

BOARD OF APPEALS

May 27, 2026

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

AGENDA

AP2026-014: An appeal was filed by Brock Baker for a variance from the required 15 ft. setback to 8 ft. from the rear property line for proposed detached garage on property owned by the appellant and located at 14516 Mercersburg Road, Clear Spring, Zoned Agricultural Rural District. - **GRANTED**

AP2026-015: An appeal was filed by Robert & Cathie Clemson for a variance from the required 50 ft. setback to 25 ft. from the rear property line for proposed agricultural building on property owned by the appellant and located at 13821 Newcomer Road, Hagerstown, Zoned Agricultural Rural 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 May 18, 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: Brock Baker
14516 Mercersburg Road
Clear Spring MD 21722

Docket No: AP2026-014
Tax ID No: 04001648
Zoning: A(R)

Appellant: Brock Baker
14516 Mercersburg Road
Clear Spring MD 21722

RB Overlay: No
Zoning Overlay:
Filed Date: 05/07/2026
Hearing Date: 05/27/2026

Property Location: 14516 Mercersburg Road

Description Of Appeal: Variance from the required 15 ft. setback to 8 ft from the rear property line for proposed detached garage.

Appellant's Legal Interest In Above Property:

Owner: Yes
Lessee: No
Other:

Contract to Rent/Lease: No
Contract to Purchase: No

Previous Petition/Appeal Docket No(s):

Applicable Ordinance Sections:

Washington County Zoning Ordinance Article 5A, Section 5A.5

Reason For Hardship:

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Residential

Proposed Use: Detached Accessory Structure

Previous Use Ceased For At Least 6 Months:

Date Ceased:

Area Devoted To Non-Conforming Use -

Existing:
Proposed:

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

[Handwritten Signature]
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 7 day of May, 2026.

Nov. 7, 2029
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: AP2026-014

State of Maryland Washington County, To Wit:

On 5/7/2026, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Brock Baker and made oath in due form of law as follows:

Brock Baker 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 05/27/2026, 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 05/12/2026 and will remain until after the above hearing date.

Brock Baker

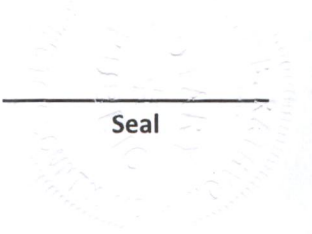
Sworn and subscribed before me the day and year first above written.

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 Appeals

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2461 | Hearing Impaired: 7-1-1

WWW.WASHCO-MD.NET

Variance Request

Property Location 14516 Mercersburg rd, Clearspring Md. 21722

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:

Example: Article 5A, Section 5A.5-Requires 15 ft. side yard setback.

Article 5A, Section 5A.5

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

Example: Requesting adjustment from 15 ft. to 12 ft. for new detached garage.

Requesting an adjustment from the 15 ft. set back to an 8ft. setback for the rear property line to build a detached garage

Applicants must make application in person and shall submit *nine (9)* complete sets of the items listed below. Incomplete applications will not be accepted.

- A written statement demonstrating the specific reason(s) for the adjustment request including which standard the appeal is for practical difficulty or undue hardship. The standards for a variance is outlined in the Variance Filing Procedures.
- A plot plan (concept plan), drawn to a scale indicating the following information:
 - Outline of the entire property;
 - Location of all existing and/or proposed structures with measurements from structures to property lines;
 - Location of existing and/or future septic and wells;
 - Any street rights-of-way or other easements (i.e. utility, storm water management, etc.);
 - Existing/proposed entrance/exit to property, driveways, etc.
 - Existing/proposed parking areas
- If Request is for commercial use, in addition to above, the following additional information will be required:
 - Location of any freestanding signage
 - Number of employees (existing/proposed)
 - Hours of operation
 - Proposed landscaping and lighting

PAGE TWO
VARAINCE REQUEST

- Other information that applicants feel will be useful to justify their request, this could include pictures, letters of support from impacted neighbors, concept draws of the structure.
- If you are not the property owner, a notarized affidavit from the property owner authorizing the appeal shall be submitted. This includes applicants filing as an agent on behalf of the property owner.
- Pay the filing fee by cash, Visa/MasterCard, or check made payable to the Washington County Treasurer:
 - Residential Variance.....\$150.00
 - Commercial Variance.....\$300.00

ALL FILING FEES ARE NON-REFUNABLE

Note: A plan review fee of \$150 and/or floodplain review of \$150.00 may be charged by the Engineering Department.

