

BOARD OF APPEALS

September 4, 2024

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

AGENDA

AP2024-040: An appeal was filed by Obidi Holdings LLC for requesting to modify condition of previously approved special exception AP2022-029, specifically, "the condition that the proposed use be consistent with the testimony and evidence presented.." to allow: construction of new building rather than re-use of existing building; inclusion of +/- 1,700 sf. "Tenant Space" for "Professional Offices" or "Medical or Dental Clinic/Office"; and additional minor charges to hours of operation, etc. Requesting a variance from the off-street parking space requirement for medical offices from the 38 spaces to 32 spaces. The property is owned by the appellant and is located at 13316 Marsh Pike, Hagerstown, zoned Residential Suburban.-**GRANTED**

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 August 26, 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: Obidi Holdings LLC
303 Memorial Boulevard West
Hagerstown MD 21740

Docket No: AP2024-040

Tax ID No: 27016243

Zoning: RS

Appellant: Obidi Holdings LLC
303 Memorial Boulevard West
Hagerstown MD 21740

RB Overlay: No

Zoning Overlay:

Filed Date: 08/14/2024

Hearing Date: 09/04/2024

Property Location: 13316 Marsh Pike, Unit#
Hagerstown, MD 21742

Description Of Appeal: Request to modify condition of previously approved special exception AP2022-029, specifically, "the condition that the proposed use be consistent with the testimony and evidence presented.." to allow: construction of new building rather than re-use of existing building; inclusion of +/- 1,700 sf. "Tenant Space" for "Professional Offices" or "Medical or Dental Clinic/Office"; and additional minor charges to hours of operation, etc. Requesting a variance from the off-street parking space requirement for medical offices from the 38 spaces to 32 spaces.

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): AP2024-032, AP2024-020, AP2022-029, AP2021-026

Applicable Ordinance Sections: Washington County Zoning Ordinance Section 8.2 (e) & Section 22.12 (b)

Reason For Hardship: See justification statement

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

Handwritten signature of the appellant over a horizontal line, with the text 'Appellant Signature' to the right.

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 14 day of August, 2024.

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

Handwritten signature of the notary public over a horizontal line, with the text 'Notary Public' to the right. A circular notary seal is partially visible in the background.



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: AP2024-040

State of Maryland Washington County, To Wit:

On 8/14/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Jason Divelbiss and made oath in due form of law as follows:

Jason Divelbiss 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 09/04/2024, 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 08/20/2024 and will remain until after the above hearing date.

Jason Divelbiss *HDR*

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

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

Notary Public

Seal

My Commission Expires



WASHINGTON COUNTY BOARD OF ZONING APPEALS

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

BOARD OF ZONING APPEALS

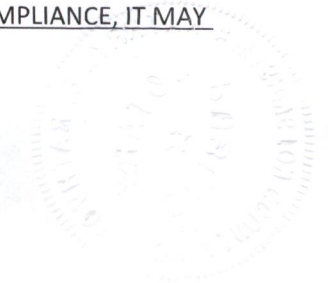
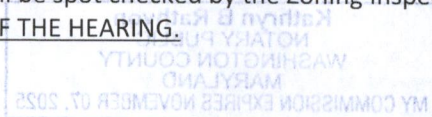
ATTENTION!

Posting Instructions

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

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

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



August 13, 2024

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

Re: Obidi Holdings, LLC - Medical Clinic/Office - 13316 Marsh Pike

- 1) **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" To Allow:**
 - a. construction of new building rather than re-use of existing building;
 - b. inclusion of +/- 1,700 sf. "Tenant Space" for "Professional Offices" or "Medical or Dental Clinic/Office"; and
 - c. additional minor changes to hours of operation, etc.

- 2) **Request for Variance from Off-Street Parking Space Requirement**

Dear Board Members:

As shall be discussed in greater detail herein below and upon presentation to the Board, although this request is submitted by the same applicant for the same property as the case presented to the Board in July '24 (AP2024-032), it has been modified in several material ways ensuring that it is not "for substantially the same proposal" as prohibited by § 25.7 of the Zoning Ordinance. Namely, the within new application:

- (i) includes a materially different building design taking into account the opinions and concerns previously expressed by the Board and adjoining property owners;
- (ii) includes a specific, limited and designated use for the +/- 1,700 sf. 2nd Floor "Tenant Space"; and
- (iii) includes a companion request for a slight variance to the Off-Street Parking Requirement to address previously expressed concerns from an adjoining property owner.

Modification of Prior Special Exception

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 +/- 8,695 sf. two-story, mixed-use commercial / residential building (the “**Existing Building**”). An aerial photo of the Property is attached hereto for convenient reference.

Past Uses / Zoning

Historically, the Property was designed and used for a dairy business and principal residence of the owners 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.

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 2nd 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 comparison drawing showing the footprint and layout of the proposed new +/- 9,480 sf. building (the "**New Building**") compared to the existing +/- 8,695 sf. Existing Building; (ii) a comparison drawing showing the relative and nearly identical height and scale of the New Building compared to the Existing Building; and (iii) a color rendering showing the exterior façade and appearance of the proposed New Building.

As referenced above, the new building design is materially different from that presented to the Board in July '24 in at least the following ways: (i) replacement of more commercial type flat roof with more residential type gabled roof; (ii) incorporation of brick accents and board & batten siding material also to lend a more residential appearance to the building; and (iii) modification of the window and window trim designs to a more traditional residential type appearance. See attached front and side building elevation drawings.

Inclusion of "Tenant Space" for "Professional Offices" or "Medical or Dental Clinic/Office"

As part of the proposed New Building, the Applicant has included an additional +/- 1,700 sf. on the 2nd Floor and identified it as potential, future "Tenant Space" which is hereby requested to be included within the scope of the Special Exception use permitted on the Property.

Specifically, as permitted in the RS (Residential, Suburban) zoning district, the additional "Tenant Space" would be for "Professional Offices" or "Medical or Dental Clinic/Office."

If not used as expansion space for and as part of the primary use by the Applicant's medical practice, the Applicant would like to have the flexibility to lease the "Tenant Space" to a 3rd party for the specified professional or medical office use.

Attached is a floor plan showing the design and layout of the interior spaces of the New Building, including the inclusion of a 2nd floor residential unit (the same as has been present on the Property since at least the 1960's) and the above referenced "Tenant Space."

Additional, Secondary Changes

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>
Hours of Operation	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.
Employees	4-6 Total (3 providers; 1-3 staff)	7-8 Total (3 providers; 4-5 staff)
Parking Spaces	10 existing + unspecified “more to accommodate the proposed medical practice” (2022 Approval Decision, p. 2)	34 regular + 2 handicap (see further explanation below in Variance Request)

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; inclusion of the additional +/- 1,700 sf. of “Tenant Space” for professional or medical uses; and the slight modifications to the details of Applicant’s medical office use (a natural reflection of having a newer, modern building and layout) 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.

Off-Street Parking Space Requirement

The Applicant is also requesting a variance from the Off-Street Parking Requirement for "Medical & Dental Centers/Offices/Clinics" which, pursuant to § 22.12 of the Zoning Ordinance, is: **1 space per 200 sq. ft GFA**

As applied to the Project, the applicable Off-Street Parking Requirement is: 38 parking spaces for the medical offices (including the 2nd Floor "Tenant Space"); and 2 parking spaces for the 2nd Floor residential unit, for a total of 40 required spaces.

