

**BOARD OF APPEALS**

**March 29, 2023**

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

**AGENDA**

**DOCKET NO. AP2023-012:** An appeal was filed by Jeffrey Piper for a variance from the required minimum lot area of 10,000 sq. ft. to 6,814 sq. ft. for lot 1A, 6,732 sq. ft. for lot 2A, 6,654 sq. ft. for lot 3A, and 6,576 sq. ft. for lot 4A and a variance from the required 70 ft. lot width to 44 ft. for lots 1A-4A for future single-family dwellings on properties owned by C. Williams Hetzner Inc. and located at 13810A-13814B Weaver Avenue, Maugansville, Zoned Residential Suburban.

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Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. Furthermore, the Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodations are requested to contact Katie Rathvon at 240-313-2464 Voice, 240-313-2130 Voice/TDD no later than March 20, 2023. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

The Board of Appeals reserves the right to vary the order in which the cases are called. Please take note of the Amended Rules of Procedure (Adopted July 5, 2006), Public Hearing, Section 4(d) which states:

Applicants shall have ten (10) minutes in which to present their request and may, upon request to and permission of the Board, receive an additional twenty (20) minutes for their presentation. Following the Applicant's case in chief, other individuals may receive three (3) minutes to testify, except in the circumstance where an individual is representing a group, in which case said individual shall be given eight (8) minutes to testify.

Those Applicants requesting the additional twenty (20) minutes shall have their case automatically moved to the end of the docket.

For extraordinary cause, the Board may extend any time period set forth herein, or otherwise modify or suspend these Rules, to uphold the spirit of the Ordinance and to do substantial justice.

Jay Miller, Chairman

Board of Zoning Appeals



WASHINGTON COUNTY BOARD OF ZONING APPEALS

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

ZONING APPEAL

Property Owner: C. Williams Hetzner Inc
PO Box 506
Hagerstown MD 21741
Appellant: Jeffrey Piper
PO Box 94
Mercersburg PA 17326
Docket No: AP2023-012
Tax ID No: 13001502
Zoning: RS
RB Overlay: No
Zoning Overlay:
Filed Date: 03/09/2023
Hearing Date: 03/29/2023

Property Location: 13810 A A-13814 B Weaver Avenue
Maugansville, MD 21767

Description Of Appeal: Variance from the required minimum lot area of 10,000 sq. ft. to 6,814 sq. ft. for lot 1A, 6,732 sq. ft. for lot 2A, 6,654 sq. ft. for Lot 3A, and 6,576 sq. ft. for Lot 4A, and a variance from the required 70 ft. lot width to 44 ft. for Lots 1A-4A for future single-family dwellings.

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

Previous Petition/Appeal Docket No(s): AP2023-011, AP2023-004, AP2007-016, and AP2003-151

Applicable Ordinance Sections: Washington County Zoning Ordinance Section 8.5 (a)

Reason For Hardship: Due to the change in the zoning and increase in setback requirements.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Vacant Lots Proposed Use: Single Family Dwellings

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.

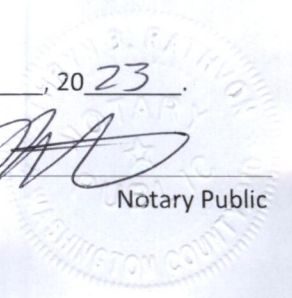
[Signature] Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 10th day of March, 2023.

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

[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: AP2023-012

State of Maryland Washington County, To Wit:

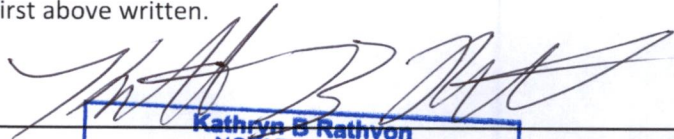
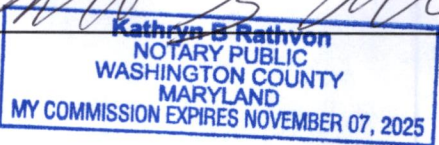
On 3/9/2023, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Jeffrey Piper and made oath in due form of law as follows:

