

BOARD OF APPEALS

April 1, 2026

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

AGENDA

AP2026-009: An appeal was filed by Carl & Leslie Rutherford for a variance from the required 50 ft. setback to 15 ft. for proposed detached garage on property owned by the appellants and located at 17423 Da Wrong Lane, Hagerstown, Zoned Agricultural Rural District.-**GRANTED**

AP2026-010: Appeal is scheduled for the April 15 hearing. Additional information will be included on the April 15 agenda.

AP2026-011: An appeal was filed by Sean & Tracy Hayden for a variance from the required 40 ft. setback from the road right-of-way to 6.5 ft. for construction of a replacement dwelling on property owned by the appellants and located at 6346 Zittlestown Road, Middletown, Zoned Preservation District.-**GRANTED**

AP2026-004: An appeal was filed by The Towers LLC for a variance from the minimum setback of a distance equaling the total height of the tower and equipment of 199 ft. to 150 ft. from the western property line on property owned by Boonsboro First Hose Fire Company and located at 3413 Rohrsersville Road, Rohrsersville, Zoned Preservation District. – **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 March 23, 2026. 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: Carl & Leslie Rutherford
17423 Da Wrong Lane
Hagerstown MD 21740

Docket No: AP2026-009
Tax ID No: 02007754
Zoning: A(R)

Appellant: Carl & Leslie Rutherford
17423 Da Wrong Lane
Hagerstown MD 21740

RB Overlay: No
Zoning Overlay:
Filed Date: 03/02/2026
Hearing Date: 04/01/2026

Property Location: 17423 Da Wrong Lane
Hagerstown, MD 21740

Description Of Appeal: Variance from the required 50 ft. setback to 15 ft. for proposed detached garage.

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 Article 5A Section 5A.7
Special Provisions 4.

Reason For Hardship:

Location would make turn around area and access to barn difficult. Location of utilities is next to existing barn. To remove trees and rocks from the wooded area beside barn would be costly.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Residential/Agricultural

Proposed Use: Detached Garage

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 Carl Rutherford

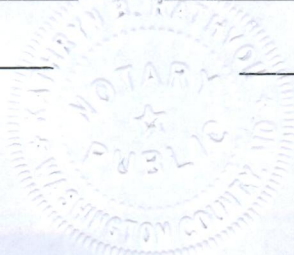
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 2 day of March, 2026.

Nov 7, 2029

My Commission Expires



Handwritten signature of Notary Public

Notary Public



WASHINGTON COUNTY BOARD OF ZONING APPEALS

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

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2026-009

State of Maryland Washington County, To Wit:

On 3/2/2026, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Carl & Leslie Rutherford and made oath in due form of law as follows:

Carl & Leslie Rutherford 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 04/01/2026, 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 03/17/2026 and will remain until after the above hearing date.

Carl & Leslie Rutherford

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

Notary Public

Nov. 7, 2029

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: BOARD of zoning
From: Carl + Leslie Rutherford

17423 PA Wagon
Hagerstown, MD 21740

2 Car garage 30^w x 32D 960
square
feet

Request 15 feet from

Property Boundary

Instead of 50 feet which would

be blocking ^{on safety} Access to and from

Home ^{and} to BARN. we would have

no turn around since for farm

equipment and vehicles. ~~Area next~~

Left front corner of Barn is underground Utilities.

Entrance Lane is raised with

Woods on left side + Farmed Land

on Right. Do not want to take

trees down due to Habitat +

Land is very ~~to~~ filled with Rock Veins.

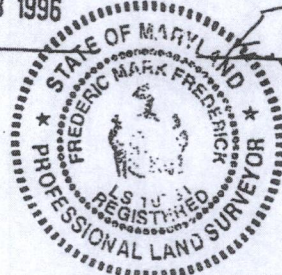
LOCATION SURVEY
FOR
LESLIE A. AND CARL M. RUTHERFORD
LOCATED AT
17423 DA WRONG LANE
HAGERSTOWN, MD

NOTE: Dwelling does not lie in the 100 year flood plain per FEMA Flood Insurance Rate Map, Community Panel No. 240070 0155A, dated May 1, 1978, Flood Zone C.

SURVEYOR'S CERTIFICATION

I hereby certify that the dwelling and/or improvements shown hereon are within the metes and bounds of the lands conveyed to Francis J. Licari and Debra S. Licari, his wife by Kathryn L. Kershner by deed dated June 29, 1987 and recorded in the Land Records of Washington County, Maryland in Liber 849, folio 1129 and that the improvements shown hereon were located by accepted field practices and include permanent visible structures and surface encroachments if any that exist on the subject property at the date of survey dated July 2, 1996. This plat is not for determining property lines, but prepared for exclusive use of present owners of property and also those who purchase, mortgage, or guarantee the title thereto at this time of settlement and as to them I warrant the accuracy of this plat. No title report furnished.

JUL 03 1996



DOWNSVILLE PIKE - MD. RTE. 632

DA WRONG LANE

Saving & Excepting, L. 587 F. 361
N 39° 21' 38" E

REMAINING LANDS
of L. 849 F. 1129
13.4 Ac. ±

839.30'
N 27° 38' 30" E 299.80'
Saving & Excepting
L. 1013 F. 1017
PARCEL A

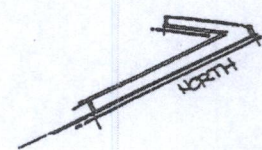
102.44'
N 05° 35' 00" W
N 29° 01' E 300'
Saving & Excepting
L. 791 F. 428
Lot 3
R=20'
A=49.5'

Saving & Excepting
L. 756
F. 1073

#17423
2 1/2 STORY
BRICK
D.W.L.G.

15 FT. ←
S 63° 01' E
330'
Proposed garage
Basin gravel lane
20' Right of Way

N 27° 38' E 300.0'
N 13° 57' E 118.72'
N 27° 21' E 380'
Saving & Excepting
L. 813 F. 120
Lot 2
Saving & Excepting
L. 708 F. 673
Lot 1



Not to
Scale

THIS DOCUMENT IS FOR THE SOLE BENEFIT AND USE OF THE PARTIES NAMED HEREIN AND IS NOT TO BE PUBLISHED OR RECORDED WITHOUT THE EXPRESS WRITTEN CONSENT OF FREDERICK, SEIBERT AND ASSOCIATES, INC.

Drawing No: 1 of 1	
Tax Map: 57-19-2	
District: 2	
Drawn By: DHH	Date: 7-3-96
Checked By: DHH	Date: 7-3-96
Scale: 1" = 200'	

FREDERICK, SEIBERT & ASSOCIATES, INC.

Carl Rutherford
Leslie Rutherford

Civil Engineers = Surveyors = Landscape Architects = Land Planners
128 South Potomac Street
(301) 791-3650
Hagerstown, Maryland 21740
(301) 416-7478
Greencastle, Pennsylvania 17225
(717) 597-1007
Fax (301) 739-4956

PA-2146-HL 2.0



BARN



**Garage
15 Feet**



Utilities drawn on picture

FOR
LESLIE A. AND CARL M. RUTHERFORD
 LOCATED AT
 17423 DA WRONG LANE
 HAGERSTOWN, MD

NOTE: Dwelling does not lie in the 100 year flood plain per FEMA Flood Insurance Rate Map, Community Panel No. 240070 0155A, dated May 1, 1978, Flood Zone C.

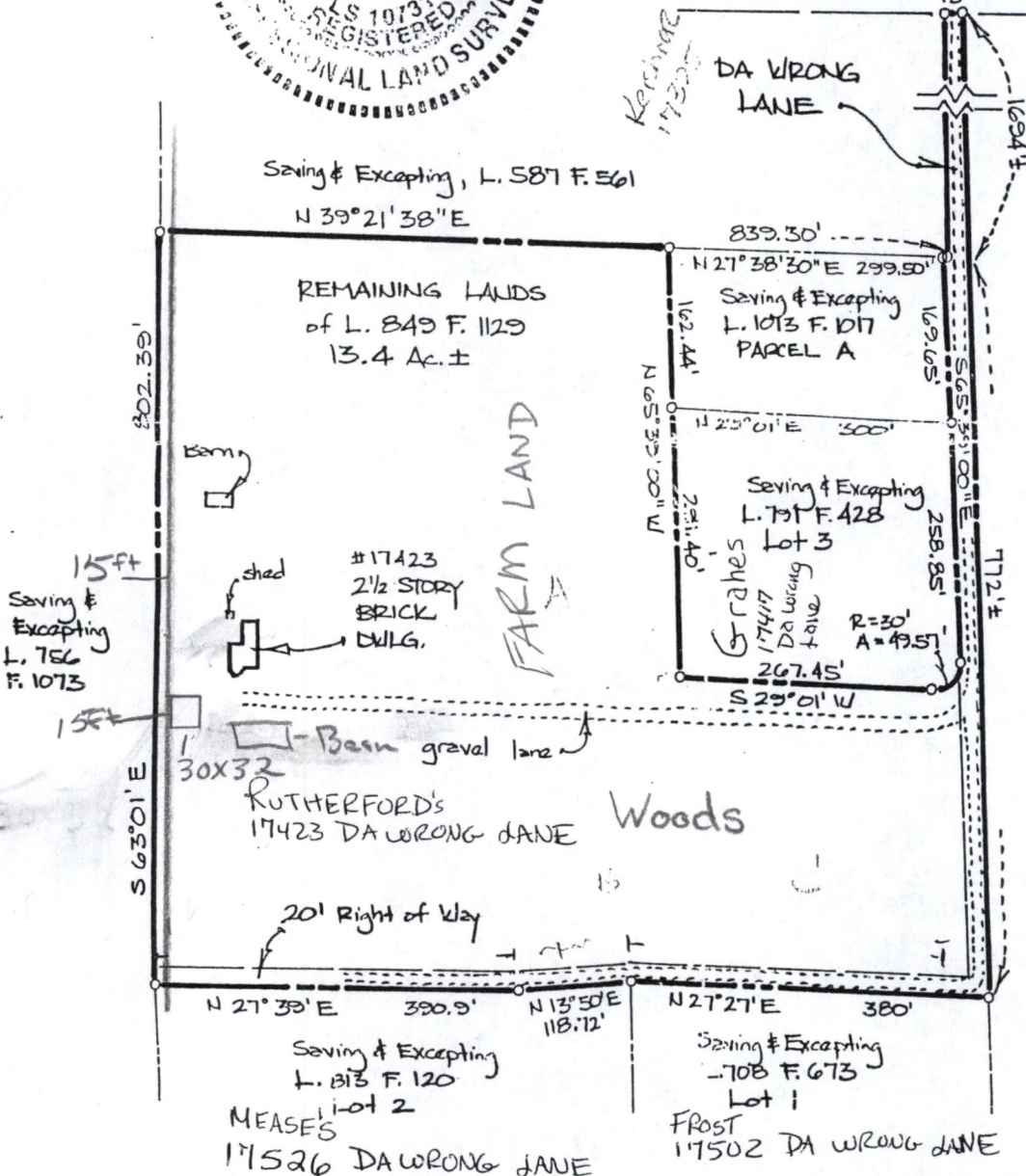
SURVEYOR'S CERTIFICATION

I hereby certify that the dwelling and/or improvements shown hereon are within the metes and bounds of the lands conveyed to Francis J. Licari and Debra S. Licari, his wife by Kathryn L. Kershner by deed dated June 29, 1987 and recorded in the Land Records of Washington County, Maryland in Liber 849, folio 1129 and that the improvements shown hereon were located by accepted field practices and include permanent visible structures and surface encroachments if any that exist on the subject property at the date of survey dated July 2, 1996. This plat is not for determining property lines, but prepared for exclusive use of present owners of property and also those who purchase, mortgage, or guarantee the title thereto at this time of settlement and as to them I warrant the accuracy of this plat. No title report furnished.