As reflected on the current Site Plan for the proposed New Building, a total of 43 parking spaces are proposed. However, in order to remove those 9 spaces closest to the adjacent property to the west, the Applicant requests that the Off-Street Parking Space requirement for the medical offices be modified from 38 to 32 so that a total of 34 spaces may be provided for the proposed New Building.

To require the additional parking spaces necessary to comply with the currently applicable Off-Street Parking Requirement would require the Applicant to (i) drastically increase the amount of parking area currently existing on the Property; and (ii) more significantly impact the adjacent property owner, both of which would impose an undue burden on the Applicant.

In the Applicant's opinion and belief, slightly reducing the parking requirement from 40 to 34 spaces would be consistent with the operational requirements of the proposed New Building and thus granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.

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

ADJACENT PROPERTY OWNERS					
	<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



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)

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

Use Proposed: Medical Clinic/office plus additional "tenant space" for "professional office" or "medical/Dental clinic/office."
Zoning Ordinance section and subsection(s) providing for proposed use: Section 8.2

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?
 Yes No

If yes, give docket number(s): AP2022-029 + AP2024-032

Additional comments, if any: See attached

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

[Signature]
Signature of Appellant
idivelbiss@divelbisslaw.com
Email of Appellant

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



BOARD OF ZONING APPEALS

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

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

Appeal for Variance

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

Location 13316 Marsh Pike, Hagerstown, MD 21742

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

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

Specify the Ordinance section and subsection from which the variance is desired:
Section 22.12

Specify the particular requirement(s) from which a variance is desired in that section or subsection:
Medical + Dental Centers/offices/clinics one space per 200sf. GFA.

Describe the nature and extent of the desired variance from Ordinance requirements: listed above:
Section 22.12 reduction from the required 38 parking spaces to 32 parking spaces.

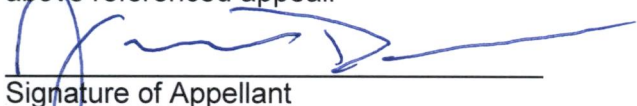
Describe reason(s) why the Ordinance requirement(s) in question would result in peculiar and/or unusual practical difficulties to or would impose exceptional or undue hardship upon the owner of the property if the requested variance were not granted:

Provide Detailed Explanation on Separate Sheet

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

If yes, list docket number(s): AP2022-029 + AP2024-032

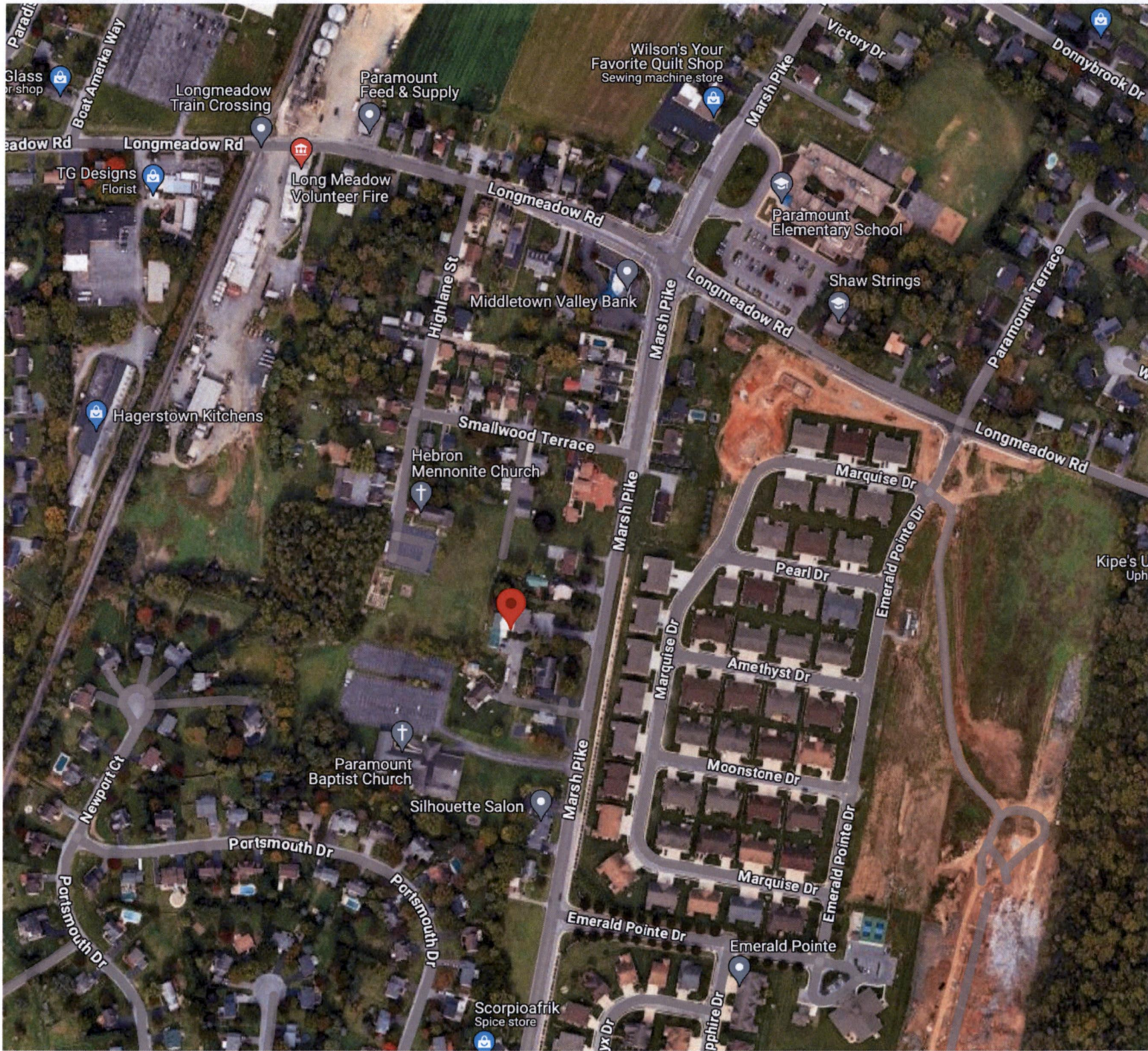
I hereby certify that I have, to the best of my knowledge, accurately supplied the information required for the above referenced appeal.


Signature of Appellant

divebiss@divebisslaw.com
Email of Appellant

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



Paradise

Boat America Way

Longmeadow Train Crossing

Paramount Feed & Supply

Wilson's Your Favorite Quilt Shop Sewing machine store

Victory Dr

Donnybrook Dr

Glass Workshop

TG Designs Florist

Long Meadow Volunteer Fire

Marsh Pike

Paramount Elementary School

Longmeadow Rd

Longmeadow Rd

Longmeadow Rd

Longmeadow Rd

Paramount Terrace

Highlane St

Middletown Valley Bank

Shaw Strings

Hagerstown Kitchens

Smallwood Terrace

Hebron Mennonite Church

Longmeadow Rd

Marquise Dr

Kipe's Upholstery

Newport Ct

Paramount Baptist Church

Silhouette Salon

Marsh Pike

Pearl Dr

Emerald Pointe Dr

Amethyst Dr

Moonstone Dr

Portsmouth Dr

Portsmouth Dr

Marsh Pike

Marquise Dr

Marquise Dr

Emerald Pointe Dr

Emerald Pointe

Scorpioafrik Spice store

Apphire Dr

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

OBIDI HOLDINGS, LLC
Appellant

Appeal No.: AP2022-029

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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**
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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.

