

BOARD OF APPEALS

January 31, 2024

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

AGENDA

AP2024-001: An appeal was filed by Paul & Jessica Veen requesting for a variance from the required 100 ft. setback to 7 ft. for a lean-to addition to the existing structure that will be used for animal husbandry on property owned by the appellant and located at 17558 Reiff Church Road, Hagerstown, Zoned Agricultural Rural District.

AP2024-002: An appeal was filed by Jonathan Lee & Beth Ann Barr requesting for a variance from the required 15 ft. side yard setback to 7.5 ft. for addition to existing dwelling on property owned by the appellants and located at 13024 St. Paul Road, Clear Spring, Zoned Agricultural Rural District.

AP2024-003: An appeal was filed by Ebenezer Yohannes requesting for a variance from the required 12 ft. rear yard setback to 11 ft. for constructed detached garage on property owned by the appellant and located as 11922 Phylane Drive, Hagerstown, Zoned Residential Suburban.

AP2024-004: An appeal was filed by the Trustees of St. James School requesting for a variance from the required 50 ft. setback to 11 ft. and a variance from the 3-acre lot area requirement for proposed dormitory to the exiting. The parcel is improved with a dormitory and two single-family dwellings on the 4 acres lot. The property is owned by the appellants and located at 17652 College Road, Hagerstown, Zoned Agricultural Rural District.

AP2024-005: An appeal was filed by Philip Scolaro for a special exception for a small private cemetery on property owned by the appellant and located at 7793 Fairplay Road, Fairplay, Zoned Rural Village District.

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 January 22, 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.

Jay Miller, 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: Paul W & Jessica L Vein
17558 Reiff Church Road
Hagerstown MD 21740
Appellant: Paul & Jessica Vein
17558 Reiff Church Road
Hagerstown MD 21740
Property Location: 17558 Reiff Church Road
Hagerstown, MD 21740
Description Of Appeal: Variance from the required 100 ft. setback to 7 ft. for a lean-to addition to the existing structure that will be used for animal husbandry.

Docket No: AP2024-001
Tax ID No: 13017646
Zoning:
RB Overlay: No
Zoning Overlay:
Filed Date: 01/03/2024
Hearing Date: 01/31/2024

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

Previous Petition/Appeal Docket No(s):
Applicable Ordinance Sections: Washington County Zoning Ordinance: Section 22.94(a)

Reason For Hardship: This is the lowest viewshed impact for the area.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Detached Structure Proposed Use: Animal Husbandry

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

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

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

Handwritten signature of Paul W & Jessica Vein

Appellant Signature

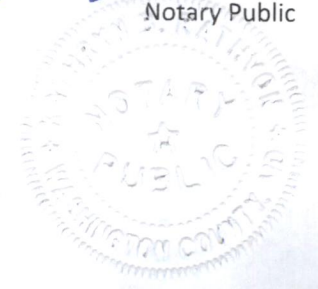
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 3 day of Jan, 20 24.

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

Handwritten signature of Kathryn B Rathvon

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: AP2024-001

State of Maryland Washington County, To Wit:

On 1/3/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Paul Veen and made oath in due form of law as follows:

Paul Veen 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 01/31/2024, 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 01/16/2024 and will remain until after the above hearing date.

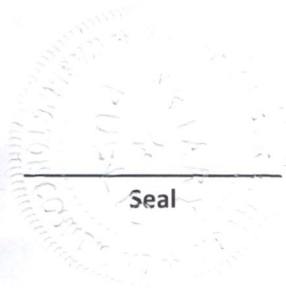
Paul Veen

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

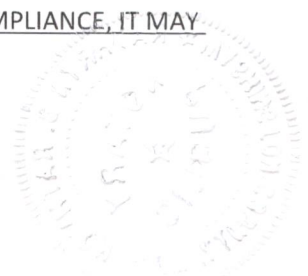
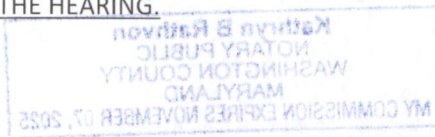
ATTENTION!

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.



Dear Members of the Board of Zoning Appeals:

This application is for a boundary exception for the property at 17558 Reiff Church Road, Hagerstown, Maryland. I am making a petition in order to construct a 192 square-foot lean-to for the purpose of housing four 4-H project pigs.

As you can see from the plot plan there are few if any other options to locate said structure due to septic system, septic reserve, existing structures and boundary set-backs. The proposed location was chosen because it has the lowest viewshed impact for the area. The closest dwelling to the proposed location is over 400 feet to the west. The east is completely blocked by the adjacent garage. To both the north and the south are farm fields.

The property closest to the proposed structure is a crop field which is designated as not for development. The land owner was contacted and when asked if he had any objections, he stated, "My father helped me raise pigs when I was a boy. I think that is a great project for your boys."

The other adjacent property owners have been contacted and no one stated any objection.

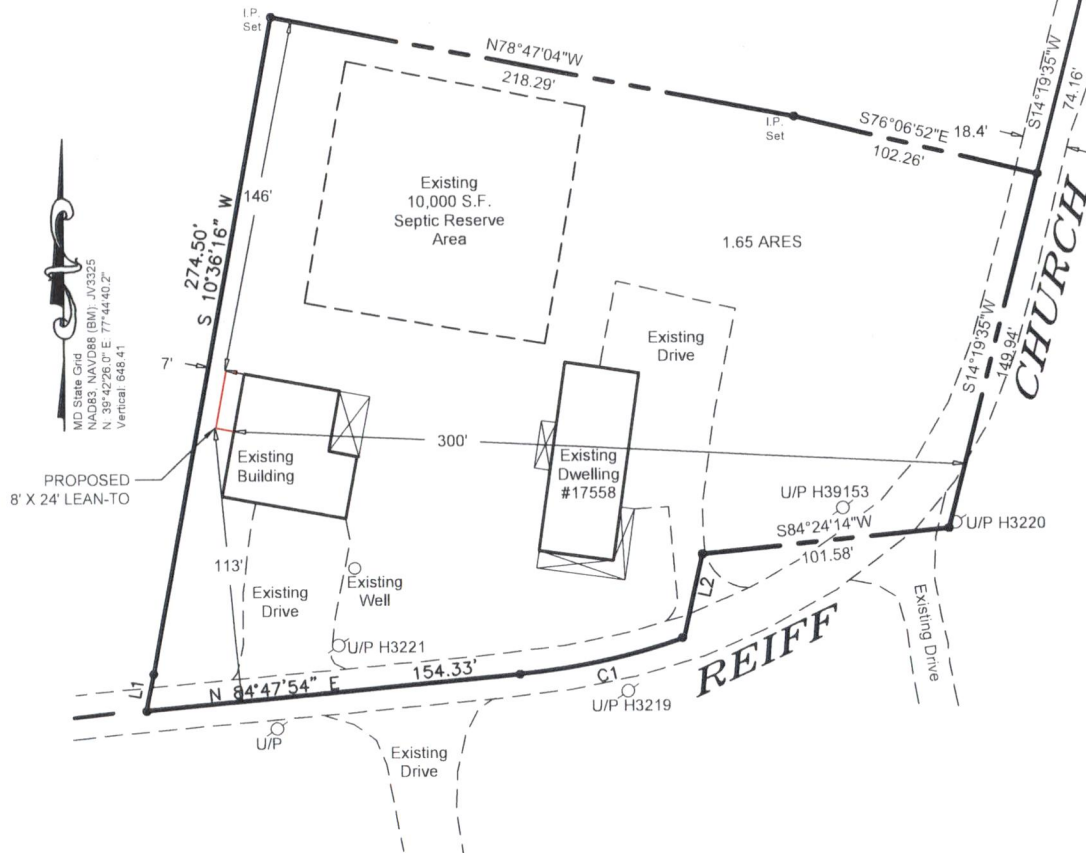
Thank you for your consideration.

Respectfully,

Paul Veen

| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | S 10°36'16" W | 15.63' |
| L2 | S 12°13'14" W | 35.59' |

| CURVE | RADIUS | ARC LENGTH | CHORD LENGTH | CHORD BEARING | DELTA ANGLE |
|-------|---------|------------|--------------|---------------|-------------|
| C1 | 288.54' | 69.09' | 68.92' | N 77°56'21" E | 13°43'07" |



**PLOT PLAN
FOR
PAUL W. VEEN
JESSICA L. VEEN**
Situate at 17558 Reiff Church Rd.
Hagerstown, Md. 21740-2427

NOTE: A SIDEYARD SETBACK VARIANCE
MAY BE NECESSARY TO REDUCE
THE SETBACKS FROM 15' TO 7'

| | | | |
|-----------------------|----------|----------|------------|
| TAX MAP | 24-1-491 | DISTRICT | 13 |
| DRAWING NUMBER 1 OF 1 | | | |
| DRAWN BY | MTJ | DATE | 12-06-2023 |
| CHECKED BY | FMF | DATE | 12-06-2023 |
| SCALE | | 1"=60' | |

**FREDERICK
SEIBERT &
ASSOCIATES, INC.**



© 2016

CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS
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
5928-PP

17558 Reiff Church Road – Viewshed of Proposed Structure



South



Southwest



West



Northwest



North

THE WHY!!