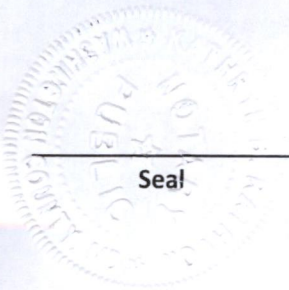
Jeffrey Piper will post the zoning notice sign(s) given to me by the Zoning Administrator in accordance with Section 25.51(c) of the Washington County Zoning Ordinance for the above captioned Board of Appeals case, scheduled for public hearing on 03/29/2023, and that said sign(s) will be erected on the subject property in accordance with the required distances and positioning as set out in the attached posting instructions.

Sign(s) will be posted on 03/14/2023 and will remain until after the above hearing date.

  
\_\_\_\_\_  
Jeffrey Piper

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

  
\_\_\_\_\_  
  
Kathryn B Rathvon  
NOTARY PUBLIC  
WASHINGTON COUNTY  
MARYLAND  
MY COMMISSION EXPIRES NOVEMBER 07, 2025  
Notary Public



Seal

My Commission Expires





# Washington County

M A R Y L A N D

DIVISION OF

ENGINEERING & CONSTRUCTION MANAGEMENT  
PLAN REVIEW | PERMITTING | ENGINEERING | CONSTRUCTION

## Washington County Building Code Board of Appeals Owner's Representative Affidavit

This is to certify that Jeffrey A. Piper is authorized to file an appeal with the Washington County Building Code Board of Appeals for a variance from min. lot width and area on property located at 13810A, 13810B, 12812A, 13812B, 13814A and 13814B Weaver Avenue, Maugansville, MD 21767.

The said work is authorized by C. William Hetzer, Inc. the property owner in fee.

### PROPERTY OWNER

C. William Hetzer, Inc.

Property Owner's Name

P.O. Box 506

Property Owner's Address

Hagerstown, MD 21741

City, State, Zip Code

Tony L. Kerns, President

*Tony L. Kerns*  
Property Owner's Signature

Sworn and subscribed before me this 8<sup>th</sup> day of March, 2023.

My Commission Expires: 12/8/24

Robin Di Giuseppe

*Robin Di Giuseppe*  
Notary Public

### AUTHORIZED REPRESENTATIVE

Jeffrey A. Piper

Authorized Representative's Name

P.O. Box 94

Authorized Representative's Address

Mercersburg, PA 17326

City, State, Zip Code

*Jeffrey A. Piper*  
Authorized Representative's Signature

Sworn and subscribed before me this 8<sup>th</sup> day of March, 2023.

My Commission Expires:

April 7, 2023

Revised: 7-30-15

*Cynthia Jo Thurber*  
Notary Public



80 West Baltimore Street | Hagerstown, MD 21740 | P: 240.313.2460 240.313.2461 | Revised: 7-1-24



business buildings, apartment buildings, single family dwellings and duplexes within 2 blocks East-West and 3 block to the North-South of this property that are not within conformance of the current zoning restrictions. The requested variances would allow single family homes that will conform to the current setback restrictions and allow a minimum clear width of 16' between buildings, which would exceed the required fire separation distance.

#### B. Undue Hardship

1. Due to the change in zoning and increase in setback requirements, a typical width semi-detached dwelling cannot be constructed on these lots. Single family dwellings are more in conformance with the existing neighborhood and would allow a better use and return for these lots. The infrastructure is in place within the right of way of Weaver Avenue, which would still need constructed and connected to these dwellings. The cost of installing utilities to these dwellings will be difficult to offset if larger dwellings cannot be constructed. Considering these points, strict compliance with the Ordinance would prevent the applicant and owner from securing a reasonable return from or make reasonable use of this lot.

2. Since the change in zoning and increase in setback requirements occurred after the approval date of these lots on the previously mentioned subdivision plats, the difficulties and hardships are peculiar to Lots 1 through 6. There are only two other vacant and undeveloped lots out of more than 170 lots within 2 blocks East-West and 3 block to the North-South of this property. This property, being Lots 1 through 6 of this subdivision, is adversely affected by the change in zoning and increase in setback requirements.