JUL 03 1996



DOWNSVILLE PIKE - MD. RTE. 632



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

CARL AND LESLIE RUTHERFORD

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Appeal No.: AP2026-009

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APPELLANTS

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OPINION

Carl and Leslie Rutherford (hereinafter “Appellants”) request a variance to reduce the required setback from 50 feet to 15 feet for a proposed detached garage at the subject property. The subject property is located at 17423 Da Wrong Lane, Hagerstown, Maryland 21740 and is zoned Agricultural, Rural. The Board held a public hearing in this matter on April 1, 2026.

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon notice to the parties and general public as required. Kathryn Rathvon provided the Staff Report indicating that proper notice of the hearing was given to adjacent property owners by letter, publication was made in the newspaper, and the subject property was properly posted.

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 17423 Da Wrong Lane, Hagerstown, Maryland. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately 13.1 acres and is improved by a residence, multiple accessory barn structures and a gazebo. The approach to the residence is a long lane that ends in a turnabout in front of a large barn and to the side of the residence.
3. There are underground utilities located to the side of the large barn. There are numerous trees and rock in other areas of the subject property.
4. Appellants suffered damage to their vehicles due to storms and hail in the past. They are seeking to protect their vehicles by storing them in a garage.

5. Appellants propose to construct a 30-foot by 32-foot detached garage building at the end of the driveway and circle, fifteen (15) feet from the property line.

6. Appellants consulted their neighbors about the project and there were no concerns or objections raised.

7. The Historic District Commission had no objection to the proposed project but wanted to ensure that Appellants that the impact to existing resources will be minimized. To that end, they reiterated that historic design requirements which will apply to this project.

8. There were no comments from other County agencies or departments.

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 as set forth in Section 25.2 and 25.56 of the Ordinance.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. Section 25.56(A).

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).

¹"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)

Pursuant to Section 5A.7, "side yard setbacks for residential use lots shall be a minimum of 50 feet for lots five (5) acres or greater in size." Normally under Section 5A.5, the side yard setback would be 15 feet. Appellant seeks a variance to the setback which would apply to smaller properties in order to construct a detached garage. Appellants testified that they looked at other locations on the property but found the proposed area to be the most practical. Adhering to the setback requirement would put the garage in front of the existing barn which would block access and interfere with large equipment turning around. They are unable to excavate or build on the other side of the large barn due to buried utilities servicing the property. Appellants also testified that elsewhere on the property would require costly tree and rock removal.

The Board finds that practical difficulty would result from strict compliance with the setback requirements. Given the topography, the location of existing buildings and underground utilities, Appellants have very few practical places to locate the proposed garage. Without relaxation of the setback, Appellant would not have the ability to construct the garage in the most logical location – at the end of the driveway. It is also clear from the testimony that Appellants considered other locations, all of which present more hardships and difficulty than the proposed location. The variance does not confer any special privilege and is consistent with the uses that other similarly situated properties enjoy. Appellant's request appears to be the minimum necessary to facilitate practical use of the property. The Board finds that relaxation of the setback requirement is necessary and remains consistent with the spirit and intent of the Ordinance. The variance request should be granted.

Accordingly, the request for a variance to reduce the required setback from 50 feet to 15 feet for a proposed detached garage at the subject property is hereby GRANTED, by a vote of 5 to 0. The variance relief is granted subject to the standard condition that the use is consistent with the testimony and evidence presented during the hearing before the Board.

BOARD OF APPEALS

By: Tracie Felker, Chair

Date Issued: April 30, 2026

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: Sean & Tracy Hayden
6346 Zittlestown Road
Middletown MD 21769
Appellant: Sean & Tracy Hayden
6346 Zittlestown Road
Middletown MD 21769
Property Location: 6346 Zittlestown Road
Middletown, MD 21769
Description Of Appeal: Variance from the 40 ft. setback from the road right-of-way to 9.5 ft. for construction of a replacement dwelling.

Docket No: AP2026-011
Tax ID No: 06008496
Zoning: P
RB Overlay: No
Zoning Overlay:
Filed Date: 03/11/2026
Hearing Date: 04/01/2026

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): AP2026-001
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 5C.5

Reason For Hardship: See justification statement

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Dwelling Proposed Use: Replacement Dwelling

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

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

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

[Handwritten Signature]
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 11 day of March, 2026.

Nov. 7, 2026
My Commission Expires

[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: AP2026-011

State of Maryland Washington County, To Wit:

On 3/11/2026, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared C.R. Rensberger Builder and Family LLC and made oath in due form of law as follows:

C.R. Rensberger Builder and Family LLC 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 04/01/2026, 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.

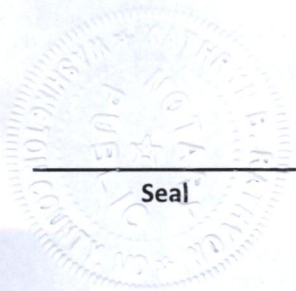
Sign(s) will be posted on 03/17/2026 and will remain until after the above hearing date.

C.R. Rensberger Builder and Family LLC

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

Notary Public

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

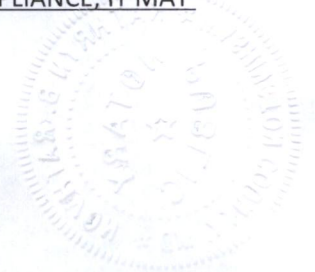
ATTENTION!

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.





BOARD OF ZONING APPEALS

OWNER REPRESENTATIVE AFFIDAVIT

This is to certify that Rose Borisow is authorized to file an appeal with the Washington County Board of Appeals for Tracy and Sean Hayden on property located 6346 Zittlestown Rd, Middletown MD 21769. The said work is authorized by Tracy and Sean Hayden the property owner in fee.

PROPERTY OWNER

Tracy and Sean Hayden

Name

6346 Zittlestown Rd

Address

Middletown MD 21769

City, State, Zip Code

x

Owner's Signature

CHARNEL M CARTER
Notary Public - State of Maryland
Frederick County
My Commission Expires Mar 7, 2026

Sworn and subscribed before me this 27 day of February, 2026.

Charnel M Carter
Title Insurance Producer
105 Swallow Pointe Court
Frederick, Maryland 21702
3003668355

Charnel M. Carter, Notary Public
Notary Public

My Commission Expires:
March 7, 2026

AUTHORIZED REPRESENTATIVE

ROSE BORISOW

Name

S. MAIN STREET

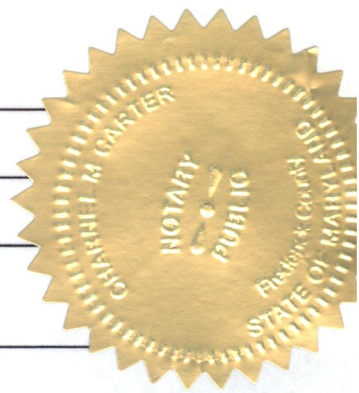
Address

WOODSBORO MD 21798

City, State, Zip Code

[Signature]

Authorized Representative's Signature



CHARNEL M CARTER
Notary Public - State of Maryland
Frederick County
My Commission Expires Mar 7, 2026

Sworn and subscribed before me this 27 day of February, 2026.

Charnel M Carter
Title Insurance Producer
105 Swallow Pointe Court
Frederick, Maryland 21702
3003668355

Charnel M. Carter, Notary Public
Notary Public

My Commission Expires:



MHBR #6677

MHIC #130127

Date: March 6, 2026

To: Washington County, Board of Zoning Appeals

From: Joel Rensberger

Cc: Rose Borisow

Regarding: Variance Request: 6346 Zittlestown Rd., Middletown, MD (**changes in bold below**)

Dear Chairperson and Members,

Thank you for considering our **revised** appeal. On behalf of Sean and Tracy Hayden, longtime Washington County owners and residents, we respectfully ask that you allow us to rebuild their home closer to the road than the zoning ordinance allows for new construction typically, but farther back than the current home.

The home we seek to replace is a failing 1915 structure with lead paint, lead-soldered plumbing work, and has a septic system that currently discharges into the creek. It's time it be addressed, is our feeling.

This request is unique; our project cannot comply with the ordinance. This home predates the zoning ordinance. If forced to comply with the letter of the ordinance, an undue hardship would immediately befall the family. A hardship such that we cannot proceed forward.

A. Practical Difficulty

Strict compliance would push the new planned home further into the hill, adding 17 feet of vertical foundation construction to the foundation. As such, a new 2nd lower story and an unimaginable number of steps for the Owners would be required. Strict compliance would add roughly 125k to the cost of the project, as well as trigger additional SWM/ESD requirements of unknown cost (as of this writing)

Denying the variance would do substantial injustice to the applicant. Such would render the project unbuildable for their finances. Such would mean that we cannot remove and replace the family home with a new suitable and safe dwelling.

Granting of the variance will be consistent with the spirit and intent of the zoning ordinance. The family site plan places the new home **at its current location but further from the road**, replaces the septic system, and drills a new well. As is typical for old Washington County, it remains close to the road, but further back than today, consistent with zoning spirit.

B. Undue Hardship

Strict compliance does restrict the Applicant from securing an undue return and reasonable use. The Hayden family seeks to replace their family home with a new safe one. Zoning setbacks of today, if strictly applied, mandate a 17' rise in foundation costs, which makes the project fail for them/unbuildable.