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

PAUL AND JESSICA VEEN

Appellants

*

*

Appeal No.: AP2024-001

*

*

* * * * *

OPINION

Paul and Jessica Veen (hereinafter “Appellants”) request a variance to reduce the required east side yard setback from 100 to 7 feet for a lean-to addition to the existing for use with animal husbandry at the subject property. The subject property is located at 17558 Reiff Church Road, Hagerstown, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter on January 31, 2024.

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 17558 Reiff Church Road, Hagerstown, Maryland. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately 1.65 acres, improved by a single-family dwelling and an accessory, garage-type building. The subject property is bound to the north and west by farm fields, and to the south and east by Reiff Church Road.
3. Appellants’ sons participate in 4-H and are interested in raising pigs.
4. Appellants propose to construct an 8 foot by 24-foot lean-to on the east side of the existing accessory building, to house pigs.

5. The proposed structure would only be in place while Appellants' sons are participating in 4-H. Once they are done, Appellants plan to remove the structure.

6. Appellants utilize the rear of the building for firewood storage.

7. Appellants have already prepared a nutrient plan and a waste management plan.

8. Appellants will be required to obtain an animal husbandry zoning certificate.

9. 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 25.56.¹ "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 22.94 of the Ordinance, "[a]nimal waste storage and

¹ "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).

management systems associated with an animal husbandry facility and/or any structure housing animals shall have a minimum building setback of 100 feet from the property line..." Appellants' proposed use fits the definition of animal husbandry and therefore the more restrictive setback requirement applies to the lean-to structure. Appellants' request appears to be the minimum necessary to achieve the stated purpose of providing shelter for their pigs. Given its location on the side of the building and adjacent to farmland, it is unlikely to affect the neighboring property owner. Based on the testimony provided, Appellants would not be able to facilitate this pig project without the lean-to structure as there is no other location on the property where they can house the pigs. The Board finds that this demonstrates practical difficulty, as strict adherence to the setback requirements would prevent a reasonable use of property located in the agricultural zoning district.

Accordingly, the variance request to reduce the required east side yard setback from 100 feet to 7 feet for a lean-to addition to the existing for use with animal husbandry at the subject property is GRANTED, by a vote of 5-0. Said variance request is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: February 29, 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: Jonathan Lee & Beth Ann Barr
13024 St. Paul Road
Clear Spring MD 21722
Appellant: Jonathan Lee Barr
13024 St. Paul Road
Clear Spring MD 21722
Property Location: 13024 St. Paul Road
Clear Spring, MD 21722
Description Of Appeal: Variance from the required 15 ft. side yard setback to 7.5 ft. for addition to existing dwelling.

Docket No: AP2024-002
Tax ID No: 04017897
Zoning: A(R)
RB Overlay: No
Zoning Overlay:
Filed Date: 01/10/2024
Hearing Date: 01/31/2024

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

Previous Petition/Appeal Docket No(s):
Applicable Ordinance Sections: Washington County Zoning Ordinance Section: 5A.5

Reason For Hardship: Odd shaped lot with a split septic area and rock outcropping.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Single Family Dwelling Proposed Use: Addition
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

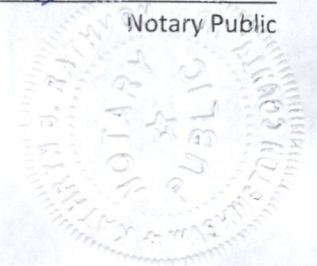
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 11 day of Jan., 20 24.

Kathryn B Ratnovon
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: AP2024-002

State of Maryland Washington County, To Wit:

On 1/10/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Frederick Seibert & Associates Inc and made oath in due form of law as follows:

Frederick Seibert & Associates Inc will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 01/31/2024, 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.

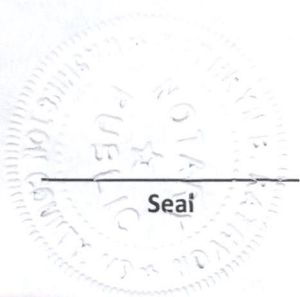
Sign(s) will be posted on 01/16/2024 and will remain until after the above hearing date.

Frederick Seibert & Associates Inc

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

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

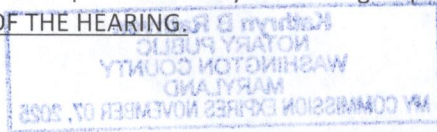
ATTENTION!

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.



Project Name: Jonny Barr Residence

**Owner/Applicant: Jonathan L Barr
13024 St. Paul Road
Clear Spring, MD 21722**

**Project Address: 13024 St. Paul Road
Clear Spring, MD 21722**

Tax Map 35 Grid 1 Parcel 537

Account # 04008278

Zoning: A(R)

Variance request: Reduce the side yard setback of 15 feet in the A(R) zoning district as enumerated in table 5A.5 of the Washington County Zoning Ordinance to 7.5 feet for the construction of an addition to an existing residential dwelling.

The odd shaped lot with a split septic area and rock outcroppings along with the most logical location for the addition in relation to the existing floorplan has located the addition where it is.

During the hearing further explanation of Practical Difficulty and Undue Hardship will be provided.



Washington County Board of Zoning Appeals Owner's Representative Affidavit

This is to certify that Ed Schreiber - Fred Frederick w/ FSA
is authorized to file an appeal with the Washington County Board of Appeals for a side yard
variance from 15' to 7.5'
on property located 13024 St. Paul Rd.
The said work is authorized by Jonathan Barr
the property owner in fee.

PROPERTY OWNER

Jonathan L. Barr
Name

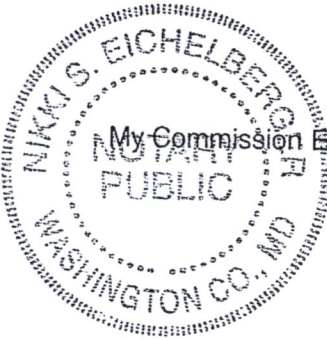
13024 St. Paul Rd
Address

Clearspring, MD 21732
City, State, Zip Code

[Signature]
Owner's Signature

Sworn and subscribed before me this 8 day of January, 2024.

[Signature]
Notary Public



AUTHORIZED REPRESENTATIVE

Frederick, Seibert and Associates, Inc.
Fred Frederick or Ed Schreiber
Name

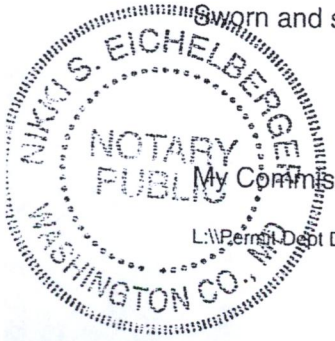
128 S. Potomac Street
Address

Hagerstown, MD 21740
City, State, Zip Code

[Signature]
Authorized Representative's Signature

Sworn and subscribed before me this 8 day of January, 2024.

[Signature]
Notary Public



Parcels:LIVING SPRINGS FARM LLC

Parcel #
Account # 04008278

12,844.00 ST PAUL RD
CLEAR SPRING, MD 21722
Plat - 8863
M. 0035 / P. 0280
[SDAT](#)
[GOOGLE STREET VIEW](#)

[Zoom to](#)



Real Property Data Search ()
 Search Result for WASHINGTON COUNTY

View Map View GroundRent Redemption View GroundRent Registration

Special Tax Recapture: None

Account Identifier: District - 04 Account Number - 017897

Owner Information

Owner Name: BARR JONATHAN LEE Use: RESIDENTIAL
 BARR BETH ANN Principal Residence: YES
 Mailing Address: 13024 ST PAUL RD Deed Reference: /07180/ 00019
 CLEAR SPRING MD 21722-0000

Location & Structure Information

Premises Address: 13024 ST PAUL RD Legal Description: LOT 2 2.00 ACRES
 CLEAR SPRING MD 21722-0000 13024 ST PAUL ROAD
 ST PAUL ESTATES

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No: 11303
 0035 0001 0537 4010023.22 0000 2 2024 Plat Ref:

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
 2006 2,364 SF 2.0000 AC 000000

StoriesBasementType Exterior QualityFull/Half BathGarage Last Notice of Major Improvements
 1 1/2 NO STANDARD UNITSTUCCO/5 2 full/ 1 half 1 Attached

Value Information

| | Base Value | Value | | |
|--------------------|------------|------------------|----------------------|---------|
| | | As of 01/01/2024 | Phase-in Assessments | |
| | | As of 07/01/2023 | As of 07/01/2024 | |
| Land: | 85,000 | 85,000 | | |
| Improvements | 251,300 | 530,500 | | |
| Total: | 336,300 | 615,500 | 336,300 | 429,367 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