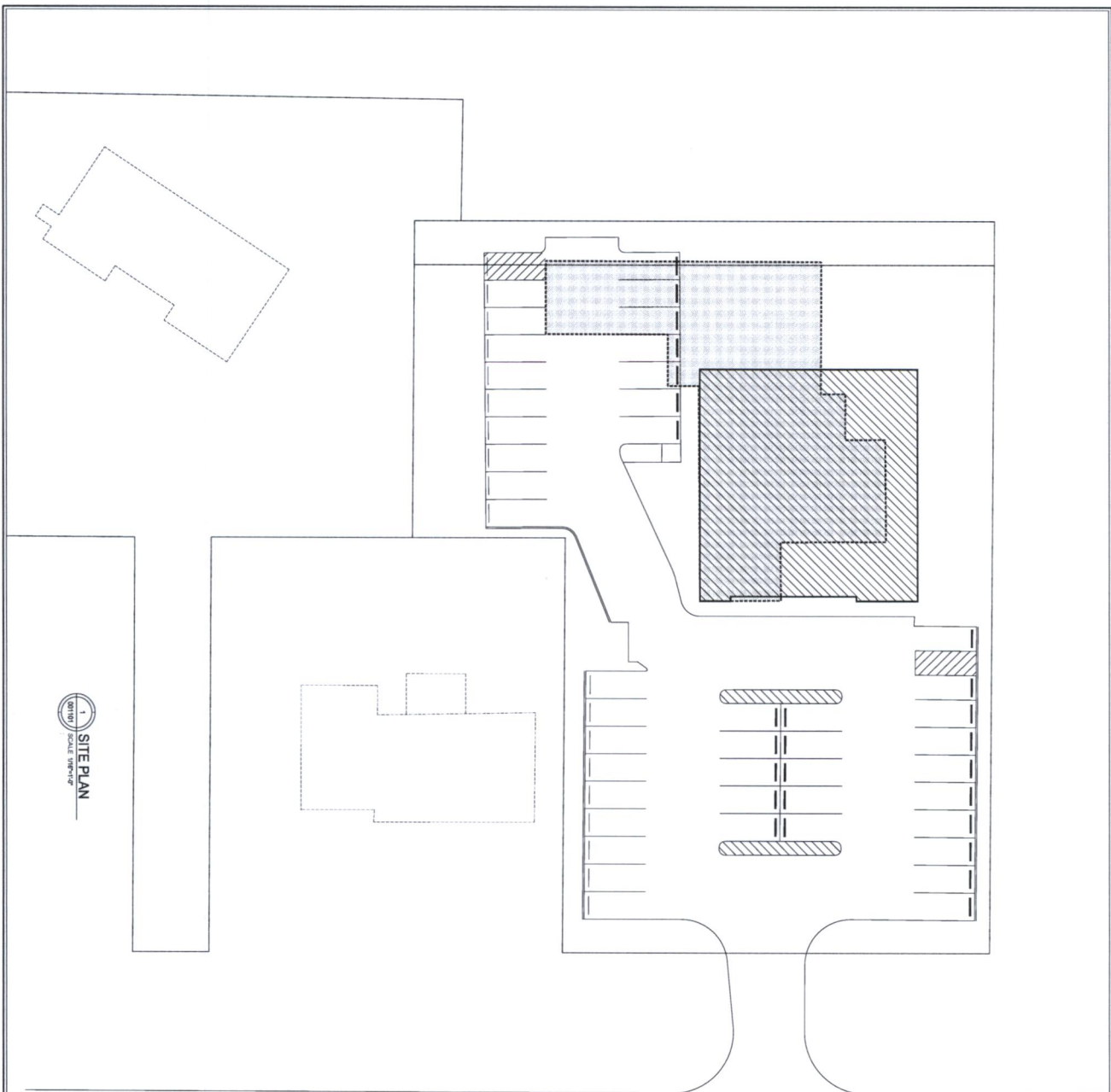
BOARD OF APPEALS

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.



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

COMPARISON	
EXISTING BUILDING	NEW BUILDING
GRAPHIC	
AREA	9% LARGER THAN EXISTING
PERCENTAGE	

<p>WADE ARCHITECTURE INTERIORS AND SCULPTURE</p>	<p>PERMIT SET 2008</p>	<p>Partners In Pediatrics Medical Office 13316 Marsh Pike Hagerstown, MD</p>	<p>BUILDING COMPARISON</p>
		<p>DATE: 08/14/08 DRAWN BY: [Name] CHECKED BY: [Name] SCALE: [Scale]</p>	
<p>A-001</p>		<p>7/28/24</p>	