The hardships are unique to this property (when compared to most new construction). The current home is just 24' from the center of road, **with concrete steps 18" from pavement. This new plan has the home 31.8 feet from the center of the road (or 19.3 feet from the edge of right-of-way). The new stairs planned are to be 22'+/- from the center of roadway (or 9.5' from the edge of right-of-way).** This district and this road are replete with homes very close to the road, we seek to improve in all regards.

The hardship is not the result of any action by the applicant, except for that they seek to improve their living condition, for themselves and their daughters.



Joel Rensberger

Owner/Builder

Joel@CERensbergerBuilder.com

1 South Main Street, Woodsboro, MD 21798 (301) 370-4042

PAGE 1 OF 1
 DRAWN DATE
 FILE: L:\P\2171\2171.dwg
 PROJ. NO. 25-033
 SCALE: 1" = 100'
 DRAWING DATE: 10/7/2025
 FIELD DATE: 4/22/2025

6FFA71507C214DB
 Doc No. 21701, Exp. 07/1/2027
 Documented by:

 L.2540, F.689
 SITUATED AT 6346 ZITTLSTOWN ROAD
 WASHINGTON COUNTY, MARYLAND

SITE PLAN
 L.2540, F.689
 SITUATED AT 6346 ZITTLSTOWN ROAD
 WASHINGTON COUNTY, MARYLAND

LAVELLE & ASSOCIATES
 INCORPORATED
 PLANNERS • SURVEYORS
 P.O. Box 372, Friendsville, Maryland 21725
 TEL: (301) 988-9722, FAX: (301) 988-9766

OWNERS
 SCAN & TRACY HAYDON
 6346 ZITTLSTOWN ROAD
 ROCKLETON, MD 21789

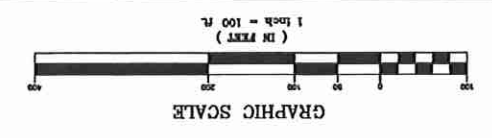
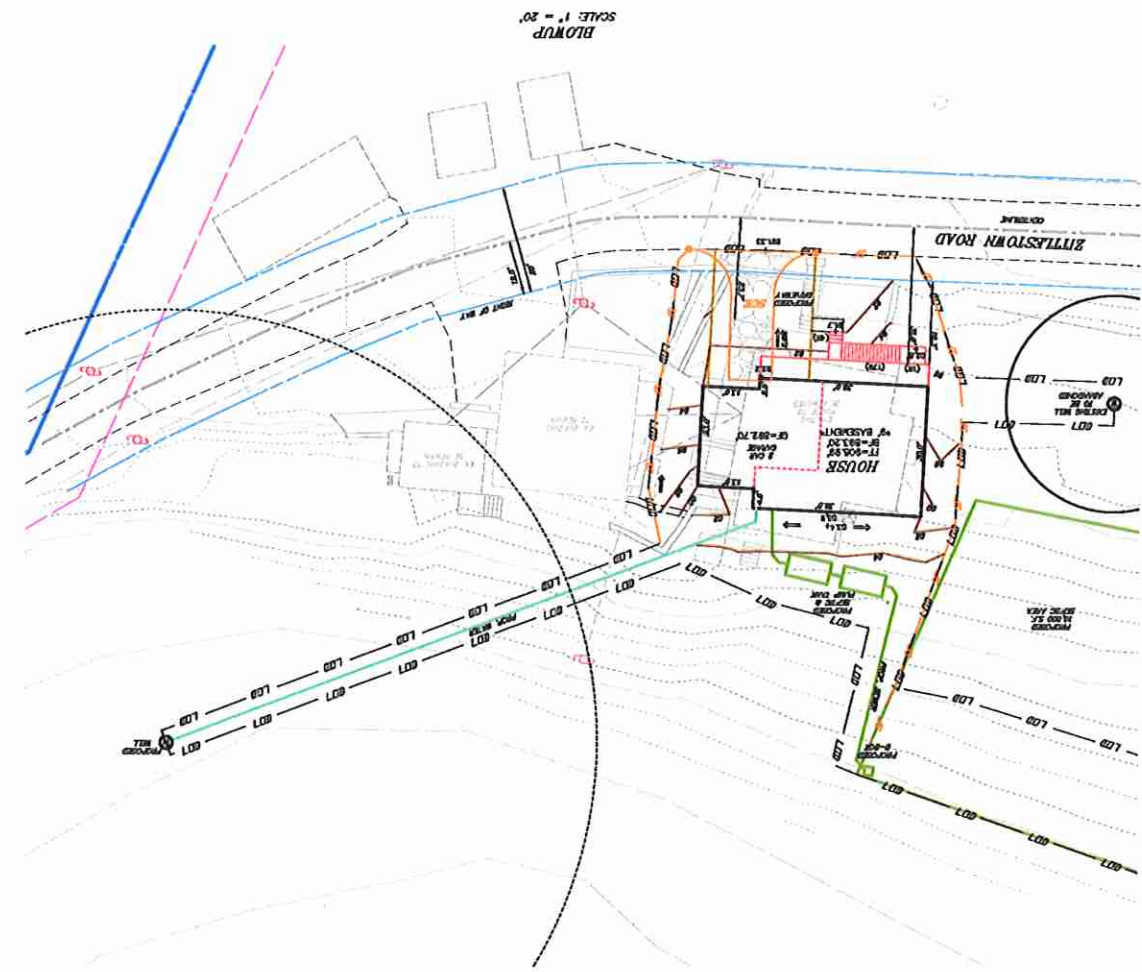
A LICENSEE EITHER PERSONALLY
 PREPARED THIS PLAN OR HAS IN
 RESPONSIBLE CHARGE THE
 PREPARATION AND THE SURVEYING WORK
 REFLECTED IN IT. ALL IN COMPLIANCE
 WITH REQUIREMENTS SET FORTH IN
 REGULATION OR ORDER OF THE BOARD
 OF LAND AND RESOURCES (COMAR)

FIELD DATE: 4/22/2025
 DRAWING DATE: 10/7/2025
 SCALE: 1" = 100'
 PROJ. NO. 25-033
 DRAWN DATE

SITE PLAN
 L.2540, F.689
 SITUATED AT 6346 ZITTLSTOWN ROAD
 WASHINGTON COUNTY, MARYLAND

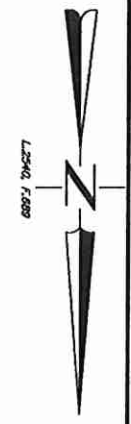
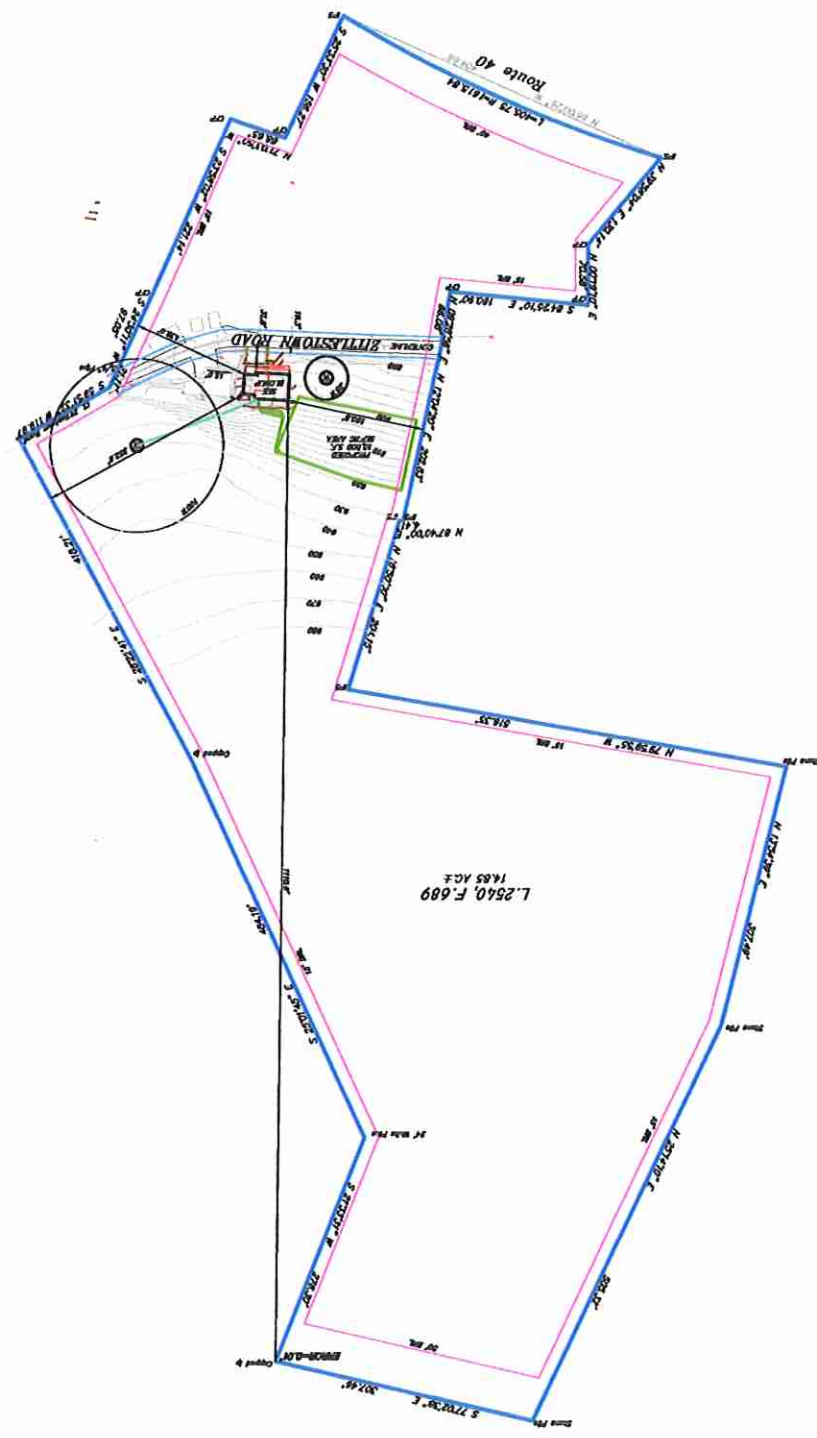
LAVELLE & ASSOCIATES
 INCORPORATED
 PLANNERS • SURVEYORS
 P.O. Box 372, Friendsville, Maryland 21725
 TEL: (301) 988-9722, FAX: (301) 988-9766

ADJACENTS



NOTES:

- CURRENT DEED REFERENCE: L2540 F.689
- EXISTING PROPERTY BASED ON FIELD SURVEY CONDUCTED BY LAVELLE & ASSOC. INC. ON 4/22/2025.
- THE PROPERTY OF THE PROPERTY SHOWN IN THIS FLOOD HAZARD ZONE X (ANNUAL FLOOD HAZARD OUTSIDE THE STRIP OR 100-YEAR FLOOD AREA) & THE 100-YEAR FLOOD HAZARD OUTSIDE THE STRIP OR 100-YEAR FLOOD AREA. FOR THIS MAP NUMBER 02-PR0001-ANNUAL-CHANCE ON 500-YEAR FLOOD. FOR THIS MAP NUMBER 02-PR0001-ANNUAL-CHANCE ON 500-YEAR FLOOD. FOR THIS MAP NUMBER 02-PR0001-ANNUAL-CHANCE ON 500-YEAR FLOOD.
- THE PORTION OF THE PROPERTY SHOWN DOES NOT CONTAIN ANY WEIRADS PER US FISH AND WILDLIFE SERVICE NATIONAL WEIRADS INVENTORY.
- EXISTING UTILITY LOCATIONS NOT KNOWN, UNLESS SHOWN.
- NO SITE INVESTIGATIONS WERE PERFORMED AS PART OF THIS DESIGN. IT IS RECOMMENDED THAT A GEOTECHNICAL ENGINEER BE CONSULTED TO VERIFY BUILT THE PROPOSED IMPROVEMENTS AS SHOWN ARE SATISFACTION FOR THE SITE.
- ALL RISERS SHOWN ARE ASSUMED TO BE 6" HIGH.
- STORMWATER TREATMENT METHOD:
 STORMWATER TREATMENT TO BE PROVIDED USING A COMBINATION OF ROOFTOP CONNECTED AS SHOWN & NON-ROOFTOP FOR THE PAVED SURFACES (DRIVEWAY/SIDEWALK).
- STORMWATER DESIGN CRITERIA:
 1. STREET FLOW MUST BE MAINTAINED IN AREAS RECEIVING DISCONNECTED RUNOFF. 2. STORMWATER TREATMENT TO BE PROVIDED USING A COMBINATION OF ROOFTOP CONNECTED AS SHOWN & NON-ROOFTOP FOR THE PAVED SURFACES (DRIVEWAY/SIDEWALK).
- SHOULD ALSO PROVIDE DISCONNECTED RUNOFF RECORD COMPLETED USING STONES, TRAPERS, OR CARBON BROWS.
- CONSTRUCTION SOAKING THE SURFACE OR ROTATING THE SOIL TO A DEPTH OF FOUR TO SIX INCHES SHALL BE PERFORMED TO ENSURE PERMEABILITY. ADDITIONALLY, ADDITIONALLY.
- ABSORPTIONS MAY BE NEEDED FOR THIN CLAYEY SOILS.



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

SEAN AND TRACY HAYDEN

* **Appeal No.: AP2026-011**

*

APPELLANTS

*

*

* * * * * * * * * * * *

OPINION

Sean and Tracy Hayden (hereinafter “Appellants”) request a variance to reduce the required setback from road right-of-way from 40 feet to 9.5 feet for construction of a replacement dwelling at the subject property. The subject property is located at 17423 Da Wrong Lane, Hagerstown, Maryland 21740 and is zoned Agricultural, Rural. The Board held a public hearing in this matter on April 1, 2026.

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon notice to the parties and general public as required. Kathryn Rathvon provided the Staff Report indicating that proper notice of the hearing was given to adjacent property owners by letter, publication was made in the newspaper, and the subject property was properly posted.

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 6346 Zittlestown Road, Middletown, Maryland 21769. The subject property is zoned Preservation.
2. Zittlestown Road is a narrow, unlined road which has no shoulder or additional room on either side of the roadway. The road is 25 feet wide and there are areas, including the subject property where trees, shrubbery and other elements encroach into the roadway.
3. Zittlestown Road does not have a platted right-of-way with the County.
4. The subject property consists of approximately 14.85 acres situated on both sides of Zittlestown Road as it bends and traverses up the mountain. The subject property is

improved by an existing dwelling which was constructed in 1915 and needs repair. The dwelling has approximately 2,700 square feet of living space and is located so close to the roadway that the front steps land at the edge of the pavement. There are also multiple existing accessory buildings located to the right of the dwelling.

5. The subject property has a steep grade that increases from the home site toward the rear of the property.

6. Appellant proposes to tear down the existing dwelling and construct a new home. The home will be designed to bring the driveway off of Zittlestown Road to a garage underneath the living space.

7. Appellant previously sought a variance to reduce the setback to 6 feet for construction of the new home with the steps extending from the front door to the roadway. That appeal was denied in Case No. AP2026-001.

8. Appellant has changed the design of the home and property since the last appeal. The proposed dwelling has been moved 60 feet west and pushed back several feet from the roadway. The front steps are now planned to run parallel to the front of the home.

9. The Board received one (1) letter of opposition from Gary Godlove who stated that proposed project was too close to the road and created unsafe conditions for motorists.

10. There was no opposition presented during the hearing for this appeal.

Rationale

Section 25.7 of the Zoning Ordinance

Pursuant to Section 25.7 of the Zoning Ordinance, "if an application is disapproved, thereafter the Board shall take no further action on another application for substantially the same proposal, on the same premises, until after twelve (12) months from the date of such disapproval." In this case, Appellants requested the current variance relief almost immediately after being denied in the prior appeal. The Board must first decide whether this request is "substantially the same" as the previous request.

Appellants offered three (3) distinct reasons that this request was substantially different from the prior appeal. First, the proposed dwelling has been moved 60 feet to the west and is now in a different location on the property. Second, the house has been pushed back several feet, changing its juxtaposition to Zittlestown Road. Lastly, the front steps have

been turned ninety (90) degrees to run parallel with the dwelling. While it is true that Appellants' request has only changed by 3.5 feet, the effect of the setback is much different. By relocating the proposed dwelling further west and towards the mountain, Appellants have materially changed the impact as to the roadway and neighboring properties. The analysis of the setbacks is different, as the house is no longer situated right on the bend in the roadway. Based on the totality of the circumstances, the Board finds that Appellants' request herein is not substantially the same proposal as the previously denied request. Appellants' variance request may proceed.

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.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. Section 25.56(A).

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).

Pursuant to Section 5C.5 of the Zoning Ordinance, the front yard setback for the subject property is 40 feet from the road right-of-way. Appellants presented testimony

¹ "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)

through their homebuilder, Joel Rensberger, about the project. He testified that they are seeking to replace the existing home which is in disrepair, with a similarly sized new home. Mr. Rensberger testified that the changes made to the design help to push the home further from the road and avoid having the front steps land so close to passing traffic. In addition, the movement of the home and driveway apron creates better sight distance for the property. Mr. Rensberger believes that this design improves the impact on the property and traffic conditions and also the extent to which design changes can be made and maintain the intent of the project.

The Board finds that practical difficulty would result from strict compliance with the setback requirements. Given the topography, the location of existing buildings and the roadway, Appellants have very few practical places to locate the proposed new dwelling. Without relaxation of the setback, Appellant would not have the ability to construct the new home and correct the current state of the property which is in disrepair. After hearing the Board's concerns in the prior appeal, Appellants have carefully considered the changes to the design to mitigate those concerns and improve the property. The variance does not confer any special privilege and is consistent with the uses that other similarly situated properties enjoy. Appellant's request appears to be the minimum necessary to facilitate practical use of the property. The Board finds that relaxation of the setback requirement is necessary and remains consistent with the spirit and intent of the Ordinance. The variance request should be granted.

Accordingly, the request for a variance to reduce the required setback from road right-of-way from 40 feet to 9.5 feet for construction of a replacement dwelling at the subject property is hereby GRANTED, by a vote of 5 to 0. The variance relief is granted subject to the standard condition that the use is consistent with the testimony and evidence presented during the hearing before the Board.

BOARD OF APPEALS

By: Tracie Felker, Chair

Date Issued: April 30, 2026

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: Boonsboro First Hose Fire Company
Appellant: The Towers, LLC
Property Location: 3413 Rohrersville Road
Description Of Appeal: Variance from the minimum setback of a distance equaling the total height of the tower and equipment of 199 ft. to 150 ft. from the western property line.

Appellant's Legal Interest In Above Property: Owner: No, Lessee: No, Other:
Contract to Rent/Lease: Yes, Contract to Purchase: No
Previous Petition/Appeal Docket No(s): AP2025-004
Applicable Ordinance Sections: Washington County Zoning Ordinance Section 4.22 Commercial Communication Towers, A.
Reason For Hardship: Larger than normal size of the road right-of-way
If Appeal of Ruling, Date Of Ruling:
Ruling Official/Agency:
Existing Use: Fire Station, Proposed Use: Commercial Communication Tower
Previous Use Ceased For At Least 6 Months: Area Devoted To Non-Conforming Use - Existing: Proposed:

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

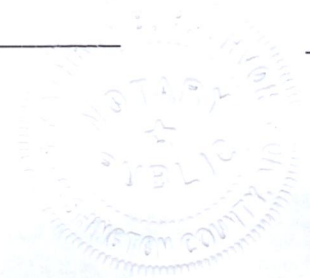
[Signature]
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 12 day of Feb., 2026.

Nov. 7, 2029
My Commission Expires

[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: AP2026-004

State of Maryland Washington County, To Wit:

On 2/12/2026, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Saul Ewing LLP and made oath in due form of law as follows:

Saul Ewing LLP 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 03/04/2026, 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 02/17/2026 and will remain until after the above hearing date.

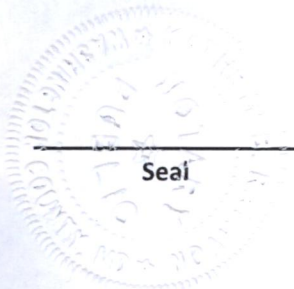
Saul Ewing LLP KR

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

Notary Public

Nov. 7, 2029

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

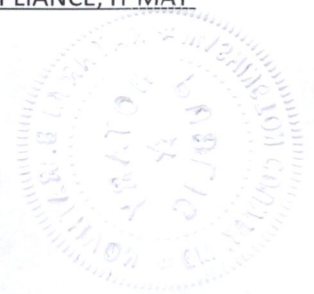
ATTENTION!

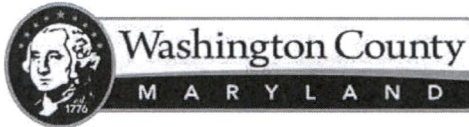
Posting Instructions

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.