Seller: LIVING SPRINGS FARM LLC Date: 01/19/2023 Price: \$199
 Type: NON-ARMS LENGTH OTHER Deed1: /07180/ 00019 Deed2:
 Seller: BARR JONATHAN LEE Date: 08/03/2020 Price: \$0
 Type: NON-ARMS LENGTH OTHER Deed1: /06320/ 00459 Deed2:
 Seller: MYERS LIMITED PARATNERSHIP Date: 02/12/2018 Price: \$286,300
 Type: NON-ARMS LENGTH OTHER Deed1: /05688/ 00395 Deed2:

Exemption Information

Partial Exempt Assessments: Class 07/01/2023 07/01/2024
 County: 000 0.00
 State: 000 0.00
 Municipal: 000 0.00|0.00 0.00|0.00
 Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: No Application

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Real Property Data Search ()
 Search Result for WASHINGTON COUNTY

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

Special Tax Recapture: None

Account Identifier: District - 23 Account Number - 014882

Owner Information

Owner Name: EICHELBERGER DAVID S L/E Use: RESIDENTIAL
 EICHELBERGER DEBRA J L/E Principal Residence: YES
 Mailing Address: 13021 SAINT PAUL RD Deed Reference: /07307/ 00001
 CLEAR SPRING MD 21722-1414

Location & Structure Information

Premises Address: 13021 ST PAUL RD Legal Description: LOT 4 5.00 ACRES
 CLEAR SPRING 21722-0000 13021 ST PAUL ROAD

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No: 2463
 0035 0001 0491 23010027.22 0000 4 2024 Plat Ref:

Town: None

| Primary Structure Built | Above Grade Living Area | Finished Basement Area | Property Land Area | County Use |
|-------------------------|-------------------------|------------------------|--------------------|------------|
| 1989 | 1,684 SF | | 5.0000 AC | |

| Stories | Basement | Type | Exterior Quality | Full/Half Bath | Garage | Last Notice of Major Improvements |
|---------|----------|----------------|------------------|----------------|------------|-----------------------------------|
| 1 | YES | STANDARD UNITS | SIDING/3 | 2 full | 1 Attached | |

Value Information

| | Base Value | Value | | |
|--------------------|----------------|----------------|----------------------|----------------|
| | | As of | Phase-in Assessments | |
| | | 01/01/2024 | As of | As of |
| Land: | 95,000 | 105,000 | 07/01/2023 | 07/01/2024 |
| Improvements | 173,100 | 255,600 | | |
| Total: | 268,100 | 360,600 | 268,100 | 298,933 |
| Preferential Land: | 0 | 0 | | |

Transfer Information

| | | |
|--|--|----------------------------|
| Seller: EICHELBERGER DAVID S Type: NON-ARMS LENGTH OTHER | Date: 08/24/2023 Deed1: /07307/ 00001 | Price: \$0 Deed2: |
| Seller: LITTON WALTER R Type: ARMS LENGTH IMPROVED | Date: 06/29/1995 Deed1: /01218/ 00132 | Price: \$149,000 Deed2: |
| Seller: LITTON WALTER R & CLARA M Type: NON-ARMS LENGTH OTHER | Date: 11/04/1992 Deed1: /01065/ 00507 | Price: \$45,000 Deed2: |

Exemption Information

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

Special Tax Recapture: None

Homestead Application Information

Homestead Application Status: Approved 09/10/2009

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Real Property Data Search ()
 Search Result for WASHINGTON COUNTY

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

Special Tax Recapture: AGRICULTURAL TRANSFER TAX

Account Identifier: District - 04 Account Number - 008278

Owner Information

Owner Name: LIVING SPRINGS FARM LLC Use: AGRICULTURAL
 Mailing Address: 11748 ASHTON RD Principal Residence: NO
 CLEAR SPRING MD 21722- Deed Reference: /07180/ 00029

Location & Structure Information

Premises Address: 12844 ST PAUL RD Legal Description: 114.25 ACRES REM
 CLEAR SPRING 21722-0000 12844 ST PAUL ROAD

Map: Grid: Parcel: Neighborhood: Subdivision: Section: Block: Lot: Assessment Year: Plat No: 11303
 0035 0001 0280 4010023.22 0000 REM 2024 Plat Ref:

Town: None

Primary Structure Built Above Grade Living Area Finished Basement Area Property Land Area County Use
 1800 2,820 SF 114.2500 AC

StoriesBasementType ExteriorQualityFull/Half BathGarageLast Notice of Major Improvements
 2 YES STANDARD UNITSTONE/5 1 full

Value Information

| | Base Value | Value | | |
|--------------------|----------------|---------------------|---|---------------------|
| | | As of 01/01/2024 | Phase-in Assessments As of 07/01/2023 | As of 07/01/2024 |
| Land: | 113,900 | 113,900 | | |
| Improvements | 197,200 | 289,600 | | |
| Total: | 311,100 | 403,500 | 311,100 | 341,900 |
| Preferential Land: | 38,900 | 38,900 | | |

Transfer Information

Seller: PEARL REBECCA LEANNE Date: 01/19/2023 Price: \$9,775
 Type: NON-ARMS LENGTH OTHER Deed1: /07180/ 00029 Deed2:
 Seller: BARR JONATHAN L Date: 01/19/2023 Price: \$2,125
 Type: NON-ARMS LENGTH OTHER Deed1: /07180/ 00009 Deed2:
 Seller: MYERS LEROY E JR Date: 01/06/2003 Price: \$0
 Type: NON-ARMS LENGTH OTHER Deed1: /01901/ 00261 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: No Application

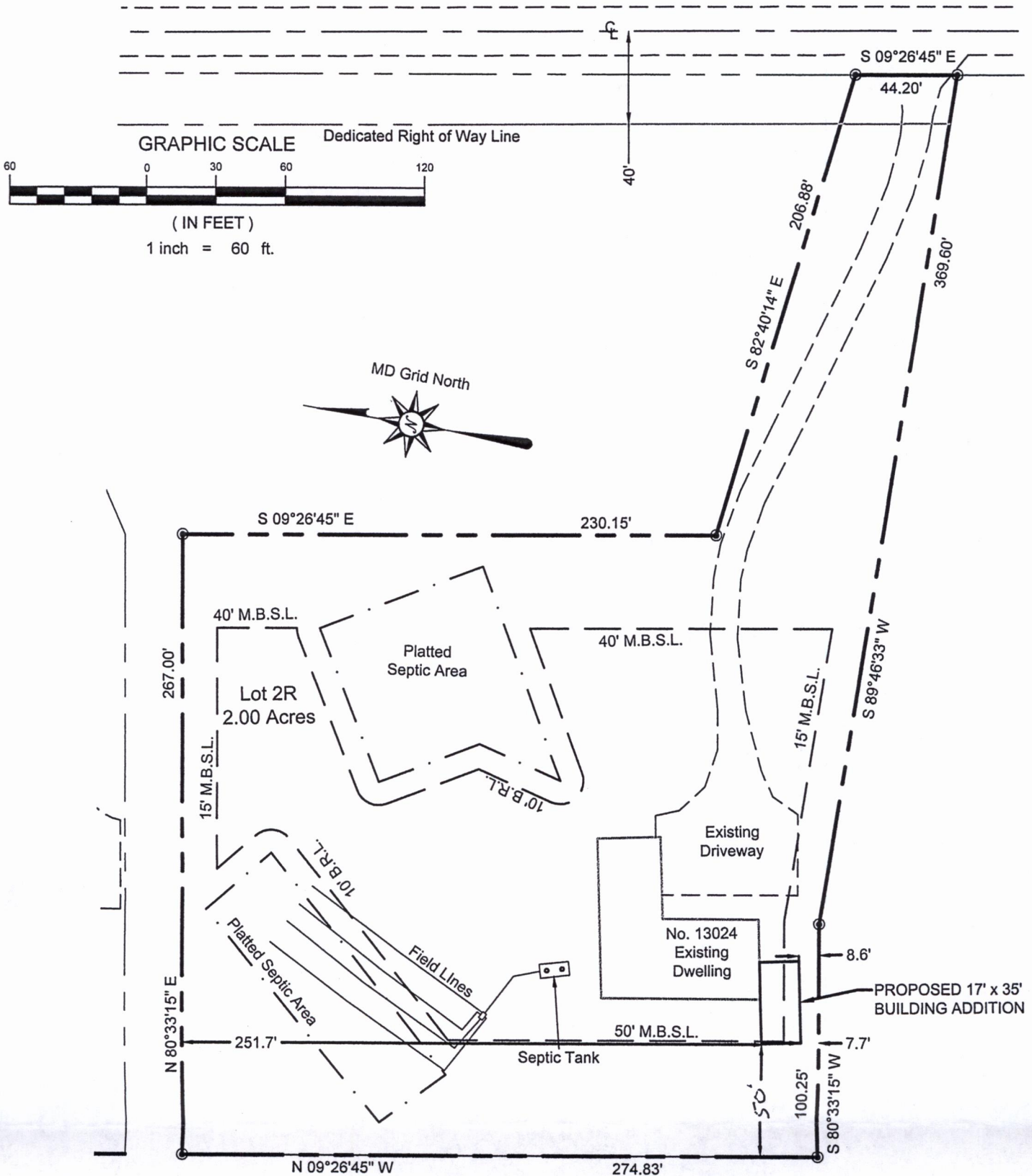
Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application Date:

Plot Plan for Proposed Addition
for
Jonny Barr
13024 St. Paul Road, Clear Spring, Maryland

ST. PAUL ROAD

MD Route 57
(Major Collector)



| | |
|-----------------|------------------------|
| Tax Map | |
| 35-1-537 | |
| DWN BY | DATE |
| MTJ | 01-05-2024 |
| PROJECT MANAGER | EMAIL |
| F. Frederick | ffrederick@fsa-inc.com |
| SCALE | |
| 1" = 60' | |
| SHEET 1 OF 1 | |



FREDERICK, SEIBERT & ASSOCIATES, INC. © 2022 fsa-inc.com

CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS

| | | | |
|--|---|--|---|
| 128 SOUTH POTOMAC STREET HAGERSTOWN, MD 21740 301.791.3650 | 20 WEST BALTIMORE STREET GREENCASTLE, PA 17225 717.597.1007 | 505 SOUTH HANOVER STREET CARLISLE, PA 17013 717.701.8111 | 15 EAST MAIN STREET NEW BLOOMFIELD, PA 17068 717.567.3680 |
|--|---|--|---|

PROJECT NO.
1879.3.PP4

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

JONATHAN LEE BARR

Appellants

*

*

Appeal No.: AP2024-002

*

*

* * * * *

OPINION

Jonathan Lee Barr (hereinafter "Appellant") requests a variance to reduce the required left side yard setback from 15 to 7.5 feet for an addition to the existing dwelling at the subject property. The subject property is located at 13024 St. Paul Road, Clear Spring, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter on January 31, 2024.

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, along with his wife, are the owners of the subject property located at 13024 St. Paul Road, Clear Spring, Maryland. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately two (2) acres improved with a single-family dwelling which was built in 2006. The adjoining property is in preservation status and cannot be developed.
3. The lot was created in 2005. At the time of development, the terrain was so rocky that septic area was divided into two (2) separate areas to meet requirements.
4. The existing dwelling is situated on the back left corner of the property, as

viewed from St. Paul Road.

5. Appellant proposes to construct a 17-foot by 35-foot addition to increase the size of the master bedroom and bathroom, which is located in the back left corner of the dwelling.

6. The required side yard setback for the subject property is fifteen (15) feet.

7. Appellant's neighbors are in support of the request.

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 25.56.¹ "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).)

The presence of rock outcroppings and rocky terrain determined the layout of the subject property and the location of the existing dwelling. Rather than having adequate

¹ "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).

clearance on all sides, the dwelling was forced to be located very close to the left side yard. This makes any addition to the dwelling difficult without relaxing the setback requirements.

Appellant testified that the plan is to renovate and add on to the existing master bedroom and bathroom. This not a special benefit, but a common desire by many homeowners to improve the function and value of their home. It appears that Appellant has requested the minimum necessary relief to achieve the proposed addition. Moreover, the fact that the adjoining property is owned by family and in preservation status, mitigates any intrusion that the addition might have. The adjoining property will not be developed and therefore it is unlikely that the relaxation of the setback will be noticed. Under the circumstances, the Board finds that the unique topography which dictated the original development of the subject property also results in practical difficulty for the proposed addition.

Accordingly, the variance request to reduce the required left side yard setback from 15 feet to 7.5 feet for an addition to the existing dwelling at the subject property is GRANTED, by a vote of 5-0. Said variance request is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: February 29, 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: Ebenezer Yohannes, 11922 Phylane Drive, Hagerstown MD 21742
Appellant: Ebenezer Yohannes, 11922 Phylane Drive, Hagerstown MD 21742
Property Location: 11922 Phylane Drive, Hagerstown, MD 21742
Description Of Appeal: Variance from the required 12 ft. rear yard setback to 11 ft. for constructed detached garage.

Docket No: AP2024-003
Tax ID No: 18000318
Zoning: RS
RB Overlay: No
Zoning Overlay:
Filed Date: 01/10/2024
Hearing Date: 01/31/2024

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 8.5 (b)

Reason For Hardship: Expense to take down and reconstruct to meet setback.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Single Family Dwelling, Proposed Use: Detached Garage

Previous Use Ceased For At Least 6 Months:
Area Devoted To Non-Conforming Use - Existing: Date Ceased: 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 10 day of Jan., 2024.

[Handwritten signature]

Notary Public

My Commission Expires
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: AP2024-003

State of Maryland Washington County, To Wit:

On 1/10/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Ebenezer Yohannes and made oath in due form of law as follows:

Ebenezer Yohannes 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 01/31/2024, 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 01/16/2024 and will remain until after the above hearing date.

Ebenezer Yohannes

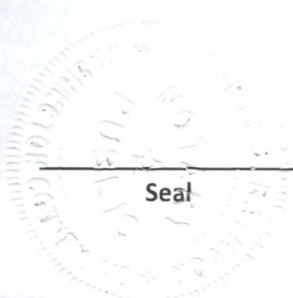
Sworn and subscribed before me the day and year first above written.

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

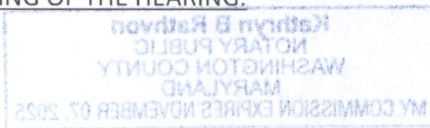
ATTENTION!

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.



Ebenezer Yohannes
11922 Phylane Dr
Hagerstown, MD 21742
Ebenezeryohannes75@gmail.com
1/10/2024

Board of Zoning Appeals
City of Hagerstown
747 Northern Avenue
Hagerstown, MD 21742

Subject: Variance Request for 11922 Phylane Dr, Hagerstown, MD 21742

Dear Members of the Board of Zoning Appeals,

I am writing to respectfully request a variance revision at 11922 Phylane Dr, Hagerstown, MD 21742. The revision request is to ensure my detached garage remains in accordance with the zoning regulations of Washington County, in the City of Hagerstown. I wish to highlight a few reasons why this zoning adjustment request is necessary and the circumstances that lead to requiring the adjustment.

The property at 11922 Phylane Dr. currently falls under the zoning regulations of Residential Suburb (RS). Which has a general backset guideline of 8 feet for buildings to property line. I was granted a variance with backset of 12 feet to property line which I intend to adhere to. However, due to practical difficulties, a minor oversight was made while constructing the garage addition resulting in a backset of 11.1 feet to property line on the left and 11.8 feet to property line on right side respectively. This falls 1 foot short of the 12 feet initially proposed, however still falls well over 3 feet more than the minimum required allowed general tolerance and as such I am petitioning the council for this small revision. This request is being made because Complying with the original approved zoning regulations would result in undue financial hardship and restrict the reasonable use and enjoyment of the property.

In support of this variance request, I would like to provide the following details:

1. During construction we made every effort to meet the zoning ordinance for the detached garage rear setback of 12 feet. I'd like the council to take into consideration that despite falling short by less than 1 foot at furthest side, we are still at least 3 feet more than the minimum allowed tolerance of 8 feet to property line allowed.
2. I learned the need for the variance request when I had gotten the result of the location survey. And I have also gotten a variance request plan done by the same surveying company outlining the variance.
3. Strict compliance to the original zoning ordinance of 12 feet from property line would result in undue financial hardship. It would require going through the approval which is time consuming and has its costs but more importantly it would require the foundation be adjusted and new steel frames/beams, metal sheet covers, insulation, etc be ordered. Not to mention the additional time and man power necessary to deconstruction reconstruct the building to meet the original variance would all add to the overall cost.

I understand the importance of maintaining the integrity and harmony of the neighborhood, and I assure you that the proposed variance adjustment will not negatively impact the surrounding properties or the overall character of the area. It is my belief that granting this variance

adjustment will allow for the reasonable development and utilization of the property while upholding the principles and objectives of the zoning regulations.

I kindly request the opportunity to present my case before the Board of Zoning Appeals at an upcoming meeting. I believe that a personal presentation will provide a more comprehensive understanding of the circumstances and allow for any questions or concerns to be addressed directly.