EXISTING BUILDING OUTLINE

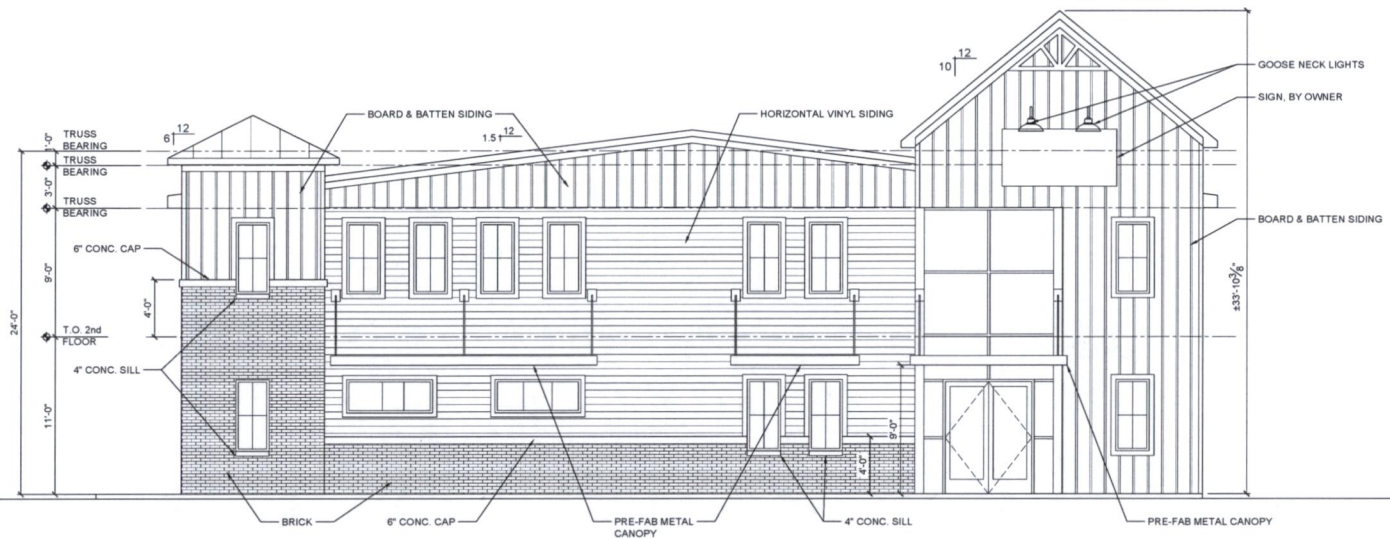
NEW BUILDING ELEVATION



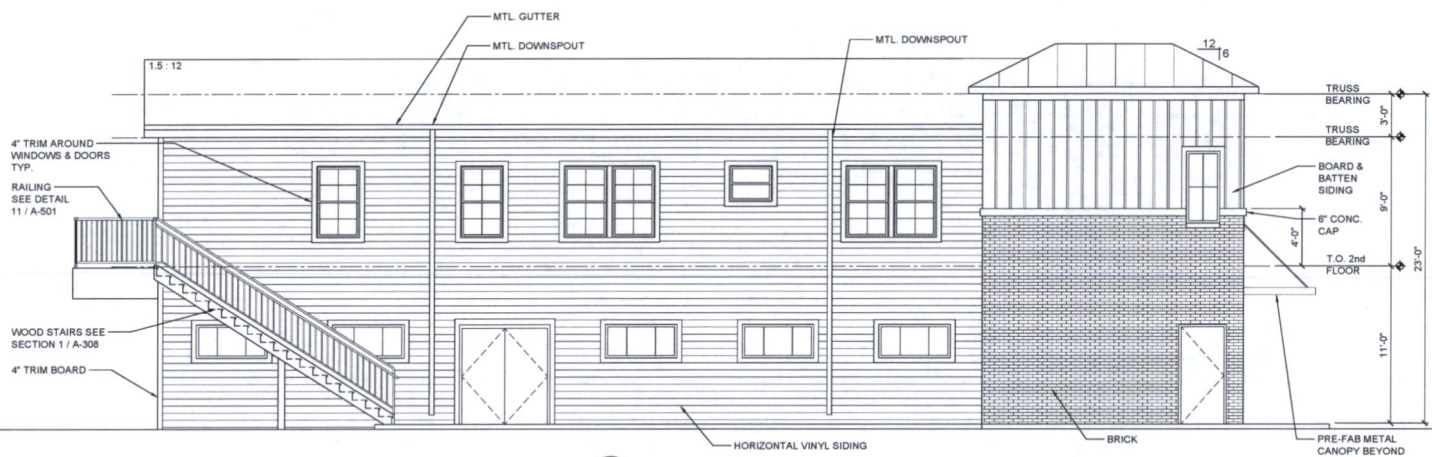
PARTNERS IN PEDIATRICS OFFICE







1
A-200
PROPOSED FRONT ELEVATION
SCALE 1/4"=1'-0"



2
A-200
PROPOSED SIDE ELEVATION
SCALE 1/4"=1'-0"

WADE
ARCHITECTURE
HAGERSTOWN, MD 340-452-4638

PERMIT SET
2024

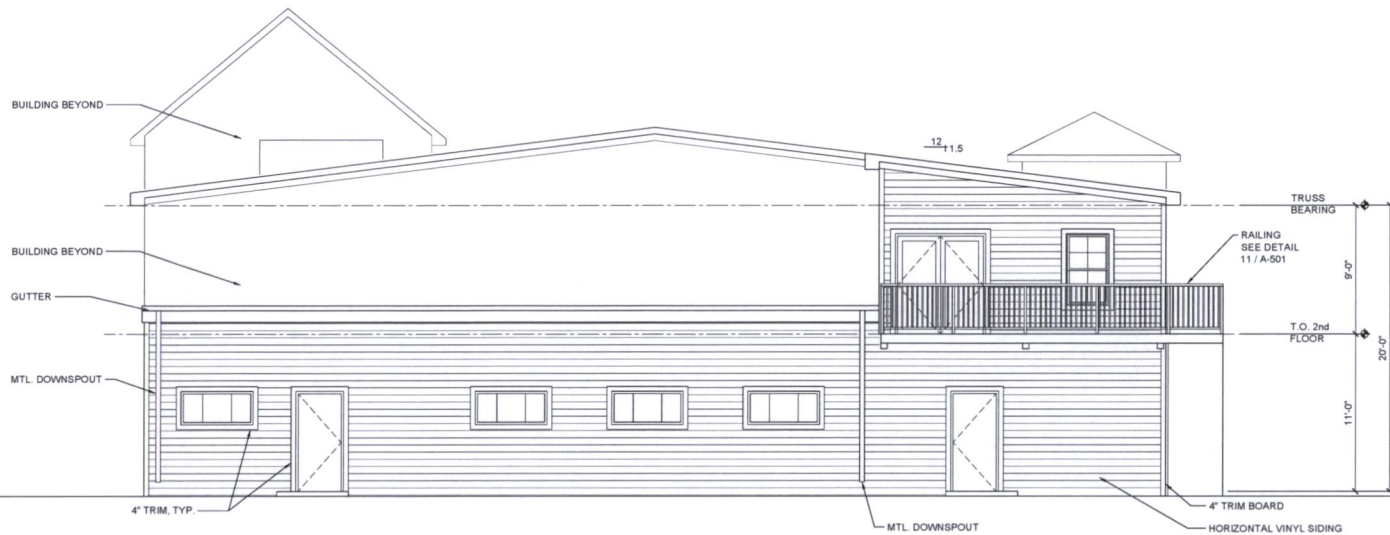
Partners in Pediatrics Medical Office
13316 Marsh Pike Hagerstown, MD

