renovation project to a demolition and rebuild project. At that time, it was determined that Appellant would need a new special exception because the prior special exception use had been approved specifically for the existing building at the subject property. Appellant promptly filed a request for a special exception. The hearing on the special exception request occurred on May 22, 2024

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<sup>2</sup> AP2022-029 was originally heard on July 6, 2022 and issued a written opinion containing clerical errors. The Board subsequently approved corrections to the Opinion at a hearing on November 30, 2022 and the Amended Opinion was issued on December 22, 2022.



and the Board issued its written decision denying the request on June 18, 2024.<sup>3</sup>

Appellant subsequently filed this request for a modification of the original special exception which was granted in Case No. AP2022-029.

### *Modification Request*

The central tenet of Appellant's case is that the previous condition that the property be renovated and reused has frustrated progress because there is no practical way to proceed with construction without demolishing the existing building. In Case No. AP2022-029, wherein the use was approved, the Board imposed its standard condition that the use be consistent with the testimony and evidence presented. In that case, Appellant testified that his plan was to renovate the existing structure for the proposed physician's office. However, during the process it was determined that demolition would be required, and the office would have to be constructed as new.

Appellant asserts that the Board did not specifically require that the building had to be renovated and reused, but rather adopted his stated plan to do so. Appellant contends that a significant change in circumstances occurred when they determined they could not renovate and had to transition to demolition and new construction. Appellant's argument is that this change in circumstances justifies a relaxation of the previously imposed condition.

As it did in the previous appeal, the Board expressed some concerns about the design and plan for the new building as it related to the orderly growth of the community. Appellant's proposed building appears to be completely different from any of the residences or other buildings in the immediate vicinity. The Board was also concerned about the increase in size and scale of the project. The Board noted that there was an additional 1,000 square feet not included in the original proposal. As before, the Board was also concerned that the proposed use would expand into a clinic or other mixed use

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<sup>3</sup> Appellant filed a Petition for Judicial Review in the Circuit Court for Washington County, which is now pending in Case No. C-21-CV-24-000305.

which might impact the surrounding properties.

The plan calls for a large parking lot with approximately forty-five (45) parking spaces, despite the testimony that there would be limited staff and patients in any given hour at the practice. The Board was asked to consider granting a variance for off-street parking, but ultimately noted that the proposed parking spaces were dictated by the Ordinance and a variance would be required to reduce the number of spaces required.

The Board is not persuaded that modification is warranted based on necessary changes to the project. While it is true that the change in circumstances was out of Appellant's control, the Board is called upon to assess the impact of the proposed resolution. Appellant has proposed to expand his original plan creating a potentially more intense use that originally contemplated. The Board has concerns about the true impact of the use on the surrounding properties and therefore cannot find that the modification would still meet the special exception criteria. Moreover, the proposed use as redesigned appears to be inconsistent with the characteristics of the surrounding properties. The Board does not believe the use as proposed fits with the character of the neighborhood.

Accordingly, the request to modify the previously approved special exception to establish a full-service physicians' office in a new commercial building at the subject property in order to remove the condition providing for renovation of the existing building is hereby DENIED, by a vote of 3 to 0.

BOARD OF APPEALS

By: Robert Meyers, Acting Chair

**Date Issued: August 22, 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.