BOARD OF ZONING APPEALS

80 West Baltimore Street | Hagerstown, MD 21740 | P: 240.313.2460 | 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 3417 Rohrsersville Road, Rohrsersville, MD 21779

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:
Ordinance § 4.22(A)(1)

Specify the particular requirement(s) from which a variance is desired in that section or subsection:
The Applicant is requesting a variance to reduce the setback of 199' (the height of the proposed monopole) from 199' to 150' from the western parcel boundary due to an abnormally large state-owned right-of-way.

Describe the nature and extent of the desired variance from Ordinance requirements: listed above:
The proposed monopole will be 150' from the western parcel boundary, but 262' from the edge of Rohrsersville Road. There is no privately owned parcel or dwelling in the right-of-way. If the right-of-way was not abnormally large, no variance would be required.

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

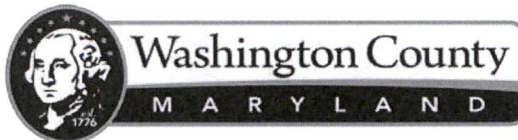
If yes, list docket number(s): BZA Appeal No. AP2025-004

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
Douglas.sampson@saul.com
Email of Appellant

Saul Ewing LLP, 1001 Fleet Street, 9th Floor,
Baltimore, MD 21202
Address and of Appellant
410-332-8661
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

OWNER REPRESENTATIVE AFFIDAVIT

This is to certify that The Towers, LLC, Saul Ewing LLP, and Site Link Wireless, LLC
is authorized to file an appeal with the Washington County Board of Appeals for
a variance of 49' from the setback restrictions set forth in Ordinance Sect. 4.22(A)(1) _____ on property
located on proeprty owned by the Boonsboro F.D. at 3417 Rohrersville Road, Rohrersville, MD 21779
The said work is authorized by _____
the property owner in fee.

PROPERTY OWNER

The First Hose Company of Boonsboro
Name
3417 Rohrersville Road
Address
Rohrersville, MD 21779
City, State, Zip Code
George Amyle, President
Owner's Signature

Sworn and subscribed before me this 11 day of February, 2026

Kimberly Adkins
Notary Public

My Commission Expires 7-8-2027

AUTHORIZED REPRESENTATIVE

Douglas A, Sampson, Saul Ewing LLP
Name
1001 Fleet Street, 9th Floor
Address
Baltimore, MD 21202
City, State, Zip Code
Douglas A. Sampson
Authorized Representative's Signature

Sworn and subscribed before me this 11th day of February, 2026

Lynne Mello-Hickok
Notary Public



My Commission Expires

747 Northern Avenue Hagerstown, MD 21742 240.313.2430 240.313.2461

My Commission Expires 2/7/29

**Appeal for a Special Exception and Variances
to Construct a 199' Monopole Telecommunications Facility
at 3417 Rohrersville Road, Rohrersville, Maryland 21779**

Adjacent Parcel Mailing List

Owner(s)	Parcel ID	Mailing Address
Alice Orzechowski Scott Mitcell Hoyman Jr.	08-009146	20312 Townsend Road, Rohersville, MD 21779
Mark Layton	08-002703	20327 Townsend Rd., Rohrersville, MD 21779-1250
Kody Lucero Kimberly Kerdthap Lucerdo	08-013462	3443 Rohrersville Rd., Rohrersville, MD 21779-0000
Pamela Denise Shaw Loren Eugene Shaw Jr.	08-003246	20331 Townsend Rd. Rohrersville, MD 21779-1250
Kody Lucero Kimberly Kerdthap Lucerdo	08-014019	3443 Rohrersville Rd. Rohrersville, MD 21779
Carl L Palmer Jr. Destinee L Palmer	08-012830	20402 Gap Ct. Rohrersville, MD 21779-0000
Jeffrey A. Hutzell Joann Hutzell	08-013322	3345 Gapland Rd. Rohrersville, MD 21779-1206
Jeffrey A. Hutzell Joann Hutzell	08-005087	3345 Gapland Rd. Rohrersville, MD 21779-1206
Alice Orzechowski Scott Mitcell Hoyman Jr.	08-005117	20312 Townsend Road, Rohersville, MD 21779
Pleasant Valley Baptist Church	08-011982	3346 Gapland Rd. Rohrersville, MD 21779-1205
Charlotte J Mullendore, et al Elizabeth A. Nemanic	08-006709	1141 Chaucer Dr. Greensburg, PA 15601
Odella Diane Hagan Jones	08-007721	3416 Gapland Rd. Gapland, MD 21779-1207
Fitzgerald Family Revocable Living Trust James F. Fitzgerald, Trustee	08-012814	3452 Kaetzel Rd. Rohrersville, MD 21779-1225

**Statement of Justification in support of Appeal for Variance from Setback Requirement
for a 199' Monopole Telecommunications Facility
at 3417 Rohrersville Road, Rohrersville, Maryland 21779**

Applicant: The Towers, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, Florida 33487
561-948-6367

Property Owner: Fire Co. Boonsboro Fire Hose
5 Saint Paul Street
Boonsboro, Maryland 21713-1319

Representative: Douglas A. Sampson, Saul Ewing LLP
1001 Fleet Street, 9th Floor
Baltimore, MD 21202
(410) 332-8661
Douglas.Sampson@saul.com

Renée Frustaci, Site Link Wireless, LLC
(410) 299-4364
rfrustaci@sitelinkwireless.com

Address: 3417 Rohrersville Road, Rohrersville, Maryland 21779
Jurisdiction: Washington County, Maryland
District: 08
Parcel Tax Acct #: 013454
SDAT Property Info: Map 0084, Grid 0001, Parcel 0329
Lot Size: 7.26 Acres
Zoning: P (Preservation)
Current Use: Exempt Commercial – Fire Station

Pursuant to the Washington County Zoning Ordinance (the “Ordinance”) § 25.56 The Towers, LLC d/b/a Vertical Bridge (“Applicant”), by its agents Saul Ewing LLP and Site Link Wireless, LLC, hereby requests a variance from the setback requirements set forth in Ordinance § 4.22(A)(1). The Applicant is building a new telecommunication facility that includes a 199’ monopole (the “Facility”) on a portion of property located at 3417 Rohrersville Road, Rohrersville, Maryland 21779, Tax ID# 08013454 (the “Property”). This honorable Board granted a special exception for the Facility in BZA Appeal No. AP2025-004.

The Applicant requests a variance from the setback from the western Property boundary. Under Ordinance § 4.22(A)(1), the proposed tower should be set back from all property lines a distance equal to the height of the tower (199’). Here, the Facility is setback 262 feet from the edge of Rohrersville Road to the west. However, due to an abnormally large state-owned right-of-way (approximately 125’ from the road’s centerline), the County determined the western boundary of the parcel is 150’ from the Facility. The Applicant requests a setback variance of 49 feet, for the Facility to be located 150’ from the Property line – but 262 feet from Rohrersville Road.

The Applicant respectfully requests that the Washington County Board of Zoning Appeals approve the requested variance from the setback requirements in Ordinance § 4.22(A)(1). This document and attached Exhibits provide justification for the requested variance.

EXHIBITS

- Exhibit 1: Board of Zoning Appeals Order No. AP2025-004
- Exhibit 2: Letter of Support- The First Hose Company of Boonsboro, Inc.
- Exhibit 3: Site Plans in 8.5” x 11”
- Exhibit 4: Engineering Certification Letter
- Exhibit 5: Letter from Washington County Department of Planning

I. The Approved Special Exception and Variances

On May 1, 2025, this honorable Board issued an opinion (“Opinion”) granting a special exception and two setback variances. (*See Board of Zoning Appeals Order No. AP2025-004 attached as **Exhibit 1***). In the Opinion, the Board accepted the testimony of the Appellant’s engineers that the fall radius in the result of a catastrophic failure was 150 feet, and was unlikely to exceed 100 feet. (*See Ex. 1, at 3*). The Board found that “that the proposed use is consistent with the purpose and vision of the Ordinance.” (*See Ex. 1, at 5*). The Board also made a factual finding that the Facility “is intended to address a gap in coverage that exists between the mountain ridges and along the Route 67 corridor.” (*See Ex. 1 at 2*).

In approving the variances, the Board found that:

The subject property is oddly shaped and shallow, with boundary lines cut at angles and juxtaposed to adjacent properties. The existing fire station building is located toward the middle of the property and the proposed communications facility would be located in close proximity to avoid disruption to the land, and to maximize distance from the surrounding properties. . . there is no location where this commercial communications facility could be constructed that would avoid the need for variance relief.

(*See Ex. 1 at 7-8*).

The Property is owned by the Boonsboro Fire Department, which has authorized the Applicant and its agents to pursue this Variance and any other zoning relief, permits, or applications required. The Property is home to Station 8 of the Boonsboro Fire Department. The Property is zoned Preservation (P) and is currently an exempt commercial use as a fire station.

The First Hose Company of Boonsboro wants the new Facility to improve wireless and broadband services for first responders. The Fire Department has expressed that wireless coverage is inadequate in this portion of Washington County, which leads to failed or dropped called by people who may be in need of emergency assistance. (*See Letter of Support- The First Hose Company of Boonsboro, Inc., dated March 31, 2025 attached as **Exhibit 2***). “The proposed tower’s location next to the station ensures it will be appropriately situated for optimal use and have

minimal impact on the surrounding areas.” (See Ex. 2). The improved wireless and broadband services will also enhance the Fire Department’s own communications infrastructure to respond to emergency situations.

II. The Proposed Telecommunications Facility

The Facility consists of a 199’ tall monopole (195’ pole, with a 4’ lightning rod) within a 50’ x 50’ (2,500 square feet) equipment compound surrounded by an 8’ tall fence (7’ chain link fence with barbed wire on top). (See Site Plan attached as Exhibit 3 at C-2 and C-3). The monopole will allow Verizon Wireless to locate its antennas with a centerline of 190’ above ground level (AGL) and will accommodate up to three future carriers to locate antennas at 180’ AGL, 170’ AGL, and 160’ AGL. (See Ex. 3 at C-3). The Facility will be built on already-graded land on the parcel and will be adjacent to the existing fire house building which will minimize the amount of land disturbance. The Facility will utilize and expand the existing utilize paved accessway to access the Facility and reduce the impervious surface. (See Ex. 3 at Z-3).

The Property is an ideal location for the Facility given its location and zoning district. The Property is a non-residential use in the middle of an area of residential and agricultural zoning districts, predominantly composed of single-family homes and farmland.

The Applicant’s engineer certified that the tower will be designed such, that in the unlikely case of a catastrophic failure, the tower would fall within a radius of 150 feet and would pose no risk to adjacent properties or buildings. (See Engineering Certification Letter attached as Exhibit 4). The Facility will have no adverse impact on the health, safety, or welfare of residents or workers in the area. The Facility will be free of odors, fumes, light, glare, and noise.