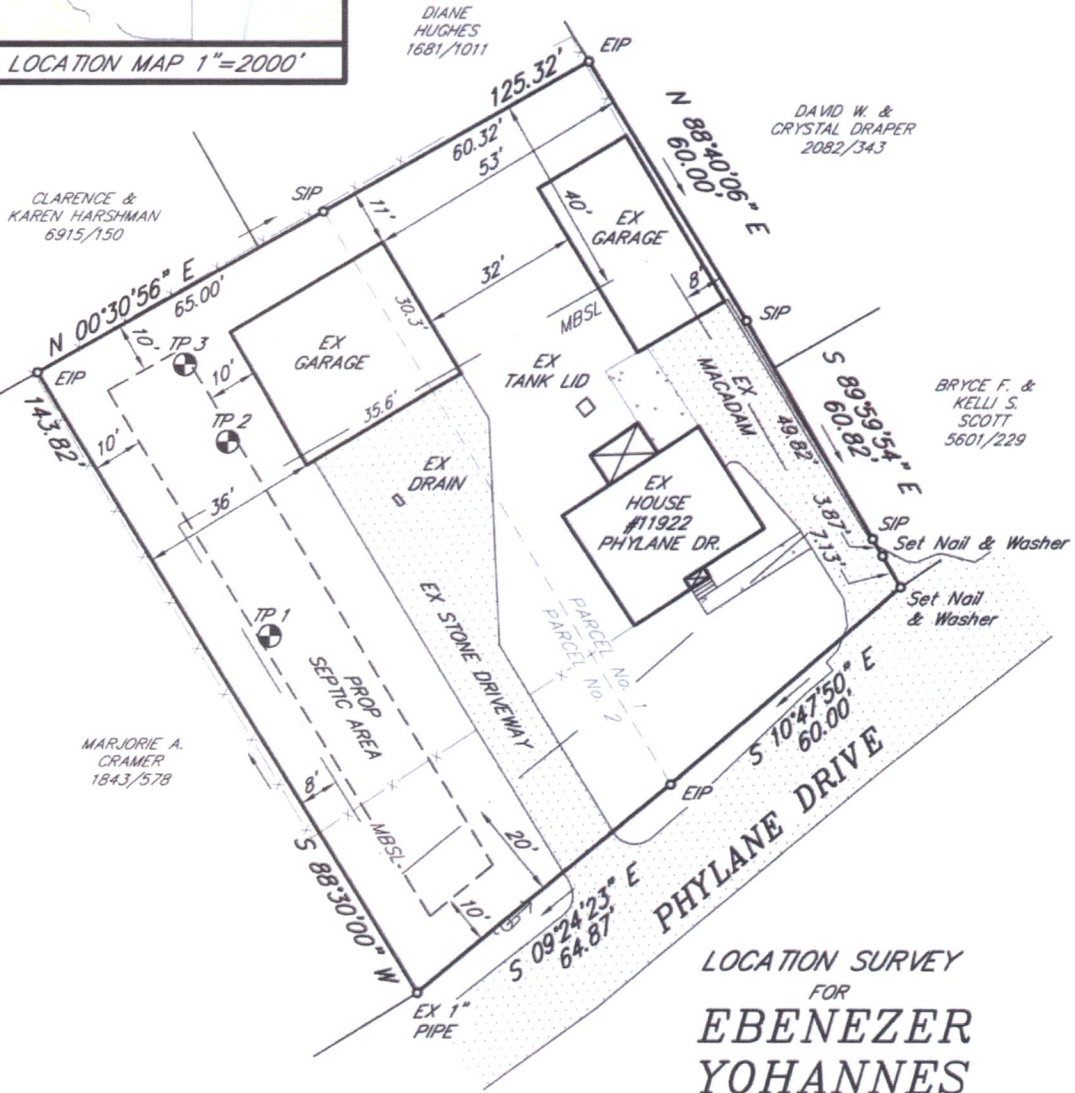
Thank you for your time and consideration of this variance request. I look forward to the opportunity to discuss this matter further with the Board.

Yours sincerely,

Ebenezer Yohannes

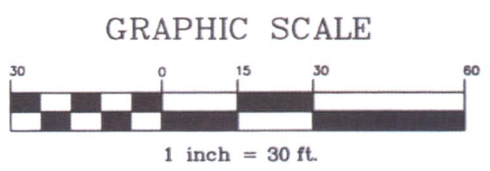


ZONE RS -
RESIDENTIAL, SUBURBAN



LOCATION SURVEY
FOR
**EBENEZER
YOHANNES**
SITUATE IN
ELECTION DISTRICT No. 18
WASHINGTON COUNTY
MARYLAND

EIP DENOTES EXISTING IRON PIN
EX DENOTES EXISTING
SIP DENOTES SET IRON PIN



DEED REFERENCE: 6073/252
TAX MAP 50 GRID 3 PARCEL 357 & 904



R LEE ROYER & ASSOCIATES
SURVEYING
PENNSYLVANIA - MARYLAND
10764 BECHLANAN TRAIL EAST
WAYNESBORO, PA 17268
717-762-5619

| | |
|---------|----------|
| Area | 0.38 Ac. |
| Scale | 1" = 30' |
| Date | 11/27/23 |
| Drawn | DCS |
| Checked | PLB |
| File | 8669 |



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

EBENEZER YOHANNES

Appellants

*

*

Appeal No.: AP2024-003

*

*

* * * * *

OPINION

Ebenezer Yohannes (hereinafter “Appellant”) requests a variance to reduce the required rear yard setback from 12 feet to 11 feet for a constructed detached garage at the subject property. The subject property is located at 11922 Phylane Drive, Hagerstown, Maryland and is zoned Residential, Suburban. The Board held a public hearing in this matter on January 31, 2024.

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 located at 11922 Phylane Drive, Hagerstown, Maryland. The subject property is zoned Residential, Suburban.
2. The subject property consists of approximately .38 acres of land improved by a dwelling and two (2) garage buildings. The subject property is located in a dense residential neighborhood.
3. Appellant applied for and obtained a building permit for a 1,050 square foot detached garage constructed of pre-engineered steel and metal on a concrete slab.
4. On November 27, 2023, the Division of Permits and Inspection received the required location survey for Appellant’s project. At that time the survey was denied because the constructed garage did not meet the required 12-foot rear yard setback

requirement.

5. The newly constructed garage is located 11 feet from the rear yard property line.

6. The location of the garage was the result of a miscalculation by the contractor hired to pour the concrete slab.

7. Appellant plans to use the garage for storage and hobby work on vehicles for personal use.

8. Appellant would endure significant costs to tear down the building and rebuild in the correct location.

9. Some of the neighbors are concerned about the overall size of the garage building and the number of cars at the subject property.

Rationale

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.¹ “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.

¹ “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).)

Appellant testified that he went through the permitting process to construct a large, detached garage at the subject property so that he could store and work on his personal vehicles. He testified that he is a “car guy” and his hobby is collecting and working on vehicles. Appellant hired a contractor to pour the concrete slab for the foundation to the garage building, however that contractor mistakenly poured the slab one (1) foot too close to the rear property line. According to the records, the mistake was not discovered until it came time for the Division of Permits and Inspection to approve the location survey. Appellant expected that the garage was being constructed in the proper location and did not cause the problem now before the Board.

Although there was opposition from the neighbors, it focused mostly on the use of the garage and its size. Neither of those issues are before the Board and they are not relevant to the variance request. Appellant is asking for a relaxation of one (1) foot in order to preserve the constructed garage. If Appellant were to comply with the setback requirement, he would have tear down the fully constructed garage and rebuild it, at significant additional cost. The Board finds that this would be unnecessarily burdensome and results in practical difficulty to Appellant.

Accordingly, the variance request to reduce the required rear yard setback from 12 feet to 11 feet for a constructed detached garage at the subject property is GRANTED, by a vote of 5-0. Said variance request is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: February 29, 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: Trustees of St. James School
17652 College Road
Hagerstown MD 21740

Docket No: AP2024-004

Tax ID No: 02021331

Zoning: A(R)

Appellant: Trustees of St. James School
17641 College Road
Hagerstown MD 21740

RB Overlay: No

Zoning Overlay:

Filed Date: 01/12/2024

Hearing Date: 01/31/2024

Property Location: 17652 College Road
Hagerstown, MD 21740

Description Of Appeal: Variance from the 50 ft. required setback to 11 ft and a variance from the lot area requirement of 3 acres for proposed dormitory. The property is improved with a dormitory and two single-family dwelling on the 4 acre lot.

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 5A.6

Reason For Hardship: Existing structures on the property impacts the location of the new dormitory

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Dormitory and Dwellings Proposed Use: Additional Dormitory

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

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

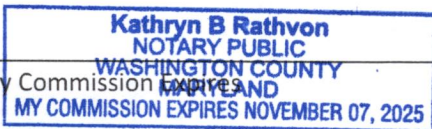
I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Handwritten signature of the appellant.

Appellant Signature

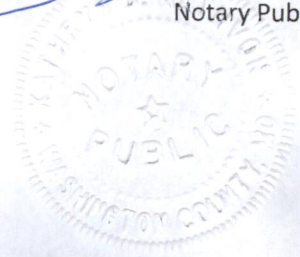
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 12 day of Jan, 2024.



Handwritten signature of the notary public.