PROPOSED ELEVATIONS

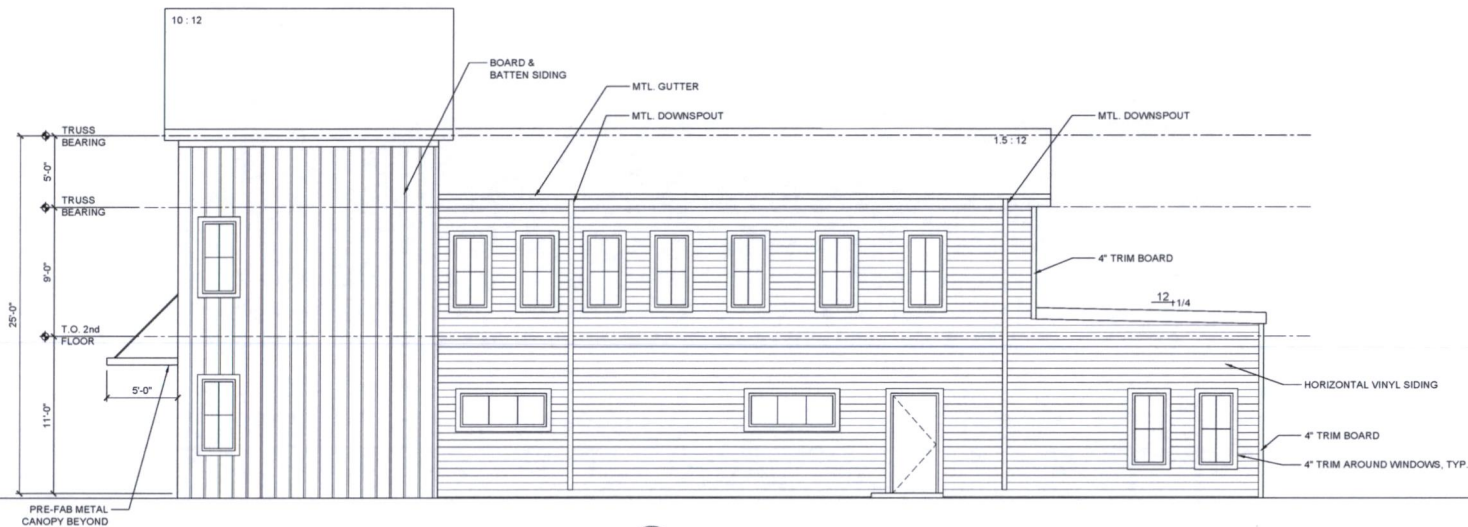
REV	DESCRIPTION	DATE

PROJECT NUMBER	20-08-1074
FILE NAME	
DRAWN BY	AKK
PLST DATE	7/26/24

SHEET No
A-200



1 PROPOSED REAR ELEVATION
A-200.1 SCALE 1/4"=1'-0"



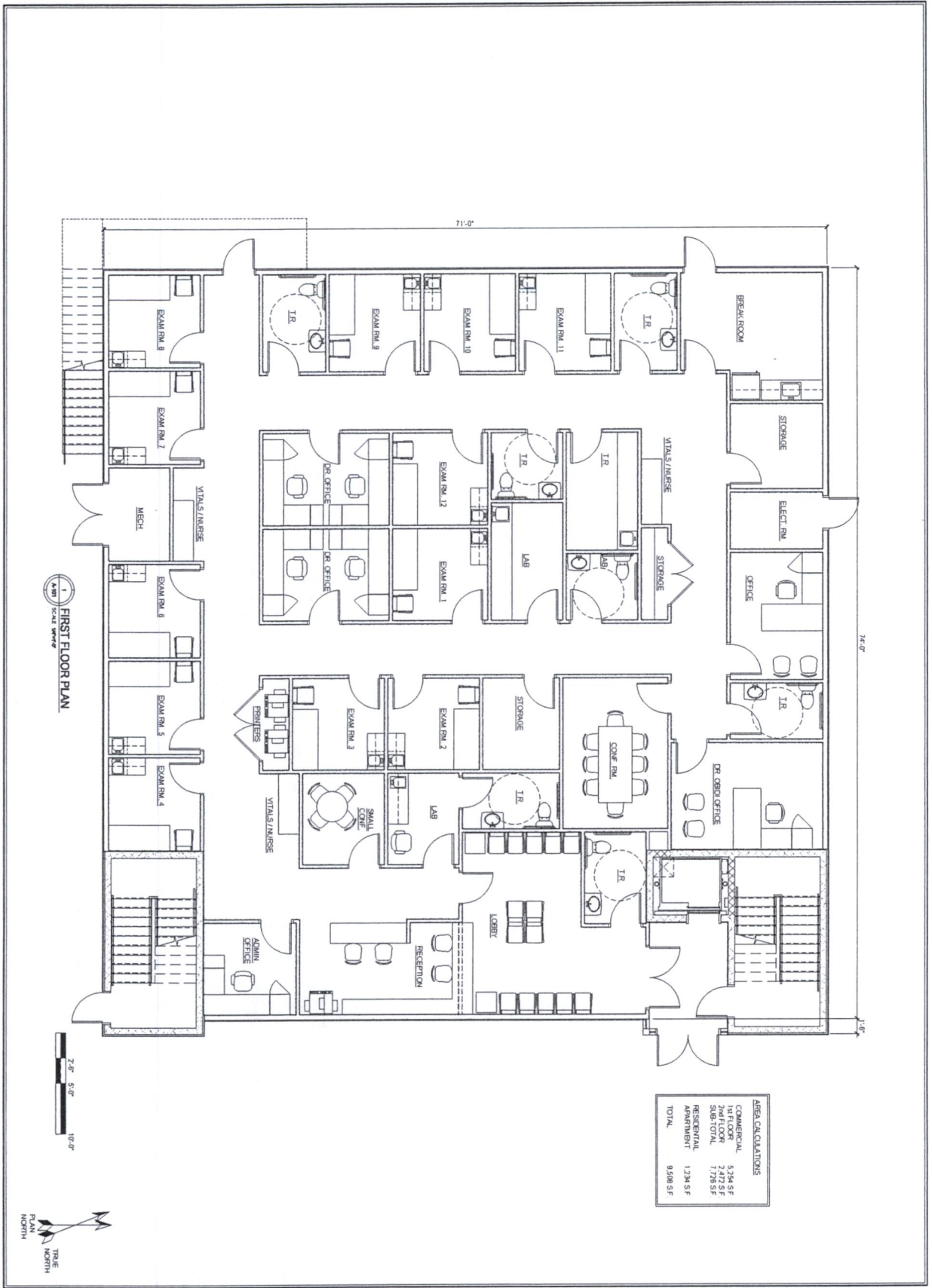
2 PROPOSED SIDE ELEVATION
A-200.1 SCALE 1/4"=1'-0"

REV	DESCRIPTION	DATE

PROJECT NUMBER	2024-1074
DRAWN BY	AKK
PLotted DATE	7/30/24

SHEET No. **A-200.1**

7/30/24

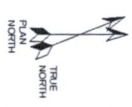


71'-0"

74'-0"