III. Requested Variance

Because the Facility will be located 262 feet from Rohrsersville Road, the Applicant believed it complied with setbacks to the west. On December 19, 2025, the Applicants received a letter from the Washington County Department of Planning & Zoning rescinding the site plan approval (SP-25-029) for the Facility, because it found that the Facility is only 150 feet from the western border of the Property. (See Letter from Washington County Department of Planning, dated December 19, 2025 attached as Exhibit 5).

The proposed Facility is 262 feet from Rohrsersville Road. Due to an abnormally large 250 wide state-owned right-of-way (approximately 125 feet to either wide of the centerline of Rohrsersville Road), the County made a finding that the distance from the western boundary of the Property is only 150 feet.¹ The Boonsboro Fire Department maintains the 112 feet of grass and land between its parcel boundary and Rohrsersville Road and obtains ingress and egress to the fire

¹ There is an argument that the Facility already complies with the Ordinance. Section 4.22(A)(1) reads: “Subject to a minimum setback of a distance equaling the total height of the tower and equipment. The setback shall be measured from the base of the tower to the boundary line of the property owned, leased, or **controlled by easement by the applicant.**” *See* Ordinance § 4.22(A)(1) (emphasis added). The Boonsboro Fire Department controls the grassy area between its western Property boundary and the edge of Rohrsersville Road, including cutting the grass, obtaining ingress and egress over the right-of-way, and having a sign in the right-of-way. However, in order to avoid any doubt, the Applicant agreed to submit this appeal for a variance.

station through this right-of-way. The Applicant requests a variance reducing the required setback from the western Property boundary by 49 feet from 199 feet to 150 feet. The Applicant is requesting a variance from the setback requirements of Ordinance § 4.22(A)(1): a reduction of the 1-to-1 height setback (199' tower height) from the western Property boundary to 150 feet. The Facility meets all other setback requirements set forth in Ordinance § 4.22(A)(1).

Due to the shape of the parcel, there is no place on the Property where the proposed Facility can meet all required setbacks in Ordinance § 4.22(A). The location of the proposed Facility was chosen to be adjacent to the existing fire station, which limits the area of disturbance and reduces visual impact on the surrounding area. (*See Ex. 3*). The Applicant considered alternative locations on the parcel, but no location would have completely eliminated the need for variances.

IV. Compliance with Ordinance Section 25.56

Section 25.56 Variances

A variance may be granted by the Board upon a showing of criteria of practical difficulty or undue hardship described below respectively:

A. Practical Difficulty

1. Strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

- **Applicant's Response:** A telecommunications facility is permitted in the P (Preservation) district with a special exception, which has already been approved by this honorable Board. (*See Ex. 1*). The Board has already found that there is no location on the Property where the proposed Facility could meet all setbacks and, therefore, not require at least one variance. (*See Ex. 1 at 7-8*). The abnormally large state-owned right-of-way also creates a practical difficulty. The Facility will be set back 262 feet from Rohrersville Road. The strip of land between Rohrersville Road and the western boundary of the Property is state owned, uninhabited, and undeveloped.

2. Denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and

- **Applicant's Response:** Requiring strict compliance with the Code would cause substantial injustice to the Applicant and would likely eliminate the proposed Facility from ever being built. Indeed, the Board previously approved two variances from the RV district and the nearest dwelling. The requested variance does not affect any private property owner. The variance relief requested, reduces the setback from a state-owned right-of-way with no building or development of any kind. The right-of-way is unusually large (125' from the centerline of the roadway). If the right-of way was typical in Maryland (~30 feet from the centerline), no variance would be required – which is why no variance was originally requested. The requested relief will cause no harm or adverse effect. The Applicant's engineers have confirmed that the fall zone for

the Facility is 150 feet. (*See Ex. 4*). In the unlikely event of a catastrophic failure, the proposed monopole would not fall outside of the boundary of the Property.

3. *Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare.*

- **Applicant's Response:** Granting the requested variance would observe the spirit of the Ordinance. The adjacent state-owned right-of-way has no building and no development. It is maintained by the Boonsboro Fire Department and the fire department uses the strip of land for ingress and egress to its Property. Therefore, there is no adverse impact to any adjacent property owners if the requested variance is granted. This area of Washington County has a significant need for improved emergency and non-emergency wireless services. (*See Ex. 1*). Bringing necessary emergency and non-emergency communications services to the area provides a significant benefit to secure public safety and welfare.

B. *Undue Hardship*

1. *Strict compliance with the Ordinance would prevent the applicant from securing a reasonable return from or to make reasonable use of the property; and*

- **Applicant's Response:** Strict compliance with the setback provisions of Ordinance § 4.22(A)(1) will likely prevent the Applicant from building the Facility. The height of the Facility (199') is necessary to bring adequate emergency and non-emergency wireless services to this area of Washington County. As testified to in the special exception application, a reduced height would not meet Verizon's coverage needs and would render co-location opportunities moot. If the variance is denied, the Facility is unlikely to be built. Additionally, the abnormally large right-of-way would eliminate a reasonable use of the Property.

2. *The difficulties or hardships are peculiar to the property and contrast with those of other property owners in the same district; and*

- **Applicant's Response:** The Property is unique in that it is home to the Boonsboro Fire Department. It provides a location for a telecommunications Facility on a parcel that has a non-residential use surrounded by other residential properties. Locating the Facility on the fire department's Property will increase emergency and non-emergency communications for the community including the first responders located at the Property. It also provides a location that is a public use, rather than imposing the burden on a privately owned parcel. There is no location on the Property where the Applicant can proceed without any variances. (*See Ex. 1 at 7-8*). The difficulties are also peculiar to this Property due to the abnormally wide state-owned right-of-way. If the right-of-way was typical in Maryland (~30 feet from the centerline), no variance would be required..

3. *The hardship is not the result of the applicant's own actions.*

- **Applicant's Response:** The hardship is not the result of the applicant's actions. The Applicant choose a location to minimize the variance requests and reduce the burden on adjacent properties to the maximum extent. The existence of an unusually large state-owned right-of-way pre-dates the Boonsboro Fire Department's ownership of the parcel. Were the right-of-way a typical thirty feet from the road's centerline, no variance would be required here. The Property is unique in that there is no location on the Property where the proposed Facility could be located to meet a setback from the state-owned right-of-way, and meet (or maximize) the other required setbacks and approved setback variances.

VII. Conclusion

The Applicant respectfully requests that the Washington County Board of Appeals grant the requested Variance for reduced setback from the western Property boundary. We look forward to presenting this and additional information as necessary at an upcoming hearing, and improving the wireless services for the residents, businesses, and visitors to Washington County. If you need further information, please contact our zoning attorney Doug Sampson at 410-332-8661 or douglas.sampson@saul.com.

EXHIBIT 1

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

THE TOWERS, LLC

Appeal No.: AP2025-004

Appellant

* * * * *

OPINION

The Towers, LLC (hereinafter “Appellant”) requests a special exception for a proposed 199-foot monopole-style commercial communications facility at the subject property. Appellant also requests variance to reduce the minimum required setback from a dwelling from 399 feet to 329 feet, and a variance to reduce the minimum required setback from the Rural Village Zoning district from 399 feet to 291 feet at the subject property. The subject property is located at 3417 Rohrersville Road, Rohrersville, Maryland 21779 and is zoned Preservation. The Board held a public hearing in this matter on April 2, 2025. Appellant was represented by Douglas A. Sampson, Esq. at the hearing.

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. Boonsboro First Hose Fire Co. is the owner of the subject property located at 3417 Rohrersville Road, Rohrersville, Maryland. The subject property is zoned Preservation.
2. Appellant is the contract lessee for a portion of the subject property to be

used as a commercial communications tower and is authorized to pursue this appeal.

3. The subject property consists of approximately 7.26 acres, improved by a commercial building and garage space operated as Station 8 of the Boonsboro First Hose Fire Company. The garage building houses emergency vehicles and there is surface parking surrounding the building. It is adjacent to agricultural and residential properties, with screening from trees to the south, southeast and across Rohrersville Road to the west.

4. Appellant proposes to construct a 199-foot monopole-style commercial communications tower with a 4-foot lightning rod on top. The facility will consist of the monopole and an accessory building. It will be accessed by expanding the current access to the property and will require visits from a technician approximately four (4) times per year for routine inspection and maintenance.

5. The communications tower will be designed so that in the event of failure or damage, the fall radius would be limited to 150 feet.

6. The commercial communications facility will be located 329 feet from the nearest dwelling and 291 feet from the adjacent Rural Village zoning district.

7. The proposed commercial communications facility is intended to address a gap in coverage that exists between the mountain ridges and along what Route 67 corridor. The nearest communication towers are in Boonsboro, Keedysville and Harpers Ferry. Appellant found that data speeds were significantly slower in and around the proposed site due to blocked signals and gaps in the coverage area.

8. Due to the height, the monopole tower is not required to have a beacon for aircraft. Appellant indicated it would agree to install a beacon if that was made a condition of approval.

9. Appellant has confirmed that there are no suitable buildings, water tanks, utility structures or existing telecommunications facilities that could serve the coverage area through co-location. Verizon already co-locates on facilities located to the north and

the south of the subject property.

10. Boonsboro First Hose Fire Co. supports this project and believes it will address call drops and communication issues for the area.

11. There was opposition presented to this appeal by adjacent property owners.

Rationale

Appellant presented evidence, including expert testimony regarding the need for additional communication infrastructure in the area of the subject property. Area residents often complain of dropped connections or lack of service altogether.

Several adjacent property owners testified in opposition to the proposed project. They raised concerns about the viewshed, having to see that monopole communications tower from their homes, which are situated above the subject property. The opposition noted concerns for property values, citing that research suggested up to a twenty percent reduction in value when located near a commercial communications facility. The Board heard testimony regarding nearby historic buildings, and the rural character of the area that would be negatively impacted by the location of a communications tower at the subject property. At least one of the opposition witnesses testified that she was concerned about the health risks of such a facility located so close to homes. Lastly, the opposition raised questions about the safety of such a facility in the event of storm damage or failure, given its proximity to other properties.

Appellant called upon its engineers to respond to the concerns raised during the hearing. In its supporting documentation submitted with the application, Appellant asserted that the fall radius in the event of a catastrophic event or failure was 150 feet. Appellant's engineer testified that the fall radius was likely not to exceed 100 feet. The monopole is designed to crumple and bend over, rather than shear off at the bottom. Appellant noted that EMF emissions are closely regulated by the Federal Government and that the proposed project would fall well within the regulated limits.