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

Brock Baker
Signature of Appellant/Agent

BrockBaker3@gmail.com
Email of Appellant/Agent

14516 Mercersburg Rd, Clear Spring
Address and of Appellant/Agent

301-268-3636
Phone Number of Appellant/Agent

Brock Baker
14516 Mercersburg Rd, Clear Spring, MD 21722
301-268-3636
Brockbaker3@gmail.com

To: Board of Appeals

Re: Request for Variance for Building Permit at 14516 Mercersburg Rd, Clear Spring, MD 21722

Dear Board of Appeals:

I am the owner of the property located at 14516 Mercersburg Rd, Clear Spring, MD 21722, and I respectfully request a variance from the 15-foot property-line setback requirement so that I may locate my garage where it can still maintain the required 20-foot separation from the septic system.

The proposed location is the only area on the property where the garage can be placed to comply with the 20-foot septic setback rule while also allowing the structure to be built and used as intended. There is no other feasible location that would both meet the septic-system setback requirement and allow a usable garage.

I believe this request should be considered under the standard of practical difficulty, as strict application of the 15-foot property-line setback would prevent reasonable use of the property for this improvement. The requested variance is the minimum necessary to construct the garage in the only practical location available on the lot.

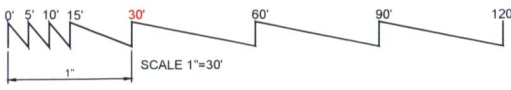
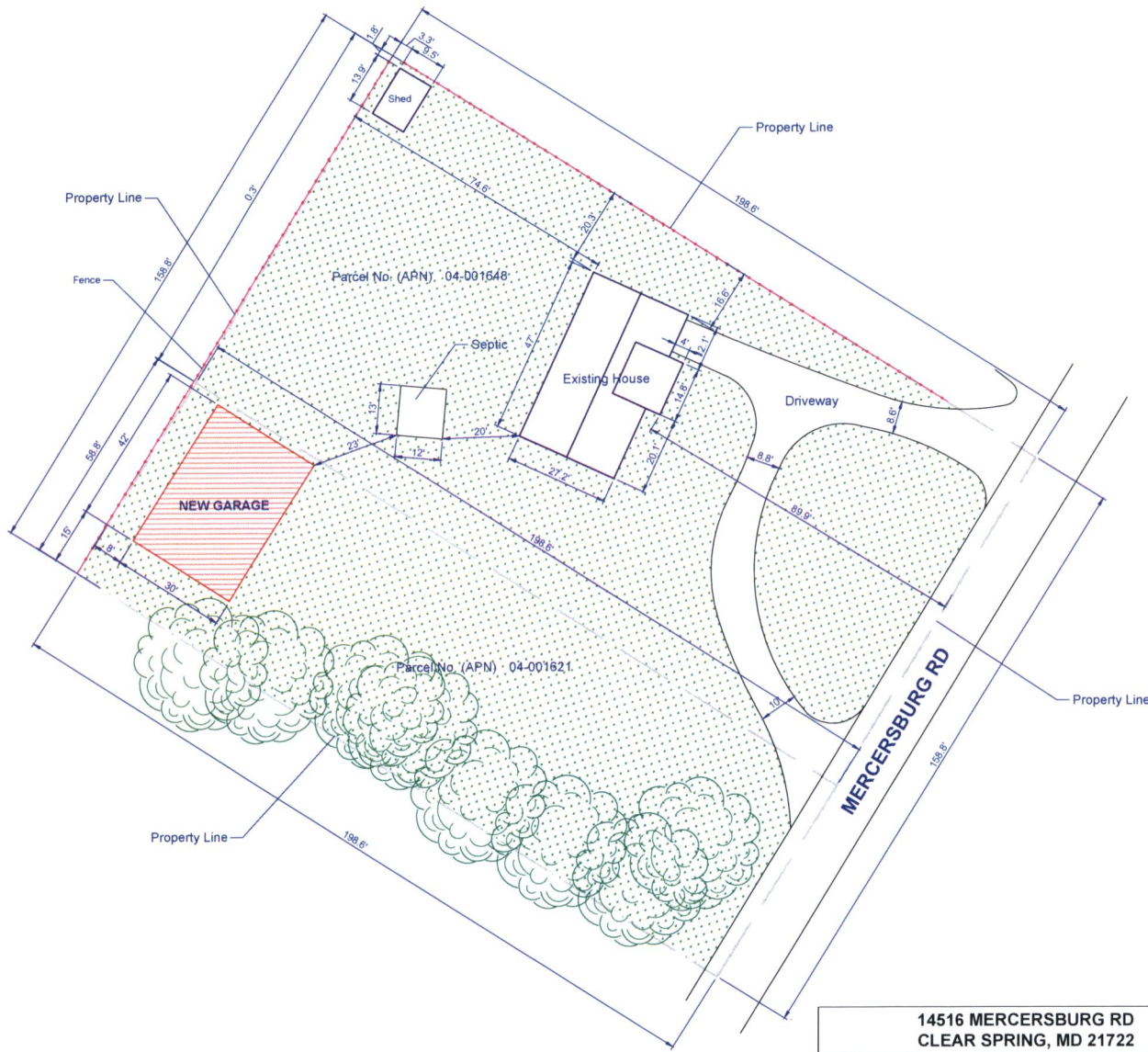
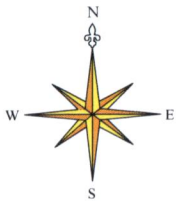
In addition, I wish to preserve as much of my yard and lawn as possible for family and recreational use. Maintaining usable outdoor space is important to me and my family, including my children, grandchildren, and dog. The proposed location provides the most reasonable balance between maintaining the required distance from the septic system and conserving open yard space.