3. As stated previously, Lots 1 through 6 of which the variance is being applied for is shown on plats that were finally approved on July 24, 2007 under the previous, now defunct 'RR' Rural Residential Zoning District. The zoning has since changed for this property and is now subject to the requirements of the 'RS' Residential Suburban District. The hardship is not the result of the applicant's or owner's actions.

The criteria is based on my 38 years' experience in land development and building construction, which ties into knowledge pertaining to cost feasibility, product design and marketability.

Since last meeting, I have performed more feasibility studies on product by visiting other communities within Washington County along with developments located in multiple states. I also visited National Builders websites on the entire East Coast for research based on the same types of product. That said I found no product less than 20' in width.

This puts the focus really on financial, product feasibility and the land being unsuitable for development, which I can't express enough. This being a hardship on all parties, including effecting revenues through taxes and utilities for both the County and City.

I would like to point out just few more items to consider:

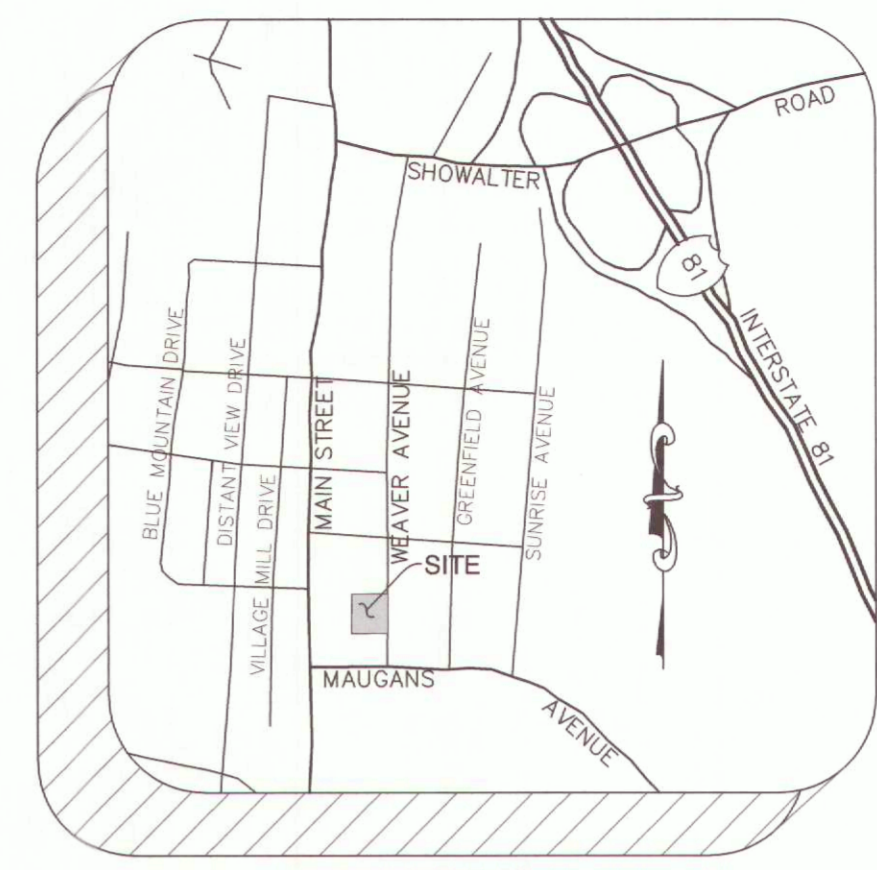
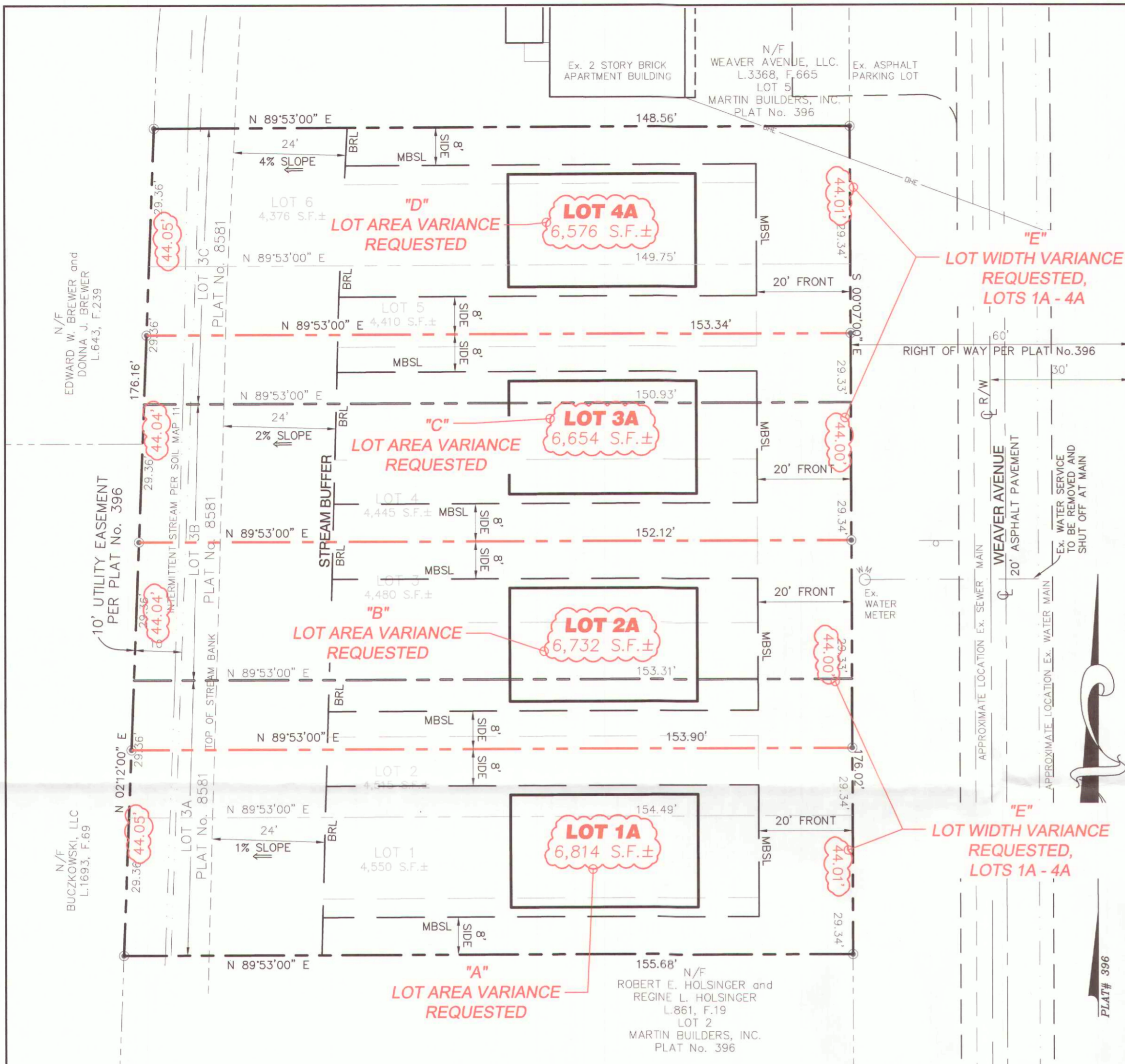
These Lots have been unsalable for the past 20+ years and there are several other properties in close vicinity that these lots will be similar to. This request to reduce the lot area and lot width will allow single family homes to be constructed, which will conform much better to the surrounding neighborhood.

I ask to please consider this reasonable request that benefits all parties.