Special Exception

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as “a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood.” Article 28A. 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.

For the reasons set forth herein, the Board concludes that the special exception should be granted.

The subject property is located in a rural area and although there are residences

nearby, the population is moderate to low in the surrounding area. The subject property will continue to be used as a fire station. The testimony presented was that the proposed facility will not produce any noise, odor, gas, smoke, fumes, or vibrations upon the surrounding properties.

Although the opponents to this appeal raised concerns about property values, it was based on their belief that property values would decrease. They did not present any documentation or cite specific studies or research that would substantiate these beliefs. Common sense might dictate that residing in close proximity to a commercial communications tower is not desirable, but the same can also be true for residing in close proximity to a fire station. Depending on the intensity of its operations, the fire station could be significantly more disruptive to peace and enjoyment of one's property than having to look at a communications tower.

The Board finds that the proposed use is an appropriate use of land and/or structure. The Board recognizes there may be other appropriate uses for the property, but the proposed use is permitted by special exception. There is an inherent appropriateness to such use as deemed by the Board of County Commissioners, subject to review of the criteria to evaluate the impact on surrounding properties.

Notwithstanding the analysis pursuant to *Schultz v. Pritts* and the related appellate opinions, there are no judicial decisions directly affecting the subject property.

The proposed project is consistent with the orderly growth of the community. Appellant provided evidence and testimony of the need for the proposed communications facility to address a large gap in coverage in the area. There is no evidence that it will create dangerous traffic or other safety concerns within the surrounding area. The Board finds that the proposed use is consistent with the purpose and vision of the Ordinance.

The nearest school is Pleasant Valley Elementary which is approximately 3.8 miles away and will not be affected by this project. Although there are a number of churches

nearby, the proposed facility does not create additional traffic to the area or impact access to gatherings or events that may be held at locations in the surrounding area.

The Board notes that any use of property has some impact on the surrounding neighborhood. The test is not whether there is adverse impact, but whether the nature of the specific property or area exacerbates that impact. A monopole communications tower near residential property would have many of the same adverse effects raised by the opposition, regardless of its location in the zoning district. To the extent it is aesthetically displeasing and may affect property values, those things are not unique to the subject property herein. Rather, they are characteristic of the use in general, when located among agricultural and residential uses.

Having considered the testimony and evidence presented and having further considered the criteria set forth in the Ordinance, the Board finds that the proposed use at the subject property will have no greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981). For all these reasons, we conclude that this appeal meets the criteria for a special exception, and Appellant’s request should be granted.

Variance Requests

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.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

¹ “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)

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).

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).

Pursuant to Section 4.22(A)(2), the required setback for a commercial communications tower from the nearest dwelling is equal to the height of the tower plus 200 feet. In this case, that would make the setback requirement 399 feet from the nearest dwelling which is located on the Lucero property to the northeast. Pursuant to Section 4.22(A)(2) of the Ordinance, the required setback for a commercial communications tower from the Rural Village zoning district is also equal to the height of the tower plus 200 feet. In this case, that would make the setback requirement 399 feet from the Rural Village zoning district which is located adjacent to the subject property. Appellant is requesting variances to reduce those setbacks to 329 feet and 291 feet, respectively.

The subject property is oddly shaped and shallow, with boundary lines cut at angles and juxtaposed to adjacent properties. The existing fire station building is located toward the middle of the property and the proposed communications facility would be located in close proximity to avoid disruption to the land, and to maximize distance from the surrounding properties. The proposed location complies with the setback requirements on two (2) sides and is situated 291 feet from the Rural Village zoning district and 329 feet from the nearest dwelling. Given the shape, size and characteristics

of the subject property, there is no location where this commercial communications facility could be constructed that would avoid the need for variance relief. It is clear from the testimony that variance requests herein are the minimum necessary to afford relief and were carefully chosen to balance setback distances from all properties. The resulting setbacks are still significant and exceed the total height of the proposed tower. The Board finds that strict compliance with the setback requirements would unreasonably prevent the use of the property for a permitted purpose. Appellant cannot move the tower on the property to alleviate the setback requirements and cannot reduce the height without significantly impacting the viability and utility of the proposed facility. Therefore, practical difficulty exists, and the requested variances are both appropriate and necessary.

Accordingly, the request for a special exception for a proposed 199-foot monopole-style commercial communications facility at the subject property is hereby GRANTED, by a vote of 3 to 2. The variance request to reduce minimum required setback from a dwelling from 399 feet to 329 feet, and the request to reduce the minimum required setback from the Rural Village Zoning district from 399 feet to 291 feet at the subject property are GRANTED, by a vote of 3 to 2. The special exception and variances are granted subject to the standard condition that the use is consistent with the testimony and evidence presented during the hearing before the Board.

BOARD OF APPEALS

By: Tracie Felker, Chair

Date Issued: May 1, 2025

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.

EXHIBIT 2



The First Hose Company of Boonsboro, Inc.

Boonsboro Station 6
5 St. Paul St.
Boonsboro, MD 21713
Phone: 301-432-2348
Fax: 301-432-2438

Rohrersville Station 8
3417 Rohrersville Road
Rohrersville, MD 21779
Phone: 301-432-8120
Fax: 301-432-5120

March 31, 2025

Washington County Board of Zoning Appeals

747 Northern Ave
Hagerstown, MD 21742

To the Members of the Board of Zoning Appeals,

I hope this letter finds you well. We are writing to express our strong support for the proposed installation of a communications tower next to First Hose Company of Boonsboro; Rohrersville Road, Station 8. As we are responsible for the essential services provided by our local volunteer fire department, we believe this project will provide tremendous benefits to both the department and the greater community.

The installation of the communications tower will serve as a crucial resource for enhancing the effectiveness of our fire department's operations. The tower will ensure improved communication capabilities for emergency response, which is vital for saving lives and protecting property. In addition, this tower will generate significant revenue for the department, which is largely volunteer-based and faces continual funding challenges. The additional revenue will directly contribute to covering operational expenses, purchasing necessary equipment, and improving training for the dedicated volunteers who serve our community.

We are aware that some members of the public have expressed concerns about the installation of the tower. However, we firmly believe that the benefits far outweigh any potential drawbacks. The fire department plays a critical role in public safety, and this project is an investment in the future of our community. The proposed tower's location next to the station ensures it will be appropriately situated for optimal use and have minimal impact on surrounding areas.

Moreover, the revenue generated will help alleviate the financial strain on the department, enabling them to continue providing the high level of service we have come to rely on. Given the increasing demands on emergency services and the financial challenges volunteer organizations face, we are confident that this project is in the best interest of our community's safety and well-being.

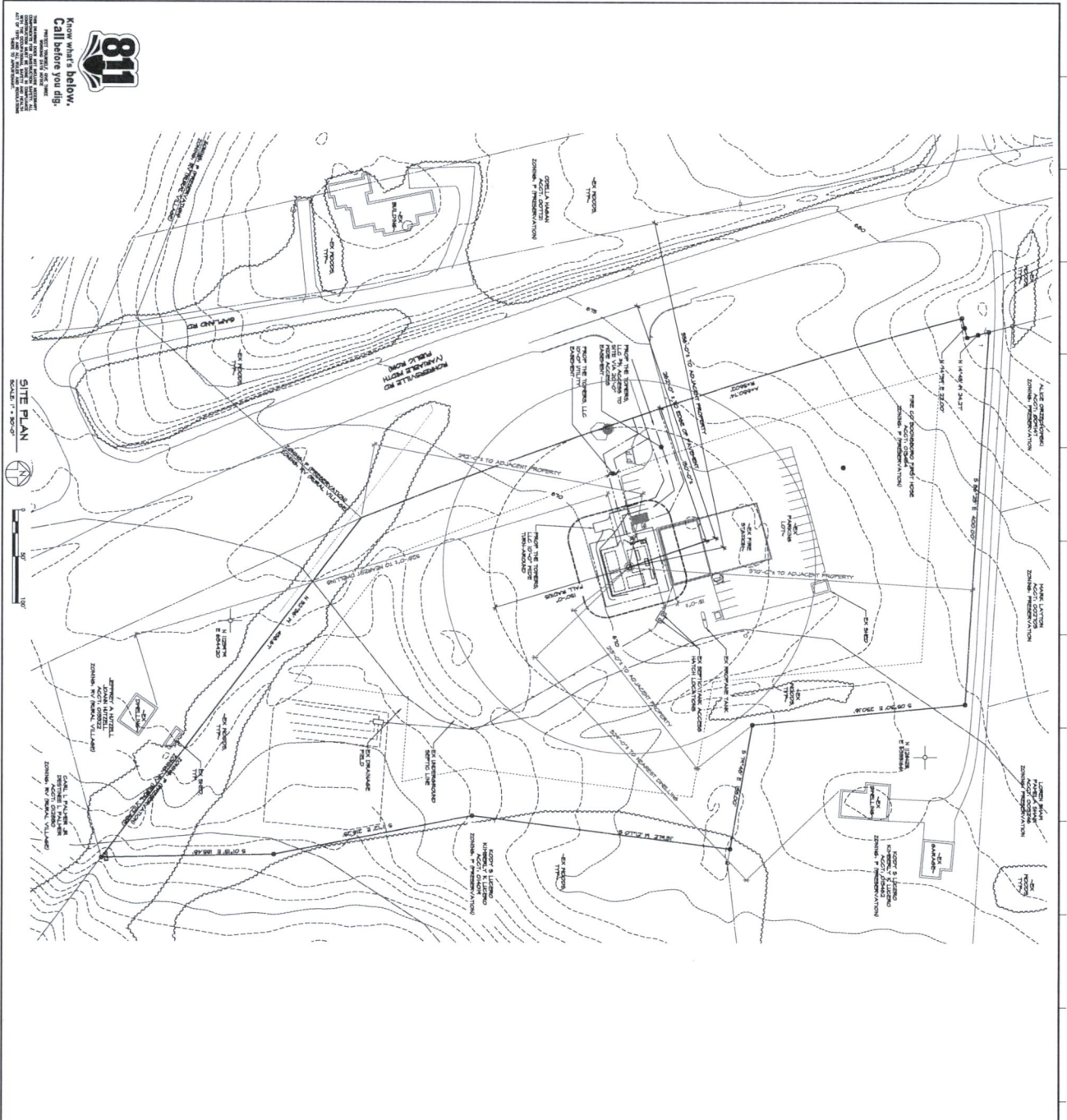
We strongly encourage the approval of this communications tower installation and ask that you consider the positive impact it will have on both the fire department and our local residents. Thank you for your time and consideration of this important request.