Notary Public





WASHINGTON COUNTY BOARD OF ZONING APPEALS

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

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2024-004

State of Maryland Washington County, To Wit:

On 1/12/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared and made oath in due form of law as follows:

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 01/31/2024, 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 01/16/2024 and will remain until after the above hearing date.

[Handwritten signature]

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

[Handwritten signature of Kathryn B Rathvon]

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

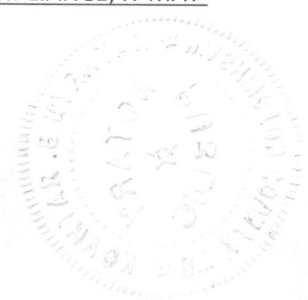
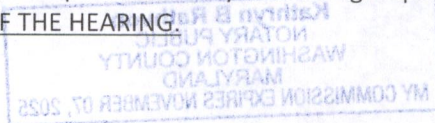
ATTENTION!

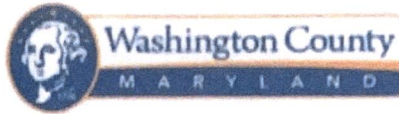
Posting Instructions

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.





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 17632 College Rd, Hagerstown, MD 21740

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

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

Specify the Ordinance section and subsection from which the variance is desired:
Section 5A.6 Non-Residential Lot Size and Bulk Dimensions

Specify the particular requirement(s) from which a variance is desired in that section or subsection:
Other Principal Permitted or Conditional Uses, Side Yard Setback requirement 50 Feet

Describe the nature and extent of the desired variance from Ordinance requirements: listed above:
Desired variance is to reduce the minimum Side Yard Setback requirement to 11 Feet

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 X No

If yes, list docket number(s):

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

Signature of Appellant

Email of Appellant wjwivell@stjames.edu

17641 College Road, Hagerstown, MD 21740
Address and of Appellant

301-733-9330
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.

January 9, 2024

College of Saint James, Applicant
17641 College Road
Hagerstown, MD 21740

BZA Variance Criteria

The subject property is located along the North side of College Road and is part of the existing campus of Saint James School in Hagerstown. This parcel is developed with two single family dwellings, which house school employees and Mattingly Hall, a student dormitory. This property was purchased in July of 1957 in an effort to be able to expand the campus. The current zoning for this property is 'A(R)' Agricultural (Rural) District. This district requires a 50' minimum side yard setback for non-residential use. Due to the limitations of space on this property, a variance of 11' is being requested from the 50' minimum side yard setback to construct a new dormitory for the students.

A. Practical Difficulty

1. Due to this property being the same shape and size since 1902, which was long before the Zoning Ordinance was introduced, it is difficult to meet all of the required setbacks. Saint James School would like to expand within their own property and in an area where existing employee and student housing already exists.

2. Considering the information above, denying the variances would do substantial injustice to the applicant. This area has been designated for School housing and due to the existing structures on the property, the placement of the new dormitory has to be slid to the West closer to the existing property line.

3. Granting the variance would observe the spirit of the Ordinance and not impede on public safety and welfare. The existing campus was founded in 1842 and has continued to provide educational services since, the new dormitory would be very beneficial and provide safety and welfare for the students.

B. Undue Hardship

1. Due to the zoning restrictions and the shape and size of this property, strict compliance of the Ordinance would prevent the School from making reasonable use of the property.

2. The difficulties or hardships are peculiar to this property. The total area being 4.162 acres and having 3 existing institutional dwellings doesn't leave much room for expansion. The School would like to use their own property and not have to subdivide for expansion.

3. The subject property was purchased in July of 1957 prior to the Zoning Ordinance, with hopes of being able to expand the Campus in the future. Due to the restrictions of the current Ordinance, a variance is required from the side yard setback. The hardship is not the result of the applicant's or owner's actions.

January 11, 2024

Katie Rathvon
Zoning Coordinator, Division of Planning & Zoning
747 Northern Avenue
Hagerstown, MD 21742

Re: College of Saint James, Applicant
17641 College Road
Hagerstown, MD 21740

Dear Ms. Rathvon:

In addition to the variance from Section 5A.6 of the Zoning Ordinance as a reduction from the 50' minimum side yard setback to 11' is being requested to construct a new dormitory for the students at Saint James School, we would like to add a request for variance from the minimum lot area of this same Section.

Additional BZA Variance

The subject property is located along the North side of College Road and is part of the existing campus of Saint James School in Hagerstown. This parcel is developed with 2 single family dwellings, which house school employees and Mattingly Hall, a student dormitory. This property was purchased in July of 1957 in an effort to be able to expand the campus. The current zoning for this property is 'A(R)' Agricultural (Rural) District. Section 5A.6 for this district requires a minimum Lot Area of 3 acres for other principal permitted or conditional uses. We understand that the 2 existing single family dwellings require a minimum Lot Area of 40,000 square feet each and the existing dormitory requires 3 acres. The proposed dormitory also requires a minimum Lot Area of 3 acres, the total of these 4 buildings would require a minimum Lot Area of 7.837 acres and the Total Area of the subject property is only 4.162 acres.

As part of the same BZA application, we would like to request a variance from Section 5A.6 of the Zoning Ordinance for a reduction in minimum Lot Area from 3 acres for other principal permitted or conditional uses to 1.163 acres to maintain the areas for each building. A breakdown of these areas using the reduction requested is included below.

Existing Dwelling – 2 @ 40,000 square feet = 80,000 square feet or 1.836 acres
Existing Dormitory – 1 @ 1.163 acres
Proposed Dormitory – 1 @ 1.163 acres
Total Area.....4.162 acres

I sincerely appreciate your consideration in this matter,
Ronal D. Bidle, Jr. Prof .LS

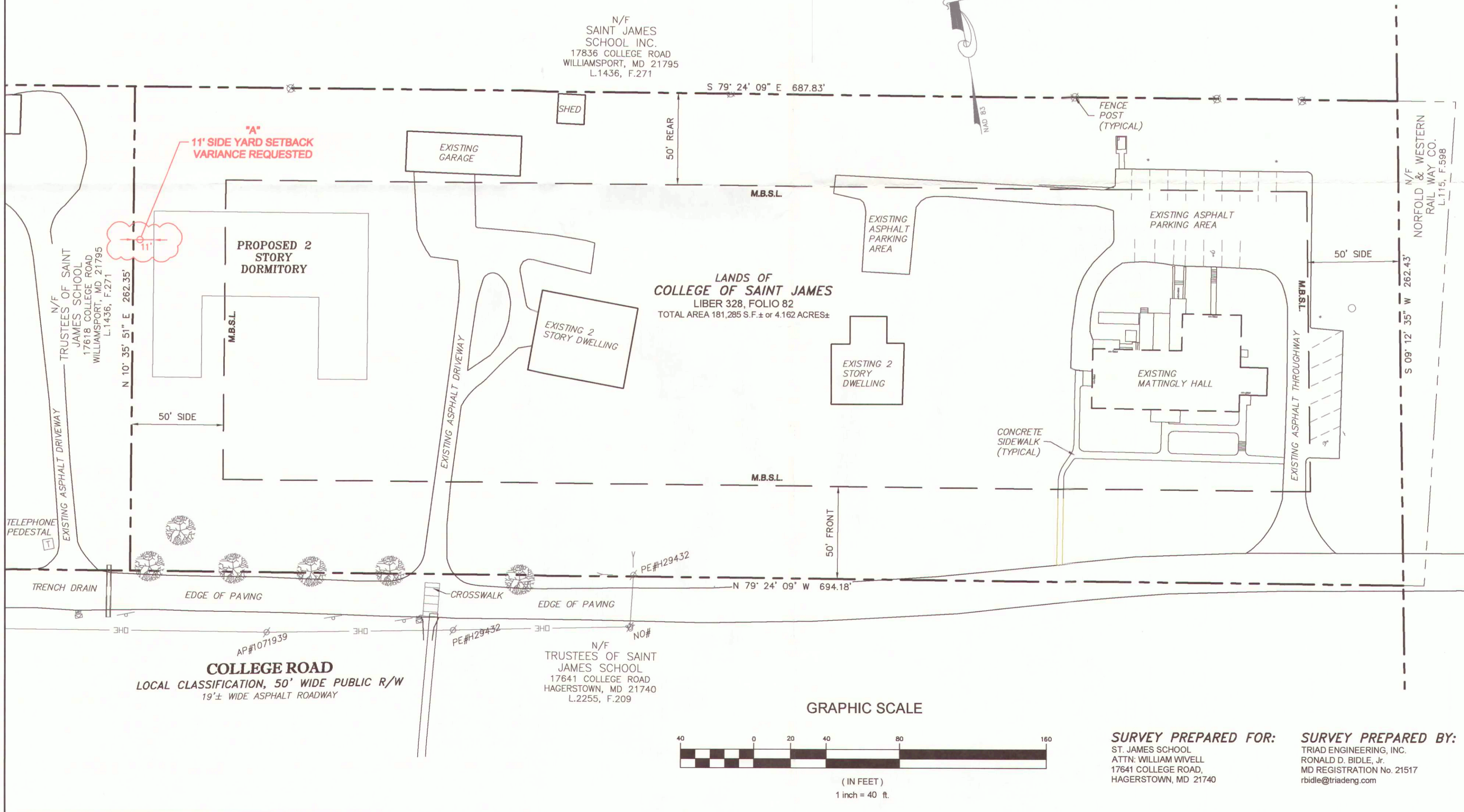
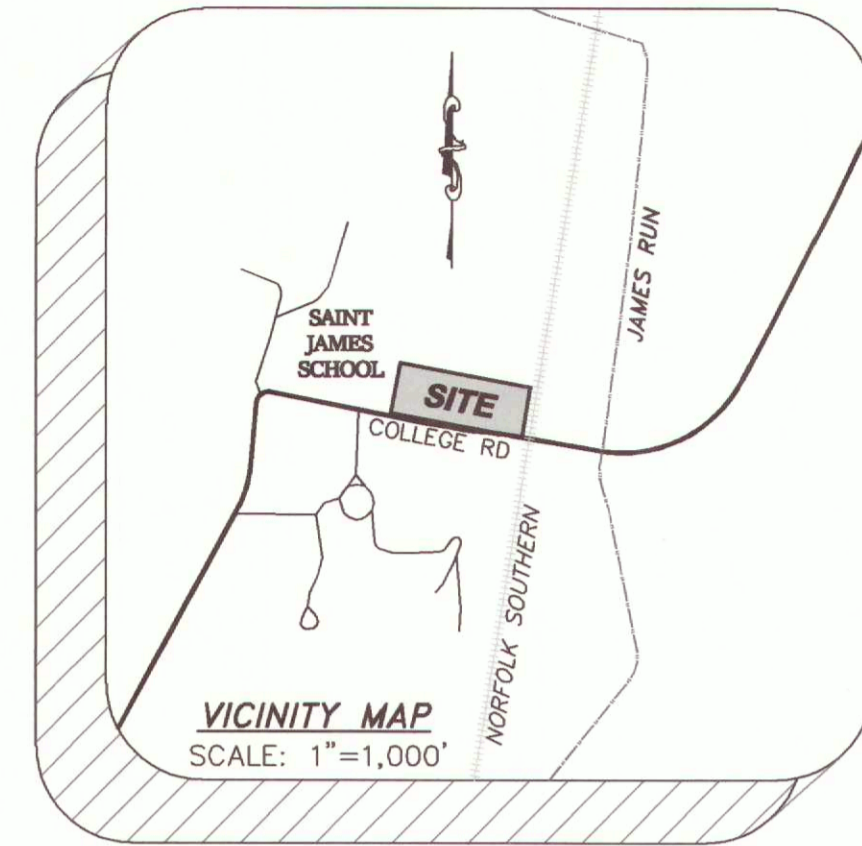
EXHIBIT 'A'