Thank you ,  
Jeffrey A. Piper







**General Notes:**

- No title report performed by or provided to Triad Engineering, Inc. regarding the property shown hereon. This plat makes no attempt to locate any easements or rights of way, if any exist, other than those shown hereon.
- Contours shown hereon are derived from field surveys and based on an assumed datum.
- 10 feet along front, 8 feet along side and rear lot lines is dedicated for drainage and utility easements.
- Zoned "RS" Residential Suburban
- "MBSL" denotes minimum building setback lines for semi-detached dwellings per Zoning Ordinance.  
Front: 20' Side: 8' Rear: 40'
- Accessory structures may be constructed in accordance with section 4.10 and 23.5(b) of the Zoning Ordinance. No accessory structures permitted prior to construction of a principle permitted structure.
- "BRL" denotes building restriction line per Health Department, developer, or other regulatory agency.
- House address is based on entrance location as shown on this plat, if driveways are constructed at different locations, the address for the lot is void and the owner or developer of the lot must reapply to the Planning Department for a new address.
- The lot shown hereon is not affected by the limits of the 100 year flood plain as shown on flood insurance rate map number 240070-0080A, dated May 1, 1978
- The lot shown hereon is served by The City of Hagerstown water and Washington County sewerage systems.
- There are no known wells or sewer areas within 100 feet of the lot shown hereon, except as shown.
- Weaver Avenue is classified a local road with a future right of way width of 50 feet, the existing right of way width is 60', no dedication is required.
- Soil types:  
Ft: Funkstown silt loam  
SpA: Swanpond silt loam, 0 to 3 percent slopes
- There are no known habitats of threatened or endangered species identified by the U.S. Department of the Interior, Fish and Wildlife Service per 50CFR 17 as required to be shown by section 314 of the Subdivision Ordinance and section 4.21 of the Zoning Ordinance. This subdivision is not within the limits of the Appalachian Trail Corridor or the watersheds of the Edgemont-Smithsburg Reservoirs. This subdivision is not within the Beaver Creek drainage basin. There are no wetlands on these Lots per mapping by the U.S. Department of the Interior, Fish and Wildlife Service's, Hagerstown, MD-PA "quad".
- There is an intermittent stream symbol present on these Lots as shown on the soil survey map number 11 of Washington County see "Sensitive Area Notice". There are no areas of steep slopes as defined by Article 28.631 of the Washington County Zoning Ordinance.
- The watershed area above this site is less than 400 acres.
- Reference is hereby made to a plat entitled "LOTS 1 THROUGH 6, S & H, LLC." dated May 3, 2007, and recorded among the land records of Washington County, Maryland as Plat 9180.
- Reference is hereby made to Variances granted by the Washington County Board of Zoning Appeals, Docket number AP2003-151 and AP2007-016 through AP2007-018 for a reduction of the minimum Lot Area and Lot Width as established hereon.

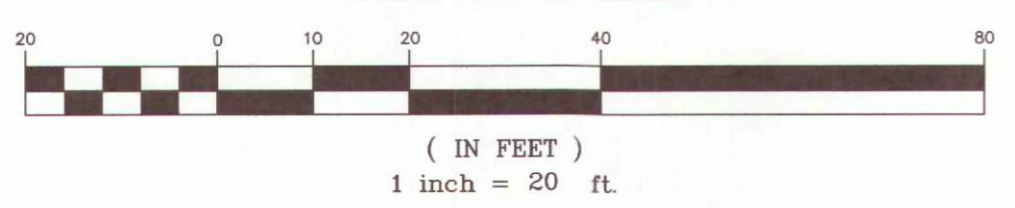
**ACREAGE TABULATION**

EXISTING LOT 3A PER PLAT 8581	9,065 S.F.±
LESS NEW LOT 1	4,550 S.F.±
LESS NEW LOT 2	4,515 S.F.±
REMAINING AREA LOT 3A	0 S.F.±
EXISTING LOT 3B PER PLAT 8581	8,925 S.F.±
LESS NEW LOT 3	4,480 S.F.±
LESS NEW LOT 4	4,445 S.F.±
REMAINING AREA LOT 3B	0 S.F.±
EXISTING LOT 3C PER PLAT 8581	8,786 S.F.±
LESS NEW LOT 5	4,410 S.F.±
LESS NEW LOT 6	4,376 S.F.±
REMAINING AREA LOT 3C	0 S.F.±