Sincerely,

George Meyer, President

Vern Wachter, Chief

EXHIBIT 3



SITE PLAN
SCALE: 1" = 200'

VICINITY MAP
SCALE: 1" = 1 MILE

GENERAL NOTES:

1. THE PROPERTY LIES WITHIN THE ZONING DISTRICT OF...
2. THE PROPERTY LIES WITHIN THE...
3. THE PROPERTY LIES WITHIN THE...
4. THE PROPERTY LIES WITHIN THE...
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MR2
MORRIS & RICHIE
ARCHITECTS

1111 W. WASHINGTON ST.
ROHRSVILLE, VA 22655
TEL: 540-861-1111
WWW.MR2VA.COM

verticalbridge
THE TOWERS, LLC

ROHRSVILLE
3415 ROHRSVILLE ROAD
ROHRSVILLE, VA 22655

DATE: 10/13/2024

PROJECT NO: 10417-018

DESIGNED BY: C&S

DRAWN BY: EMS

REVIEWED BY: EMS

SCALE: 1" = 200'

SHEET: C-1

11



811
Know what's below.
Call before you dig.
811
Call before you dig.
811
Call before you dig.
811
Call before you dig.

EXHIBIT 4

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS



January 15, 2025

Ms. Laura Hughes
The Towers, LLC
750 Park of Commerce Drive, Suite 200
Boca Raton, FL 33487-3650

Re: US-MD-5101 - Rohrersville
3417 Rohrersville Road
Rohrersville, MD 21779 (Washington Co)
Latitude: 39.407964° Longitude: -77.659722°
MRA Job No. 19847.015

Dear Laura:

The purpose of this letter is to certify that the proposed 195'-0" monopole structure will be designed by the manufacturer to meet the requirements of the 2018 International Building Code (2021 IBC) and the ANSI/TIA-222-H Standard.

Per the TIA-222-H Standard, ASCE 7-16, and 2021 IBC requirements, the monopole shall be designed under the following minimum loading conditions:

TIA-222-H: 115 mph Wind (3-second gust) + No Ice
TIA-222-H: 40 mph Wind (3-second gust) + 1" Radial Ice

Note: The monopole shall also be designed to resist seismic loading per TIA-222-H in conjunction with site specific soil parameters determined from a geotechnical investigation.

In addition to the minimum loading conditions above, we note that the monopole shall also be designed by the manufacturer such that should failure of the monopole occur under extreme weather conditions, the maximum "fall zone" radius will not exceed **150'-0"** from the center of the monopole's base. While failure is extremely rare in any kind of tower, it is especially so for monopoles. The proposed monopole shall be designed by the manufacturer such that if failure were to occur, it would occur in a specific portion of the monopole to meet the maximum "fall zone" radius requirement previously defined.

We also note that in addition to the above, the monopole will be designed to support a maximum of four (4) wireless carriers.

1220-B East Joppa Road, Suite 400K, Towson, MD 21286 (410) 821-1690 Fax: (410) 821-1748 www.mragta.com

Abingdon, MD ♦ Baltimore, MD ♦ Laurel, MD ♦ Towson, MD ♦ Georgetown, DE ♦ New Castle, DE ♦ Leesburg, VA ♦ Raleigh, NC
(410) 515-9000 (410) 935-5050 (410) 792-9792 (410) 821-1690 (302) 855-5734 (302) 326-2200 (703) 674-0161 (984) 200-2103

The Towers, LLC
Re: US-MD-5101 - Rohrsersville
January 15, 2025
Page 2

Monopole design documents shall be submitted from the manufacturer as part of the Building Permit submission. If you should have any questions or require any additional information, please do not hesitate to call our office.

Sincerely,
MORRIS & RITCHIE ASSOCIATES, INC.



Brian E. Siverling, PE
Principal

EXHIBIT 5



DEPARTMENT OF PLANNING & ZONING
PLANNING | ZONING | LAND PRESERVATION | FOREST CONSERVATION | GIS

December 19, 2025

Doug Sampson
Saul Ewing LLP
1001 Fleet Street, 9th Floor
Baltimore, Maryland 21202

Re: Notice of Rescission of Site Plan Approval for SP-25-029

Dear Doug,

I am writing to notify you that your site plan submission for the monopole commercial communication tower located at 3417 Rohrsersville Road, Rohrsersville, Maryland 21779 fails to comply with the Washington County Zoning Ordinance (the "Ordinance"), and therefore, the County must rescind the site plan approval.

Specifically, Section 4.22(A)(1) of the Ordinance provides:

Design requirements

In addition to the applicable requirements for a site plan as specified in Section 4.11, the applicant shall provide the following information as part of the site plan submittal. These provisions shall apply to towers in all districts where permitted as a principal permitted or special exception use:

1. Subject to a minimum setback of a distance equaling the total height of the tower and equipment. The setback shall be measured from the base of the tower to the boundary line of the property owned, leased, or controlled by easement by the applicant.

Here, your site plan submission shows that distance from the tower to the western border of your property line is only 150 feet, whereas the total height of the tower and equipment proposed totals 199 feet. Thus, the proposed tower location violates the setback requirement established in Section 4.22(A)(1) of the Ordinance by 49 feet. Accordingly, the County must rescind its approval of your site plan, and you must resubmit a site plan which fully complies with the Ordinance.

Sincerely,

Jennifer D. Kinzer
Interim Planning Director

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

THE TOWERS, LLC

* **Appeal No.: AP2026-004**

*

APPELLANT

*

*

* * * * * * * * * * *

OPINION

The Towers, LLC (hereinafter “Appellant”) request a variance to reduce the required setback from 199 feet to 150 feet from the western property line for a proposed commercial communications facility at the subject property. The subject property is located at 3413 Rohrersville Road, Rohrersville, Maryland 21779 and is zoned Preservation. The Board held a public hearing in this matter on March 4, 2026 and April 1, 2026.

This appeal was called during the regular meeting of the Board on March 4, 2026. At that time, concerns were raised about the notice that was posted on the subject property. Although the notice was to remain for two (2) weeks after posting, there were several witness accounts that the notice was not up upon passing or visiting the subject property. The Board raised concerns about the sufficiency of notice, particularly in light of the contentious appeal in 2025. The Board decided to postpone the hearing so that the subject property could be properly posted for the prescribed period.

This appeal was heard on April 1, 2026, pursuant to Article 25 of the Zoning Ordinance for Washington County and upon notice to the parties and general public as required. Appellant was represented by Doug Sampson, Esq. Kathryn Rathvon provided the Staff Report indicating that proper notice of the hearing was given to adjacent property owners by letter, publication was made in the newspaper, and the subject property was properly posted.

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. Boonsboro First Hose Fire Co. is the owner of the subject property located at 3413 Rohrersville Road, Rohrersville, Maryland. The subject property is zoned Preservation.

2. Appellant is the contract lessee for a portion of the subject property to be used as a commercial communications tower and is authorized to pursue this appeal.

3. The subject property consists of approximately 7.26 acres, improved by a commercial building and garage space operated as Station 8 of the Boonsboro First Hose Fire Company. The garage building houses emergency vehicles and there is surface parking surrounding the building. It is adjacent to agricultural and residential properties, with screening from trees to the south, southeast and across Rohrersville Road to the west.

4. Appellant proposes to construct a 199-foot monopole-style commercial communications tower with a 4-foot lightning rod on top. The facility will consist of the monopole and an accessory building. It will be accessed by expanding the current access to the property and will require visits from a technician approximately four (4) times per year for routine inspection and maintenance.

5. The communications tower will be designed so that in the event of failure or damage, the fall radius would be limited to 150 feet.

6. Due to the height, the monopole tower is not required to have a beacon for aircraft. Appellant previously indicated that it would install a beacon if it was made a condition of approval.

7. Appellant obtained special exception approval and setback variances for the proposed commercial communications facility at the subject property in Case No. AP2026-001.

8. During the Site Plan process, Appellant discovered that there was a 250-foot right-of-way along Rohrersville Road, thus changing the setback measurements for the proposed commercial communications tower.

9. Boonsboro First Hose Fire Company supports this project and believes it will address call drops and communication issues for the surrounding area.

10. There were no comments from other County agencies or departments. The

State Highway Administration provided no comments for the project.

11. There was opposition presented to this appeal by nearby property owners.

Rationale

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.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. Section 25.56(A).

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).

Pursuant to Section 4.22 of the Zoning Ordinance, the minimum setback for a commercial communications tower shall be “a distance equaling the total height of the tower and equipment.” In this case, the setback requirement would equal to 199 feet. Appellant’s presentation was identical to the one made in the prior appeal for the setback variances and special exception approval. The notable difference was that Appellant discovered the 250-foot right-of-way which frustrates compliance with the setback requirements from the western boundary line. Appellant presented testimony that the requested variance is

¹“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)

intended to maintain the original location for the communications tower. The request is also designed to accommodate the fall radius for the tower in the event of a collapse.

Several adjacent property owners testified in opposition to the proposed project. The testimony focused on the prior approval of the special exception, decreased property values and incompatibility with the surrounding area. The opposition also suggested that there were other properties in close proximity that would be more appropriate for such a use. In sum, the opposition testimony attempted to re-litigate the special exception issues that were decided in the previous appeal. It should be noted that despite significant opposition to the prior special exception and variance requests, no appeal was filed following the Board's decision.

The basis for variance relief was established in the prior appeal, and those conditions remain in existence for this appeal. The subject property is oddly shaped and shallow, with boundary lines cut at angles and juxtaposed to adjacent properties. The existing fire station building is located toward the middle of the property, and the proposed communications facility would be located in close proximity to avoid disruption to the land, and to maximize distance from the surrounding properties. Moreover, the property is limited by an excessively large right-of-way area which encroaches on the setbacks. The Board finds that strict compliance with the setback requirements would unreasonably prevent the use of the property for a permitted purpose. Appellant cannot move the tower on the property to alleviate the setback requirements and cannot reduce the height without significantly impacting the viability and utility of the proposed facility. The Board finds that practical difficulty would result from strict compliance with the setback requirements. The variance does not confer any special privilege and is consistent with the uses that other similarly situated properties enjoy. Appellant's request appears to be the minimum necessary to facilitate practical use of the property. The Board finds that relaxation of the setback requirement is necessary and remains consistent with the spirit and intent of the Ordinance. The variance request should be granted.

Accordingly, the request for a variance to reduce the required setback from 199 feet to 150 feet from the western property line for a proposed commercial communications facility is hereby GRANTED, by a vote of 3 to 2. The variance relief is granted subject to the standard condition that the use is consistent with the testimony and evidence presented during the hearing before the Board.

BOARD OF APPEALS

By: Tracie Felker, Chair

Date Issued: April 30, 2026

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.