This request is not intended to disregard the purpose of the code, but rather to obtain reasonable relief based on the unique conditions of the property. For these reasons, I respectfully ask that the variance be approved.

Thank you for your time and consideration.

Sincerely,

Brock Baker



14516 MERCERSBURG RD CLEAR SPRING, MD 21722		Scale: 1"=30'	Date: 05 05 2026	Sheet 1 of 1
Parcel No. (APN) 04-001648 Land Use RESIDENTIAL Buildings 1 Building Building Area 1,152 SF 1 Units Lot Area 20,000 SF (0.46 ACRES) Parcel No. (APN) 04-001621 Land Use VACANT LAND, RESIDENTIAL Lot Area 12,000 SF (0.28 ACRES)		THIS IS NOT A LEGAL SURVEY, NOR IS IT INTENDED TO BE OR REPLACE ONE This work product represents only generalized locations of features, objects or boundaries and should not be relied upon as being legally authoritative for the precise location of any feature, object or boundary.		

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

BROCK BAKER

* **Appeal No.: AP2026-014**

*

APPELLANT

*

*

* * * * * * * * * * *

OPINION

Brock Baker (hereinafter “Appellant”) requests a variance to reduce the required rear yard setback from 15 feet to 8 feet for a proposed detached garage at the subject property. The subject property is located at 14516 Mercersburg Road, Clear Spring, Maryland 21722 and is zoned Agricultural, Rural. The Board held a public hearing in this matter on May 27, 2026.

The 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. Appellant is the owner of the subject property located at 14516 Mercersburg Road, Clear Spring, Maryland 21722. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately .28 acres of land, improved by a single-family dwelling and situated on the west side of Mercersburg Road.
3. The residence is located on right side of the property, toward the northern boundary line of the property. The existing septic area is located directly off the southwest corner and is located within twenty (20) feet of the home. There is a tree line along the left side of the property which runs along the southern boundary to the property.

4. The right side of the home is located 16.6 feet from the property line and does not provide sufficient space for a garage.

5. Appellant proposes to construct an 11-foot by 17-foot detached garage structure in the southwest corner of the subject property.

6. There were no comments from other County agencies or departments. The State Highway Administration provided no comments for the project.

7. 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 5A.5 of the Zoning Ordinance, the minimum setback for a rear yard property line is fifteen (15) feet. Appellant is requesting to reduce the setback to eight

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)

(8) feet in order to construct a detached garage in the corner of his property. Appellant testified that he chose the proposed location as the only logical place for his garage given the layout of the property and location of his septic area. If he were to build the garage next to the home, he would be encroaching on the septic area which is generally not permitted. The remaining space consists of the front and side yards and would not make sense to locate the garage in front of the home. Appellant noted that there are other properties in the area that have detached garages, some larger than the one he has proposed. Appellant's request is simply to avoid encroachment and minimize the impact on other areas of the property.