**Sensitive Area Notice  
Stream Buffer**

The stream buffers shown hereon are established pursuant to the requirements of the Washington County Subdivision Ordinance, Article IV, Section 409. In an effort to preserve or improve water quality, the property owner is required to establish and thereafter maintain in perpetuity vegetative ground cover in accordance with urban best management practices recommended by the Washington County Soil Conservation District. No permanent structures are permitted within the stream buffer except those existing at the time of this subdivision and shown hereon and those designated to improve water quality or flow as approved by the Washington County Planning Commission in accordance with all applicable regulations, laws and policies. No septic systems shall be constructed within the buffer nor shall any septic reserve area be established within the buffer.

**GRAPHIC SCALE**



DEPICTED VARIANCE	SECTION OF ZONING ORDINANCE	TYPE OF REGULATION	ORDINANCE REQUIREMENT	PROPOSED DIMENSION (VARIANCE REQUESTED)
"A"	8.5(a)	LOT AREA	MIN. 10,000 S.F.	LOT 1A: 6,814 S.F.
"B"	8.5(a)	LOT AREA	MIN. 10,000 S.F.	LOT 2A: 6,732 S.F.
"C"	8.5(a)	LOT AREA	MIN. 10,000 S.F.	LOT 3A: 6,654 S.F.
"D"	8.5(a)	LOT AREA	MIN. 10,000 S.F.	LOT 4A: 6,576 S.F.
"E"	8.5(a)	LOT WIDTH	MIN. 70'	ALL LOTS: 44.0'

**APPLICANT:**  
JEFFREY A. PIPER AND COMPANY  
ATTN: MR. JEFFREY A. PIPER  
P.O. BOX 94  
MERCERSBURG, PA 17326  
(240)520-4605

**TRIAD ENGINEERING, INC.**  
1075-D SHERMAN AVENUE  
HAGERSTOWN, MD 21740  
PH: 301.797.6400 FAX: 301.797.2424  
OFFICE LOCATIONS  
MARYLAND • PENNSYLVANIA • VIRGINIA • WEST VIRGINIA

CADD FILE: 03221053-bza-ex-Single Family  
DRAWN BY: C.W.J.  
CHECKED BY: R.D.B.  
DATE: 03/08/2023  
SCALE: 1"= 20'

OWNER/DEVELOPER:  
OWNER: C. WILLIAM HETZER, INC.  
P.O. BOX 508  
HAGERSTOWN, MD 21741-0508  
ELECTION DISTRICT: 13  
TAX MAP: 0243 GRID: 0003  
1504 &  
PARCEL: 1505

BOARD OF ZONING APPEALS EXHIBIT  
FOR  
**LOTS 1-6  
S & H LLC**  
SITUATED ON THE WEST SIDE OF AND AT 13810-13814 WEAVER AVENUE,  
APPROXIMATELY 290 FEET NORTH FROM THE INTERSECTION OF MAUGANS  
AVENUE, IN MAUGANSVILLE, WASHINGTON COUNTY, MARYLAND