VARIANCE REQUEST

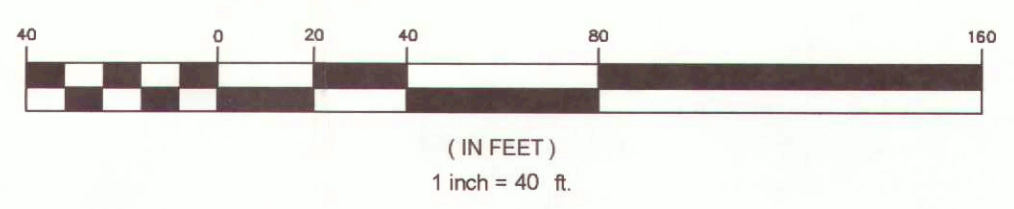
| DEPICTED VARIANCE | SECTION OF ZONING ORDINANCE | TYPE OF REGULATION | ORDINANCE REQUIREMENT | PROPOSED DIMENSION (VARIANCE REQUESTED) |
|-------------------|-----------------------------|--------------------|-----------------------|---|
| "A" | 5A.6 | SIDE YARD SET BACK | MINIMUM WIDTH 50 FEET | MINIMUM WIDTH 11 FEET |

- THIS PLAT WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT OR COMMITMENT, WHICH MAY DISCLOSE EASEMENTS AND OTHER MATTERS THAT AFFECT THE PROPERTY SHOWN HEREON. ONLY KNOWN EXISTING EASEMENTS OR RIGHTS OF WAY OF RECORD THAT WERE DISCLOSED IN PROVIDED DOCUMENTS ARE SHOWN HEREON. THIS PLAT MAY NOT INDICATE ALL ENCUMBRANCES ON THE PROPERTY.
- CURRENTLY ZONED "A(R)" - AGRICULTURAL (RURAL) DISTRICT PER THE WASHINGTON COUNTY ZONING ORDINANCE. MINIMUM YARD SETBACKS FOR NON-RESIDENTIAL, OTHER PRINCIPAL PERMITTED OR CONDITIONAL USES:
FRONT: 50 FEET REAR: 50 FEET SIDE: 50 FEET
- THE SUBJECT PROPERTY LIES WITHIN ZONE 'X' - AREA OF MINIMAL FLOOD HAZARD AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR FREDERICK COUNTY, MARYLAND, MAP NUMBER 24043C0284D, WITH AN EFFECTIVE DATE OF AUGUST 15, 2017. NO FIELD SURVEYING WAS PERFORMED TO DETERMINE THIS ZONE.
- THE IMPROVEMENTS SHOWN HEREON ARE PER A FIELD SURVEY PERFORMED BY TRIAD ENGINEERING, INC. LAST DATE OF FIELD WORK BEING DECEMBER 12, 2023.

| SYMBOL LEGEND | |
|---------------|-----------------|
| | FENCE POST |
| | GUY WIRE |
| | MAILBOX |
| | SIGN |
| | TREE, DECIDUOUS |
| | UTILITY POLE |



GRAPHIC SCALE



SURVEY PREPARED FOR:
ST. JAMES SCHOOL
ATTN: WILLIAM WIVELL
17641 COLLEGE ROAD,
HAGERSTOWN, MD 21740

SURVEY PREPARED BY:
TRIAD ENGINEERING, INC.
RONALD D. BIDLE, Jr.
MD REGISTRATION No. 21517
rbidle@triadeng.com

TRIAD ENGINEERING, INC.
1075-D SHERMAN AVENUE
HAGERSTOWN, MD 21740
PH: 301.797.8400 FAX: 301.797.2424
OFFICE LOCATIONS
MARYLAND • PENNSYLVANIA • VIRGINIA • WEST VIRGINIA

OWNER/DEVELOPER:
SAINT JAMES SCHOOL
17641 COLLEGE ROAD
HAGERSTOWN, MD 21740
301-733-9330

BOARD OF ZONING APPEALS EXHIBIT
FOR
COLLEGE OF SAINT JAMES
LIBER 328, FOLIO 82

SITUATED ALONG THE NORTH SIDE OF COLLEGE ROAD NEAR HAGERSTOWN WASHINGTON COUNTY, MARYLAND

TRIAAD
TRIAD ENGINEERING, INC.
www.triadeng.com

SHEET NUMBER:
1 OF 1

FILE NO.: 2831
JOB NO.: 03-22-0521

CADD FILE:
0322521-bza exhibit.dwg

DRAWN BY:
C.W.J.

CHECKED BY:
R.D.B.

DATE:
01/09/2024

SCALE:
1"=40'

PARCEL: 0056
ELECTION DISTRICT: 02
TAX MAP: 0062 GRID: 0001

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

TRUSTEES OF ST. JAMES SCHOOL

*

*

Appeal No.: AP2024-004

Appellant

*

*

* * * * *

OPINION

Trustees of St. James School (hereinafter “Appellant”) requests a variance to reduce the required side yard setback from 50 feet to 11 feet and a variance from the lot area requirement of three (3) acres for a proposed dormitory at the subject property. The subject property is located at 17652 College Road, Hagerstown, Maryland and is zoned Agricultural, Rural. The Board held a public hearing in this matter on January 31, 2024.

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 located at 17652 College Road, Hagerstown, Maryland. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately 4.162 acres situated on the north side of College Road. The lot contains Mattingly Hall which is a dormitory for students and two (2) dwellings which serve as faculty and staff housing.
3. The subject property is bounded to the north by farmland, to the east by railroad tracks and to the south by College Road. The adjacent property on all sides is owned by Appellant.
4. Appellants propose to construct a two-story, 26,000-square foot dormitory building on the west side of the subject property. The dormitory building will have 17

dorm rooms for students and 3 faculty apartments.

5. The existing dorm buildings are crowded based on the current student population. There are students living in triple rooms which Appellant would like to eliminate.

6. Appellant has no intention of increasing student admissions with the proposed project.

7. Appellant considered moving the western boundary line through the subdivision process, but determined that it would be costly, and would not address the lot area issues.