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 rear yard setback from 15 feet to 8 feet for a proposed detached garage at the subject property is hereby GRANTED, by a vote of 4 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: Tim Ammons, Acting Chair

Date Issued: June 25, 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: Robert & Cathie Clemson
10728 Church Hill Road
Myersville MD 21773
Appellant: Robert Clemson
10728 Church Hill Road
Myersville MD 21773
Property Location: 13821 Newcomer Road
Hagerstown, MD 21742
Description Of Appeal: Variance from the required 50 ft. setback to 25 ft. from the rear property line for proposed agricultural building.

Docket No: AP2026-015
Tax ID No: 14008616
Zoning: A(R)
RB Overlay: No
Zoning Overlay:
Filed Date: 05/07/2026
Hearing Date: 05/27/2026

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):
Applicable Ordinance Sections: Washington County Zoning Ordinance Article 5A, Section 5A.6
Reason For Hardship: See justification statement
If Appeal of Ruling, Date Of Ruling:
Ruling Official/Agency:
Existing Use: Residential
Proposed Use: Agricultural Structure
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 Robert A. Clemson

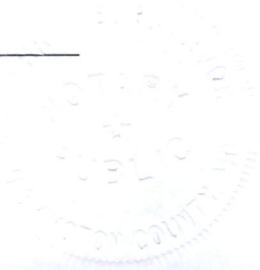
Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 7 day of May, 2026.

Notary signature and date: Nov 7, 2029
My Commission Expires

Notary signature and title: 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: AP2026-015

State of Maryland Washington County, To Wit:

On 5/7/2026, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Robert Clemson and made oath in due form of law as follows:

Robert Clemson 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 05/27/2026, 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 05/12/2026 and will remain until after the above hearing date.

Robert Clemson

Robert Clemson

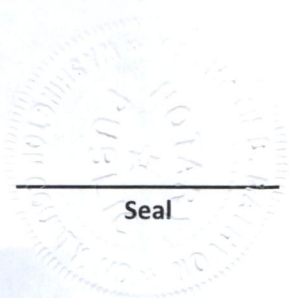
Sworn and subscribed before me the day and year first above written.

[Signature]

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

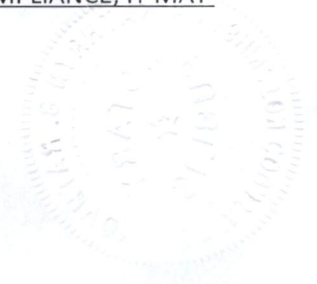
ATTENTION!

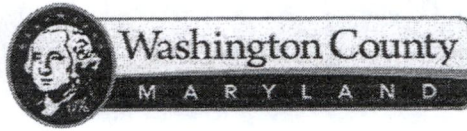
Posting Instructions

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 Appeals

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2461 | Hearing Impaired: 7-1-1

WWW.WASHCO-MD.NET

Variance Request

Property Location 13821 Newcomer Road Hagerstown MD

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:

Example: Article 5A, Section 5A.5-Requires 15 ft. side yard setback. Article 5A

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

Example: Requesting adjustment from 15 ft. to 12 ft. for new detached garage.

Requesting adjustment from 50 foot rear setbacks to 25 foot setback of the rear property line.

Applicants must make application in person and shall submit *nine (9)* complete sets of the items listed below. Incomplete applications will not be accepted.

- A written statement demonstrating the specific reason(s) for the adjustment request including which standard the appeal is for practical difficulty or undue hardship. The standards for a variance is outlined in the Variance Filing Procedures.
- A plot plan (concept plan), drawn to a scale indicating the following information:
 - Outline of the entire property;
 - Location of all existing and/or proposed structures with measurements from structures to property lines;
 - Location of existing and/or future septic and wells;
 - Any street rights-of-way or other easements (i.e. utility, storm water management, etc.);
 - Existing/proposed entrance/exit to property, driveways, etc.
 - Existing/proposed parking areas
- If Request is for commercial use, in addition to above, the following additional information will be required:
 - Location of any freestanding signage
 - Number of employees (existing/proposed)
 - Hours of operation
 - Proposed landscaping and lighting

PAGE TWO
VARAINCE REQUEST

- Other information that applicants feel will be useful to justify their request, this could include pictures, letters of support from impacted neighbors, concept draws of the structure.
- If you are not the property owner, a notarized affidavit from the property owner authorizing the appeal shall be submitted. This includes applicants filing as an agent on behalf of the property owner.
- Pay the filing fee by cash, Visa/MasterCard, or check made payable to the Washington County Treasurer:
 - Residential Variance.....\$150.00
 - Commercial Variance.....\$300.00

ALL FILING FEES ARE NON-REFUNABLE

Note: A plan review fee of \$150 and/or floodplain review of \$150.00 may be charged by the Engineering Department.