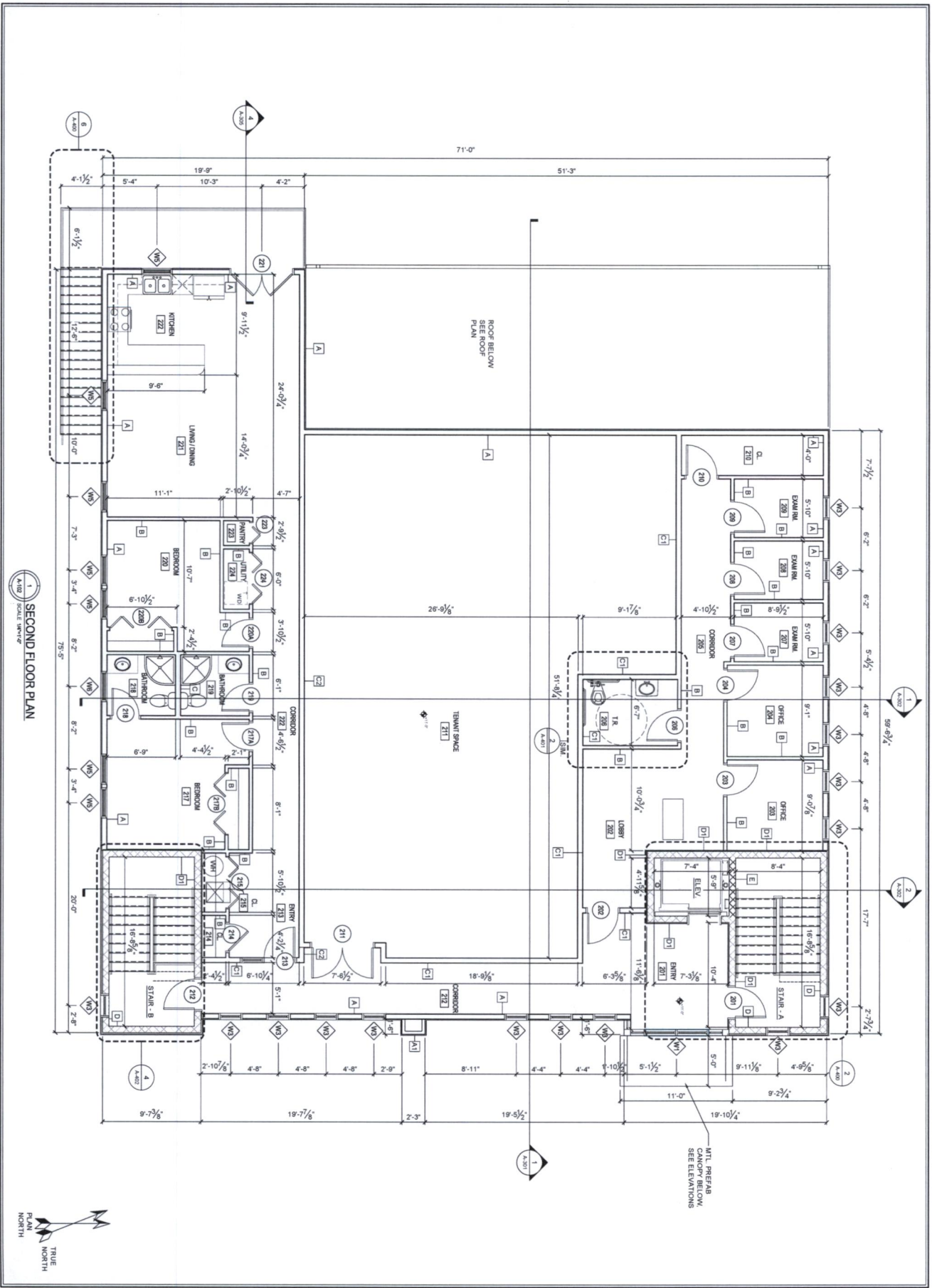
1" = 10'-0"
2" = 50'-0"

FIRST FLOOR PLAN
SCALE: AS SHOWN

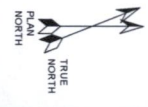


AREA CALCULATIONS	
COMMERCIAL	5,394 SF
1st FLOOR	2,172 SF
2nd FLOOR	7,282 SF
RESIDENTIAL	1,234 SF
APARTMENT	9,508 SF
TOTAL	9,508 SF

<p>MADE ARCHITECTURE PRACTICE, INC.</p>	<p>Partners in Pediatrics Medical Office 13316 Marsh Pike Hagerstown, MD</p> <p>FIRST FLOOR PLAN</p>	<p>CLIENT REVIEW ONLY NOT FOR CONSTRUCTION NOT TO BE REPRODUCED</p>	<p>104/23</p>
<p>A-101</p>			



1 SECOND FLOOR PLAN



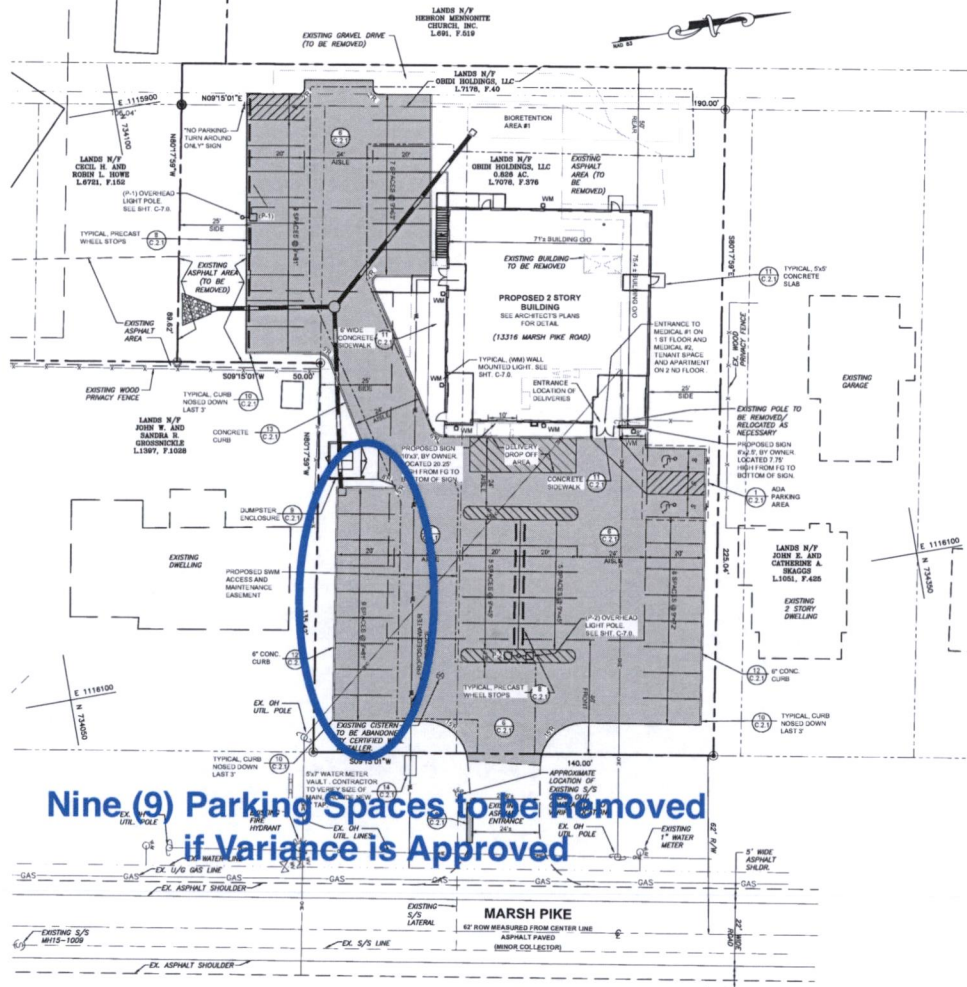
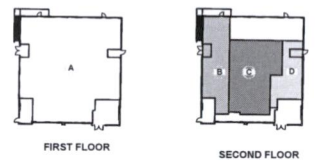
<p>A-102</p>	<p>Partners In Pediatrics Medical Office 13316 Marsh Pike Hagerstown, MD</p>	<p>PERMIT SET 2008</p>	<p>WADE ARCHITECTURE BETHESDA, MD 20814-4038</p>	
<p>NO. OF SHEETS: 10 NO. OF SHEETS USED: 10</p>	<p>SECOND FLOOR PLAN</p>			7/30/24