**TRIAD**  
TRIAD ENGINEERING, INC.  
www.triadeng.com

SHEET NUMBER:  
**1 OF 1**  
FILE NO.:  
JOB NO.: 03-22-1053





3/6

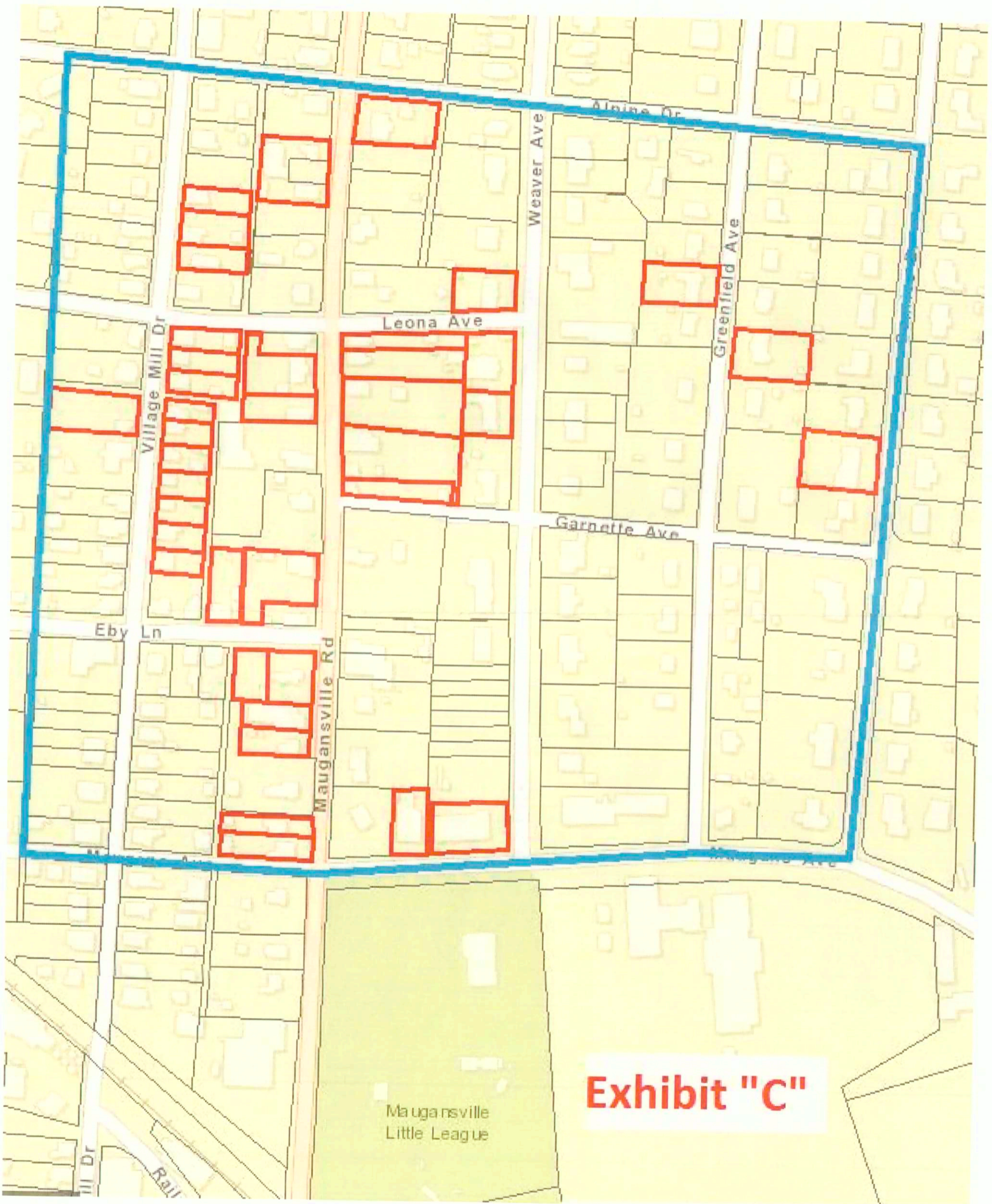
ELEVATION 3 HRT7A







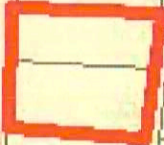




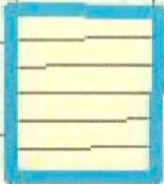
**Exhibit "C"**

Maugansville  
Little League





Vacant Lots



Subject Property

Exhibit "D"



Maugansville Little League













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

C. WILLIAM HETZER, INC.

\*

\*

Appeal No.: AP2023-012

\*

**Appellant**

\* \* \* \* \*

**OPINION**

C. William Hetzer, Inc. (hereinafter “Appellant”) requests a variance to reduce the minimum lot area from 10,000 square feet to 6,814 square feet for Lot 1A, 10,000 square feet to 6,732 square feet for Lot 2A, 10,000 square feet to 6,654 square feet for Lot 3A, and 10,000 square feet to 6,576 square feet for Lot 4A as well as to reduce the minimum lot width from 70 feet to 44 feet for all of the lots for future single-family dwellings at the subject property. The subject property is located at 13810 A – 13814 B Weaver Avenue, Maugansville, Maryland and is zoned Residential, Suburban. The Board held a public hearing in this matter on March 29, 2023.