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

Robert Clemm
Signature of Appellant/Agent

clemsonr@gmail.com
Email of Appellant/Agent

10728 Church Hill Rd Myersville MD 21773
Address and of Appellant/Agent

301 676 7771
Phone Number of Appellant/Agent

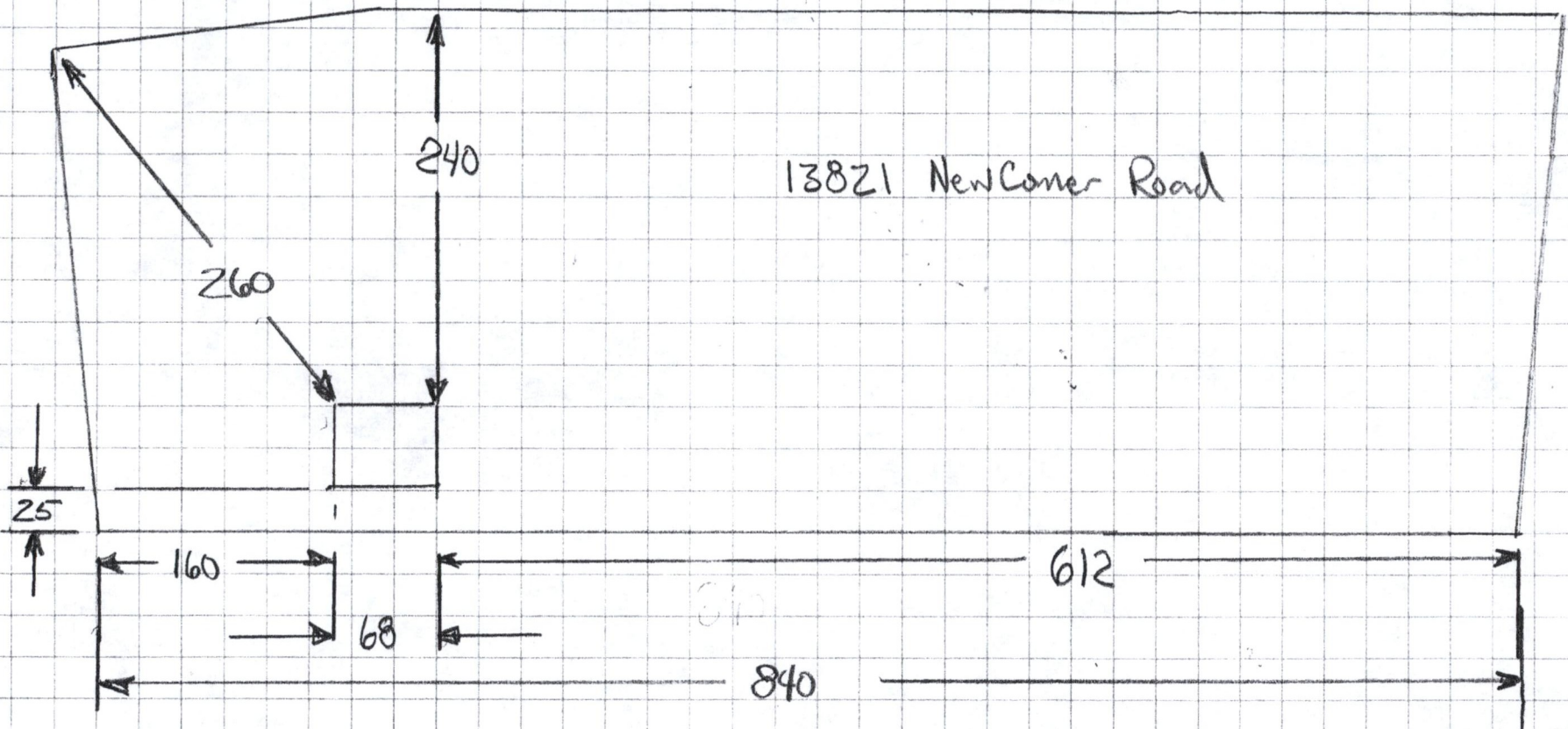
May 6, 2026

Dear Washington County Board of Appeals:

I am the property owner of 6.13 acres located on 13821 Newcomer Road in Hagerstown Maryland and I am requesting your consideration for changing the rear set back from 50 foot to 25 foot. This property is currently zoned Agricultural 5A and currently being farmed with crops. The crop area is approx 5 acres with 1.30 acres as the homestead area. I am looking to build a 50 x 68 foot pole barn structure in the back area of the homestead part of the property. This property is a long and skinny shape that leads me to request a variance of the 50 foot setback building restriction lines of Agricultural 5A to a 25 foot setback. This request is both a Practical Difficulty and some Undue Hardship. By allowing the set back change this would allow the building not to enter the crop growing area as it is now farmed. Also the driveway flow will be enhanced by the new location for better access to the garage doors with moving equipment in and out of the building. There is also a contour issue I'm dealing with and building the building further back it looks to be much more level. The contour lines show the land sloping to a 4 foot difference in the 50 foot setback area and moving it to the 25 foot setback area would put the sloping area into a more level area of a 2 foot change in elevation. Keeping it in the 50 foot setback area would cause a greater expense in moving dirt and buying dirt to level the site for the building. Also more in the center of the lot there could be a potential for rock that would have to be disturbed because of the building construction but this will not be known until construction. My plan is not to enter the crop field area with this building but by sticking with the current 50 setback requirements moving it further forward could make this necessary. I am open to your questions and hope to have a favorable response from the Board in the granting of a set back limit to 25 foot instead of the Ag limit of 50 foot. Thank you for listening and considering this matter I am presenting.

13821 Newcomer Road Hagerstown
Robert Clemson
10728 Church Hill Road
Myersville MD 21773
301-676-7771

Robert Clemson



NEWCOMER ROAD

local road

$N 31^{\circ}31'47'' E$

188.48'

814

SSA

driveway

5'

$S 58^{\circ}28'13'' E$

263.33'

Existing Buildings

100'

Existing Well

Current Crop Field

610

620

622

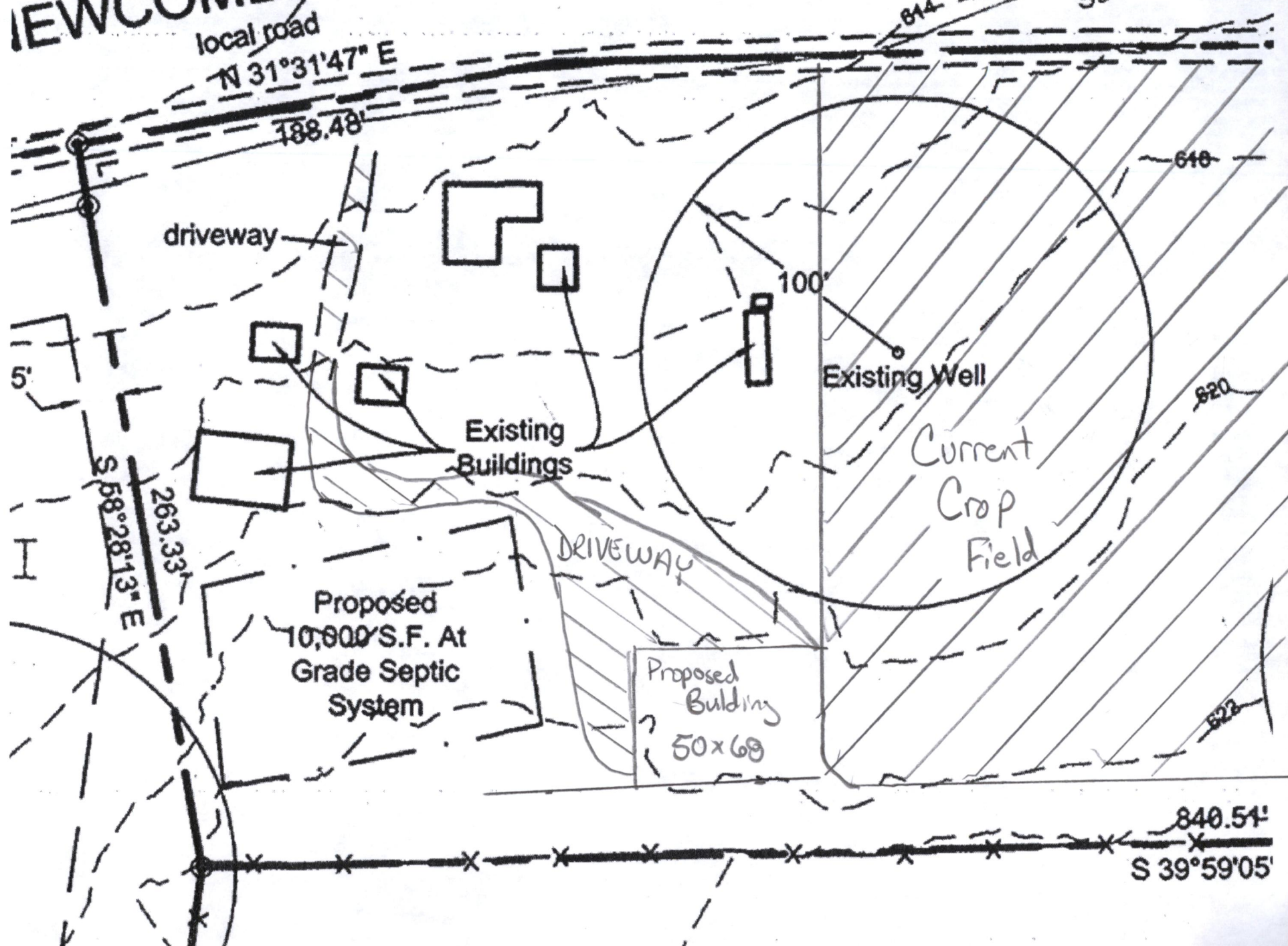
Proposed
10,000 S.F. At
Grade Septic
System