GENERAL NOTES

- TAX MAP 8005, GRID 2018, PARCEL 8128
 - ELECTION DISTRICT 27
 - TOTAL SITE AREA = 3.638 ACRES
 - DEED REFERENCE
 - RECORDS OF THE LANDS CONVEYED BY FHCPI, LLC UNTO OBIDI HOLDINGS, LLC BY DEED DATED AUGUST 7, 2012 AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND AT LIBER 7097 FOLIO 276. ALSO BEING ALL THAT PORTION OF AN UNIMPROVED 15' FOOT WIDE ALLEY AS INDICATED IN A DEED - THE LANDS CONVEYED BY MICHAEL, LLC UNTO OBIDI HOLDINGS, LLC AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND AT LIBER 7178 FOLIO 40
 - PLAT REFERENCE: THE PROPERTY BEING SHOWN AS WESTERN 88.8 FEET OF LOT 3, ALL OF LOT 4, ALL OF LOT 5, AND THE SOUTHERN 40 FEET OF LOT 6, ON A PLAT OF SUBDIVISION TITLED "PLAN OF FOUNDATION AND PART OF AN ADJACENT" NOT RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND AT PLAT NUMBER 18
 - THE PROPERTY LINES SHOWN HEREON ARE FROM REEVALUATIONS OF RECORD BOUNDARY SURVEY HAS BEEN PERFORMED BY GERALD CLUMP AND ASSOCIATES
 - TOPOGRAPHIC FEATURES SHOWN HEREON ARE FROM 2013 WASHINGTON COUNTY PLANNING AND DESIGN DATA AND SUPPLEMENTED WITH A TOPOGRAPHIC SURVEY PERFORMED BY GERALD CLUMP AND ASSOCIATES WITH THE LAST DATE OF FIELD WORK COMPLETION BEING JUNE 19, 1997
 - THE SITE IS ZONED "R-2" - RESIDENTIAL SUBURBAN DISTRICT
 - EXISTING USE IS A GUN SHOP WHICH IS A PRINCIPAL PERMITTED USE WITHIN THE "R-2" DISTRICT PER ARTICLE 8 SECTION 8 OF THE WASHINGTON COUNTY ZONING ORDINANCE
 - PROPOSED USE IS A DWELLING UNIT MEDICAL OFFICE, WHICH IS A SPECIAL EXCEPTION USE WITHIN THE "R-2" DISTRICT PER ARTICLE 8 SECTION 2 OF THE WASHINGTON COUNTY ZONING ORDINANCE. EXISTING USES ARE PREVIOUSLY A GUN SHOP AND A DWELLING UNIT
 - 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 AND GRANTING SPECIAL EXCEPTION FOR PROPERTY USE AND A VARIANCE FROM A REAR YARD DEPTH OF 25 FEET 13 FEET. DOCKET NUMBER AS 214 GRANTING A VARIANCE FROM A REAR YARD DEPTH OF 25 FEET TO 2 FEET
 - MINIMUM LOT REQUIREMENTS PER SECTION 8.5(a) OF THE WASHINGTON COUNTY ZONING ORDINANCE
- | LOT AREA | LOT WIDTH | FRONT YARD | SIDE YARD | REAR YARD |
|-------------|-----------|------------|-----------|-----------|
| 26,880 S.F. | 100 FEET | 40 FEET | 25 FEET | 50 FEET |
13. HOURS OF OPERATION: MONDAY THRU FRIDAY 9:30 AM TO 4:30 PM SATURDAY 9 AM TO 12 PM
 14. NUMBER OF EMPLOYEES: 7 PER 8 HOUR SHIFT
 15. PARKING REQUIREMENTS PER SECTION 22.12(b) OF THE WASHINGTON COUNTY ZONING ORDINANCE
 - MEDICAL #1 - 1 SPACE REQUIRED / 200 sq. ft. OF (FAR) 1st FLOOR TENANT: 4 SPACES
 - MEDICAL #2 - 1 SPACE REQUIRED / 200 sq. ft. OF (FAR) 2nd FLOOR TENANT: 7 SPACES
 - MEDICAL #3 - 1 SPACE REQUIRED / 200 sq. ft. OF (FAR) 2nd FLOOR (PUTTING) TENANT: 10 SPACES
 - MEDICAL #4 - 1 SPACE REQUIRED / 200 sq. ft. OF (FAR) 2nd FLOOR (PUTTING) TENANT: 10 SPACES
 - 1 DWELLING UNIT TENANT: 2 SPACES PER UNIT
 - TOTAL SPACES REQUIRED=40 / TOTAL SPACES PROVIDED=43 REGULAR AND 2 HC
 16. THE SITE IS SERVED BY A PUBLIC SANITARY SEWER SYSTEM PROVIDED BY WASHINGTON COUNTY DEPARTMENT OF WATER QUALITY
 17. THE SITE IS SERVED BY PUBLIC WATER SYSTEM PROVIDED BY THE CITY OF HAGERSTOWN WATER AND SEWER DEPARTMENT
 18. SIGN TO BE PLACED UPON THE EXISTING SIGN LOCATION, SIGN SHALL MEET THE REQUIREMENTS PER ARTICLE 22, DIVISION B - SIGNS OF THE WASHINGTON COUNTY ZONING ORDINANCE
 19. TRASH AND RECYCLABLES WILL BE COLLECTED AT THE PROPOSED DUMPSTER LOCATION SHOWN AND MOVED FROM SITE BY A LICENSED COMMERCIAL WALKER AND TAKEN TO AN APPROVED DISPOSAL FACILITY
 20. NO NEW EXTERNAL LIGHTS ARE PROPOSED FOR THIS PLAN
 21. THERE ARE NO HAZARDOUS MATERIALS ON THE SITE PER MAPS BY THE U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, PER THE NATIONAL WETLANDS INVENTORY DATED JUNE 20, 2003
 22. THERE ARE NO HABITATS OF THREATENED OR ENDANGERED SPECIES IDENTIFIED BY THE U.S. FISH AND WILDLIFE SERVICE PER SO C.P.R. AS REQUIRED TO BE SHOWN BY SECTION 314 OF THE WASHINGTON COUNTY SUBDIVISION ORDINANCE AND SECTION 4.21 OF THE WASHINGTON COUNTY ZONING ORDINANCE
 23. THERE IS NO INTERFERENT STREAM SYMBOL 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 26.01 OF THE WASHINGTON COUNTY ZONING ORDINANCE ON THE LANDS SHOWN HEREON
 25. THIS SITE IS NOT WITHIN THE BENCH OF THE APPALACHIAN TRAIL CORRIDOR OR THE WATERSHEDS OF THE EGGEMONT-SMITHSBURG RESERVOIR OR THE UPPER BEAVER CREEK DRAINAGE BASIN
 26. THIS SITE IS NOT AFFECTED BY THE 100-YEAR FLOOD PLAN AS SHOWN ON F.E.M.A. COMMUNITY FLOOD INSURANCE POLICY MAP DATED AUGUST 15, 2007. 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 S.F.
 28. DELIVERY REQUIREMENTS DELIVERIES WILL BE DONE BY ONE BOX TRUCK PER WEEK AND TWO GENERAL DELIVERIES PER DAY, DELIVERED TO FRONT ENTRANCE AS SHOWN AND LABELED IN PLAN VIEW. DELIVERY DROP OFF AREA AT FRONT OF BUILDING AS SHOWN PER PLAN
 29. SITE COVERAGE (IMPERVIOUS AREA GROSS SITE AREA): 0.889 AC / 38,730 S.F.
TOTAL AREA OF SITE PLAN (G.O.): 0.846 AC / 36,833 S.F.
TOTAL EX. IMPERVIOUS AREA (G.O.): 0.812 AC / 35,366 S.F.
PERCENT EX. IMP. AREA (G.O.) = 0.812 AC / 35,366 S.F. / 0.948 AC / 41,700 S.F. = 73.2%
 30. TOTAL NEW IMPERVIOUS AREA (G.O.): 0.82 AC / 35,369 S.F.
PERCENT OVERALL IMP. AREA (G.O.) = 0.82 AC / 35,369 S.F. / 0.948 AC / 41,700 S.F. = 86.5%
 31. 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 REPORT TO THE OFFICE FOR A NEW ADDRESS ASSIGNMENT
 32. THE PROPERTY IS IN A FIVE-PRIORITY FLOODING AREA
 33. THE OWNER, OBIDI HOLDINGS, LLC, WILL BE RESPONSIBLE FOR PROPERTY MAINTENANCE, INCLUDING THE ENTRANCE AND PARKING AREAS.