8. The required side yard setback for the subject property is 50 feet.

9. The required lot area for the subject property is three (3) acres for each dormitory.

10. 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 25.56.¹ “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

¹ “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because use variances are viewed as more drastic departures from zoning requirements.” *Belvoir Farms Homeowners Ass’n, Inc. v. North*, 355 Md. 259, 276 n.10 (1999) (citations omitted).

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

William Wivell represented Appellant and testified that the school is seeking to improve its dormitory offerings by reducing the number to two (2) students per dorm. Currently with the school's enrollment, there is insufficient housing which has resulted in some rooms having three (3) students. Mr. Wivell testified that the proposed new dormitory is designed to address the current crowding plan and not intended to provide for increased future admissions. When asked by the Board, Mr. Wivell explained that the decision was made to pursue the variance because moving the boundary line through subdivision was far more expensive. In addition, it would not have addressed the lot area requirements for the proposed dormitory.

The layout of the property was determined long before the adoption of the Zoning Ordinance and the imposition of lot area dimension requirements. The proposed project is necessary to the operation of the school and its students and does not confer any special benefit upon Appellant. The fact that Appellant owns the surrounding properties further mitigates any effect the project would have in the proposed location. The variance relief requested is both appropriate and necessary for the reasonable use of the subject property. The Board finds that given the conditions of the property, strict adherence to the setback and lot area requirements would result in practical difficulty.

Accordingly, the variance request to reduce the required side yard setback from 50 feet to 11 feet and a variance from the lot area requirement of three (3) acres for a proposed dormitory at the subject property are GRANTED, by a vote of 5-0. Said variance requests is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: February 29, 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: Philip Scolaro
7793 Fairplay Road
Fairplay MD 21733
Appellant: Philip Scolaro
7793 Fairplay
Fairplay MD 21733
Property Location: 7793 Fairplay Road
Fairplay, MD 21733
Description Of Appeal: Special exception for a small private cemetery.

Docket No: AP2024-005
Tax ID No: 12007949
Zoning: RV
RB Overlay: No
Zoning Overlay:
Filed Date: 01/12/2024
Hearing Date: 01/31/2024

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

Previous Petition/Appeal Docket No(s):
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 3.3 (1) M

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

Existing Use: Single Family Dwelling
Proposed Use: Private Cemetery
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.

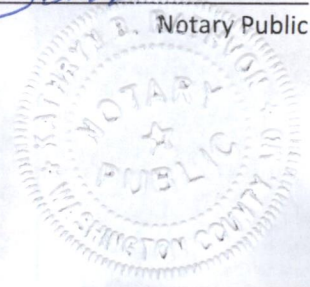
Handwritten signature of Philip Scolaro over a horizontal line, with the text 'Appellant Signature' to the right.

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 16 day of Jan., 2024.

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

Handwritten signature of Kathryn B Rathvon over a horizontal line, with the text 'Notary Public' to the right.





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: AP2024-005

State of Maryland Washington County, To Wit:

On 1/12/2024, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Philip Scolaro and made oath in due form of law as follows:

Philip Scolaro 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 01/31/2024, 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 01/16/2024 and will remain until after the above hearing date.

Philip Scolaro

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

Notary Public



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

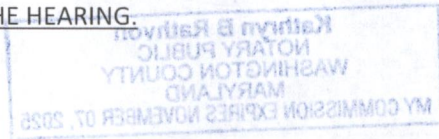
ATTENTION!

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.



To whom it may concern,

Losing our daughter, Teresa Olive, has been the most painful torment my family and I have ever endured. She was due to be born 2/11. She has 3 older sisters, Amelia, Nina, and Odetta. We had cherished the life we imagined taking care of her and experiencing life together as a family. She was to be born at home like Nina and Odetta were. We have a happy home with a garden and an old farmhouse that is filled with the joyful singing and laughter of our little girls. I believe Teresa experienced some of this while still in her mother.

We would talk to her at night and feel her push our hands while in the womb as we eagerly awaited our time together soon. When my wife realized Teresa had not moved the morning of 1/8, I was away for work. She went for an ultrasound and learned Teresa's heart was no longer beating and felt the beginning of the deepest grief we have ever experienced. I am so pained that I was not able to be with her. I returned home that night to learn not only that my youngest daughter was gone but more and more losses would be added to our grief. We could not take our time with grief and processing because Teresa's birth was on a different timeline now that she was still. We could not have Teresa at home because we could not bear the potential risk of an autopsy being imposed.

With the help of Davis Funeral home, we had the opportunity to bring Teresa home and be in the space we hoped she'd grow up in. What we thought was going to be a lifetime of memories with our little girl was condensed to a few short hours before needing to place her in the care of Davis funeral home. It is unbearable to be separated in this way. The funeral home director is a kind a gentle man who has been incredibly helpful but Teresa is not with her family, she is in the basement of a funeral home in Smithsburg. The nuanced and distinguishing difference between body and soul provide little comfort with her absence.

Our last desperate request that we beg not to compromise is to bury our tiny baby at home where her loving family awaits her return. We may not have much property but we own this land and are happy here. We have no wish for other family members to be buried here and while we do not know what the future holds, we believe a legal disinterment in the case of a family move could be more likely than an additional burial of a family member here. It is also our religious belief and practice, that we are responsible for our girls to provide the most intimate, least invasive care possible in the way they are birthed, held and in this horrible circumstance, buried. Please take all of these precious details into consideration for this approval request. I feel utterly incapable to protect my daughter in most ways at this point but beg this one request.

Amelia's , Nina's, Odetta's and Teresa's loving father,
Philip Scolaro



2

1

3

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

PHILLIP SCOLARO
Appellant

*

*

Appeal No.: AP2024-005

*

*

* * * * *

OPINION

Phillip Scolaro (hereinafter "Appellant") requests a special exception for a small private cemetery at the subject property. The subject property is located at 7793 Fairplay Road, Fairplay, Maryland and is zoned Rural Village. The Board held a public hearing on the matter on January 31, 2024.

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 located at 7793 Fairplay Road, Fairplay, Maryland. The property is zoned Rural Village.
2. The subject property consists of Appellant's residence and an accessory barn building.
3. Appellant and his wife lost their daughter at birth on January 8, 2024.
4. In accordance with their religious and personal preferences, Appellant and his wife propose to bury their daughter in a private cemetery on the subject property so that she can be close to the family.
5. The proposed burial is permitted by State law, subject to restrictions on disinterment in the event Appellant was to move. Appellant is willing to remain at the

subject property for his lifetime if necessary.

6. The proposed cemetery is for the limited purpose of keeping Appellant's daughter on the property and with family. There is no intention to expand beyond this family burial.

7. Appellant has not received any objections or concerns from his neighbors. His neighbor Linda McGrillis affirmatively supports the proposed cemetery.

8. 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. In addition, Section 25.6 sets forth the limitations, guides, and standards in exercise of the board's duties and provides:

Where in these regulations certain powers are conferred upon the Board or the approval of the Board is required before a permit may be issued, or the Board is called upon to decide certain issues, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony and data submitted, and shall hear any person desiring to speak for or against the issuance of the permit. However, the application for a permit shall not be approved where the Board finds the proposed building, addition, extension of building or use, sign, use or change of use would adversely affect the public health, safety, security, morals or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall consider any other information germane to the case and shall give consideration to the following, as applicable:

- (a) The number of people residing or working in the immediate area concerned.
- (b) The orderly growth of a community.
- (c) Traffic conditions and facilities
- (d) The effect of such use upon the peaceful enjoyment of people in their homes.

- (e) The conservation of property values.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
- (g) The most appropriate use of the land and structure.
- (h) Decision of the courts.
- (i) The purpose of these regulations as set forth herein.
- (j) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches, and the like.

With heavy heart, Appellant presented his case in support of the special exception request. He testified that the responsibility for care of his daughter, including in death is a fundamental tenet of his religious and personal beliefs. He and his wife feel strongly that an intimate burial on the subject property allows her to remain with family and allow them to emotionally heal from these tragic circumstances. Appellant testified that this request is specific to these circumstances with no intention of expanding into a traditional cemetery.

The Board finds no cause for concern with respect to the number of people residing or working in the area, traffic conditions, nearby public gatherings or the conservation of property values. There may be a slight increase in traffic as destination traffic to the subject property, but that will be limited to the specific times that events are being held. There will be no odors, gas, smoke, fumes, vibrations, noise, or glare produced. There is no evidence to suggest that this proposal will have any impact on the surrounding properties. 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).

It is hard to imagine how a family would begin to cope with the loss of a child, particularly when taken at birth. Appellant's request for a small private cemetery is reasonable and consistent with the idea of allowing people to utilize their property as

they wish. To the extent that permitting the requested cemetery will ease the pain of their loss and help the family heal, and in the absence of any adverse effects, the Board believes the special exception should be granted.

Accordingly, the request for a special exception for a small private cemetery at the subject property is hereby GRANTED, by a vote of 5 to 0.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: March 1, 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.