This appeal was heard pursuant to Article 25 of the Zoning Ordinance for Washington County and upon proper notice to the parties and general public as required.

**Findings of Fact**

Based upon the testimony given, all information and evidence presented, and upon a study of the specific property involved and the neighborhood in which it is located, the Board makes the following findings of fact:

1. Appellant is the owner of the subject property located at 13810 A – 13814 B, Weaver Avenue, Maugansville, Maryland. The subject property is zoned Residential, Suburban.



2. The subject property consists of Lots 1 through 6 on the “Combined Preliminary/Final Plat of Re-Subdivision, Lots 1 through 6, S & H, LLC” which was approved on July 24, 2007.

3. In December 2003, the subject property was the subject of an appeal in AP2003-151, at which time the Board granted variances to reduce lot area and lot width for the construction of duplexes on each lot.

4. In March 2007, the subject property was the subject of an appeal in AP2007-016, at which time the Board granted a variance to reduce lot area and lot width for semi-detached lots.

5. In October 2016, the Residential Rural zoning district was repealed and deleted from the Zoning Ordinance.

6. Pursuant to the Zoning Ordinance, each lot is required to maintain a side yard setback of 12 feet for semi-detached dwellings.

7. The industry standard width for semi-detached dwelling is 40 feet, 20 feet per dwelling.

8. Appellant previously requested a variance to 8 feet so that the standard width semi-detached housing units could be constructed. That variance request was denied by the Board in AP2023-004.

9. In AP2023-011, Appellant requested a variance to 9 feet to allow for the standard width semi-detached housing units to be constructed. The Board took no action on the variance request because it was filed within one (1) of the previous denial and was substantially the same.

10. There are other properties in the surrounding neighborhood that do not meet the minimum setback requirements.

11. Appellant now proposes to reconfigure the property in to four (4) lots, proposed lots 1A, 2A, 3A, and 4A, for the construction of four (4) single-family dwelling

units.

12. There was no opposition presented to this appeal.

### **Rationale**

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.<sup>1</sup> “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

Practical difficulty and undue hardship are the result of a property being unique. “‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.” *North v. St. Mary’s Cnty.*, 99 Md. App. 502, 514 (1994).)

The crux of Appellant’s appeal is that the current setback requirements limit its ability to build the style home they desire to market. The hardship or difficulty claimed is that the zoning designation changed which resulted in stricter setback requirements. Appellant claims that it cannot build marketable housing under the current circumstances and thus seeks variance relief. While the Board has denied previous

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

requests for relief, it has acknowledged the difficulties with the subject property and the application of the setback requirements. Those difficulties were exacerbated when Appellant was proposing to construct six (6) semi-detached dwellings in such a small area and justified a finding that the setback variances were not the minimum necessary to afford relief.

In the instant case, Appellant proposes to combine the existing 6 lots into 4 lots to construct single-family dwellings. In order to do so, the minimum lot area and lot widths need to be reduced. However, no setback relief will be necessary. This new plan will enable Appellant to make use of a property that has sat undeveloped for twenty (20) years. The Board finds that practical difficulty does exist and prohibits reasonable use of the property for residential development without the requested variance relief. The Board is persuaded that the proposal is a better use of the property and the minimum necessary to effectuate reasonable use. The variance relief is consistent with the applicable sections of the Zoning Ordinance and should be granted.

Accordingly, the request for a variance to reduce the minimum lot area from 10,000 square feet to 6,814 square feet for Lot 1A, 10,000 square feet to 6,732 square feet for Lot 2A, 10,000 square feet to 6,654 square feet for Lot 3A, and 10,000 square feet to 6,576 square feet for Lot 4A as well as to reduce the minimum lot width from 70 feet to 44 feet for all of the lots for future single-family dwellings at the subject property is GRANTED, by a vote of 4-1.

BOARD OF APPEALS

By: Jay Miller, Chair

**Date Issued: April 28, 2023**

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.