ADDRESS ASSIGNMENTS - KEY MAP

- A 13316 MARSH PIKE - SUITE 100 MEDICAL #1 (FIRST FLOOR)
- B 13316 MARSH PIKE - SUITE 200 APARTMENT (SECOND FLOOR)
- C 13316 MARSH PIKE - SUITE 201 TENANT SPACE (SECOND FLOOR)
- D 13316 MARSH PIKE - SUITE 202 MEDICAL #2 (SECOND FLOOR)

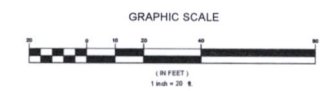


Nine (9) Parking Spaces to be Removed if Variance is Approved

WASHINGTON COUNTY DEPARTMENT OF WATER QUALITY

THIS APPROVAL IS 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 CONTROLLED IN STRICT ACCORDANCE WITH THE COUNTY'S LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR CONSTRUCTION OF SEWER, SEWER AND/OR WATER LINES. THE APPROVED DESIGN AND GENERAL DIMENSIONS OF SEWER AND/OR WATER SERVICES, SEWER AND/OR WATER SERVICE AVAILABILITY IS SUBJECT TO CONFORMANCE WITH ALL APPLICABLE REGULATORY REQUIREMENTS BY THE COUNTY. THE EFFECT OF ANY CHANGES TO THE APPLICATION FOR SERVICE IS MADE, AND/OR THE AVAILABILITY OF ALL SERVICES REMAINING IN OTHER JURISDICTIONS' FACILITY SHALL BE OBTAINED TO THE EXTENT THAT THE APPROVAL SHALL BE VALID FOR A PERIOD OF ONE YEAR.

BY: _____ DATE: _____



TRIAD ENGINEERING, INC.
1075-D BIRCHMAN AVENUE
HAGERSTOWN, MD 21740
PH: 301.787.8400 FAX: 301.787.2424
MARYLAND - PENNSYLVANIA - VIRGINIA

OBIDI HOLDINGS, LLC.
13316 MARSH PIKE
HAGERSTOWN, MD 21742

SITE PLAN FOR
13316 MARSH PIKE
SITE PLAN

ZONING: R-2
TAX MAP CODE: GRID 2018
PARCEL: 8128
ELEC. DIST: 27

TRIAAD ENGINEERING, INC.
303 MEMORIAL BLVD W
HAGERSTOWN, MD 21740
PHONE: 301.788.3000
CHUKWUEMEKA OBIDI

SHEET NUMBER: **C-2.0**
JOB NO: 03-22-0877

CHECKED BY: _____
DRAWN BY: _____
DATE: 01-05-2023
SCALE: 1"=20'
DATE: 01-05-2023
DATE: 01-05-2023

02-14-2023

COUNTY REFERENCE NO. SP-23-005

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

OBIDI HOLDINGS, LLC

Appellant

Appeal No.: AP2024-040

* * * * *

OPINION

Obidi Holdings, LLC (hereinafter “Appellant”) requests a modification of the previously approved special exception to establish a full-service physicians’ office, to allow construction of a new building rather than re-use of the existing building at the subject property. Appellant also requests a variance to reduce the required parking spaces from 38 to 32 spaces 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 September 4, 2024. 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

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 original design had 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. The proposed design calls for 32 parking spaces, plus 2 spaces for the residence.

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 approximately 7 to 8 employees.

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. AP2022-029.¹

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 supports the project but does not want a pain management clinic or similar use in the neighborhood.

13. Appellant's neighbor, Brianna Maddox testified that she supported the project and that Dr. Obidi has a great working relationship with the neighbors.

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

¹ 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, 2024.²

Appellant subsequently filed this request for a modification of the original special exception which was granted in Case No. AP2022-029. The hearing on the initial modification request occurred on July 24, 2024 and the Board issued its written decision denying the request on August 24, 2024. Appellant subsequently filed this new request for modification of the original special exception granted in Case No. AP2022-029.

Modification Request

In Case No. AP2022-029, 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. As a practical matter there appears to be no way to proceed with renovation and reuse of the existing building.

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.

In an effort to address the Board's previous concerns, Appellant presented a significantly modified and improved concept plan and design for the new building. The new design incorporates brick accents and board and batten exterior which is more consistent with the buildings in the surrounding neighborhood and the residential nature of the area. Appellant also designated the tenant space on the second floor specifically

² 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.

for medical or professional offices and expressed a willingness to place conditions on the use of that space. Moreover, Appellant changed the hours of operation slightly during the week and has requested a formal reduction of the parking requirement. The Board is persuaded that this modification request is substantially different from the previous request.

As presented, the modification request simply changes the method by which Appellant is to construct and establish the previously approved use. The impact remains unchanged as it relates to the surrounding neighborhood. The Board previously found that the proposed use would not produce any adverse effects and the same remains true when simply changing the method of construction. Furthermore, the redesign improves the overall fit with the character of the neighborhood. Based on the changes presented, the Board is persuaded that a modification of the conditions imposed on the original special exception should be granted to allow for demolition and new construction.

Parking Variance

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship as set forth in Section 25.2 and 25.56 of the Ordinance.³ “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. Section 25.56(A).

³ “When the terms unnecessary hardship (or one of its synonyms) and practical difficulty 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 difficulty standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v North*, 355 Md. 259, 276 n. 10 (1999) (citations omitted)

Practical difficulty and undue hardship are typically 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).

While a reduction in parking is not necessary for the special exception use to exist, it substantially improves the use and design of the subject property. Appellant has been clear through multiple hearings that the Ordinance requirements for off-street parking was far more than needed. Reducing the parking spaces will benefit the neighbor most affected, allow for more landscape design and aid in conforming better to the character and nature of the neighborhood. The Board finds that practical difficulty exists and that the parking variance request should be granted.

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 to remove the condition providing for renovation of the existing building is hereby GRANTED, by a vote of 5 to 0. The request to reduce the required off-street parking spaces from 38 to 32 spaces at the subject property is hereby GRANTED, by a vote of 5 to 0.

The relief granted herein is granted subject to the standard condition that it is consistent with the testimony and evidence presented at the hearing.

BOARD OF APPEALS

By: Tracie Felker, Chair

Date Issued: October 3, 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.