DRIVEWAY

Proposed
Building
50x69

840.51'

$S 39^{\circ}59'05''$



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

ROBERT & CATHIE CLEMSON

*
*
*
*

Appeal No.: AP2026-015

APPELLANTS

* * * * *

OPINION

Robert and Cathie Clemson (hereinafter “Appellants”) request a variance to reduce the required rear yard setback from 50 feet to 25 feet for a proposed agricultural building at the subject property. The subject property is located at 13821 Newcomer Road, Hagerstown, Maryland 21742 and is zoned Agricultural, Rural. The Board held a public hearing in this matter on May 27, 2026.

The 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 13821 Newcomer Road, Hagerstown, Maryland 21742. The subject property is zoned Agricultural, Rural.
2. The subject property consists of approximately 6.13 acres of land, improved by a single-family dwelling and accessory farm buildings. Approximately five (5) acres of the property is used for crops, and the remainder is the “homestead” area.
3. The subject property runs parallel to Newcomer Road and is somewhat long, and narrow given its size. The depth of the property from front to back is approximately 263 feet.

4. There is a slope from the rear property line which increases to approximately four (4) feet in the 50-foot setback area.

5. There is a 10,000 square-foot septic system and reserve area located in the southeast corner of the property.

6. Appellant proposes to construct a 20-foot by 68-foot agricultural storage building at the end of the existing driveway and along the rear property line.

7. 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 5A.5 of the Zoning Ordinance, the minimum setback for the proposed building from the rear yard property line is fifty (50) feet. Appellant is requesting

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)

to reduce the setback to twenty-five (25) feet in order construct an agricultural building closer to the rear property line. Appellant testified that he chose the proposed location as the only logical place for the building as it sits at the end of the driveway and provides adequate room to move large equipment in and out. Given the layout of the property and the location of the septic reserve area and other buildings, the proposed location was the only choice unless they were to eliminate part of the crop field. Appellant testified that his intention was to maintain the crop field and the agricultural nature of the property, which is also consistent with the purpose of the zoning district. Appellant also noted that if the building were moved back to the proper setback, the increase in slope would require significantly more grading and fill work. This would increase the cost of the project exponentially and thus imposes a practical difficulty upon Appellants.

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 rear yard setback from 50 feet to 25 feet for a proposed detached garage at the subject property is hereby GRANTED, by a vote of 4 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: Tim Ammons, Acting Chair

Date Issued: June 25, 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.