

BOARD OF APPEALS

April 26, 2023

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

AGENDA

DOCKET NO. AP2023-015: An appeal was filed by Lisa Hall for a special exception to establish a banquet/reception hall in the existing barn; a variance from the required side yard setback of 100 ft. to 13 ft. for the existing barn and a variance from the required 4 paved parking space requirement to 3 spaces as 2 of the 5 spaces will be used for the bed and breakfast use in the owner-occupied dwelling on property owned by the appellant and located at 19414 Keep Tryst Road, Knoxville, Zoned Environmental Conservation. - **GRANTED**

DOCKET NO. AP2023-016: An appeal was filed by Michael & Lisa Mowen for a variance from the required minimum lot size of 40,000 sq. ft. for parcel without public water and sewer to 28,873 sq. ft. The 11,127 sq. ft. to be added to adjacent lot via future subdivision on property owned by Douglas & Charlene Novic and located at 14428 Marsh Pike, Hagerstown, Zoned Rural Village. - **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 April 17, 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: Lisa Marie Hall & Thomas Nalani Jacob
19414 Keep Tryst Road
Knoxville MD 21758

Appellant: Lisa Hall
19414 Keep Tryst Road
Knoxville MD 21758

Property Location: 19414 Keep Tryst Road
Knoxville, MD 21758

Description Of Appeal: Special exception to establish a banquet/reception hall in the existing barn, variance from the required side yard setback of 100 ft. to 13 ft. for the existing barn, variance from the required 4 paved parking space requirement to 3 spaces as 2 spaces will be used for the bed and breakfast use in the owner-occupied dwelling.

Docket No: AP2023-015
Tax ID No: 11000371
Zoning: EC
RB Overlay: No
Zoning Overlay:
Filed Date: 03/29/2023
Hearing Date: 04/26/2023

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 Sections: Table 3.3(1) B, Section 5A.6, Section 22.12 (b) 1

Reason For Hardship: Barn is existing and fits the size of the groups perfectly, too costly to renovate and/or build new structure. Creating additional parking would require significant grading due to topography of property.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Single Family Dwelling
Proposed Use: Banquet/Reception Hall

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

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

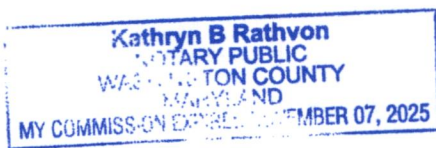
I hearby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Lisa Hall

Appellant Signature

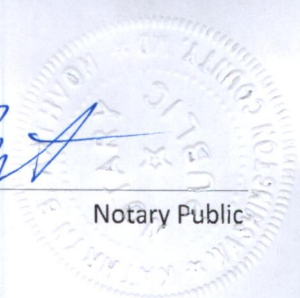
State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 29 day of March, 2023.



My Commission Expires

Kath B Rathvon



Notary Public



WASHINGTON COUNTY BOARD OF ZONING APPEALS

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

AFFIDAVIT IN COMPLIANCE WITH SECTION 25.51(C)

Docket No: AP2023-015

State of Maryland Washington County, To Wit:

On 3/29/2023, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Lisa Hall and made oath in due form of law as follows:

Lisa Hall 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 04/26/2023, 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 04/11/2023 and will remain until after the above hearing date.

Lisa Hall

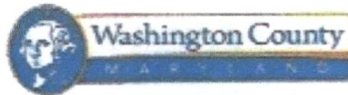
Sworn and subscribed before me the day and year first above written.

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

Notary Public

Seal

My Commission Expires



BOARD OF ZONING APPEALS

747 Northern Avenue | Hagerstown, MD 21742 | P: 240.313.2430 | F: 240.313.2461 | Hearing Impaired: 711

WWW.WASHINGTON-MD.NET

Appeal for Special Exception

Appeal is hereby made for a special exception under the Washington County Zoning Ordinance as follows:

Location 19414 Keep Tryst Rd Knoxville MD 21758

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

☒ Owner (Including Joint Ownership) ☐ Lessee ☐ Contract to rent/lease

☐ Contract to Purchase ☐ Other

Use Proposed: elopements, officiant services, small weddings up to 40 guests

Zoning Ordinance section and subsection(s) providing for proposed use: _____

If filing functionally similar to a principal permitted use or special exception use, please list the use and describe the use similarities:

Provide Detailed Explanation on Separate Sheet

Has any previous petition or appeal involving this property been made to the Board?

☐ Yes ☒ No

If yes, give docket number(s): _____

Additional comments, if any: _____

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

Lion Hall
Signature of Appellant

19414 Keep Tryst Rd Knoxville MD 21758
Address of Appellant

Theweddingniche@gmail.com
Email of Appellant

703 346 0888
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.

Revised August 3, 2022



The Wedding Niche LLC Business Plan

Prepared by: Lisa Hall

19414 Keep Tryst Rd Knoxville, Maryland 21758

703 346 0888

theweddingniche@gmail.com

www.theweddingniche.com

I. EXECUTIVE SUMMARY

The Wedding Niche LLC is established as a Limited Liability Company at 19414 Keep Tryst Rd, Knoxville, Maryland 21758 with the expectation of delivering seasonal small weddings up to 40 guests, elopements and officiant services. The beautiful historic property is five acres, surrounded on all sides by trees, and the perfect setting for an intimate small wedding or elopement.

Business Mission

Our purpose at The Wedding Niche LLC is to provide couples with a beautiful, all inclusive elopement or small wedding service. We will provide the officiant, planning, coordinating and utilize vendors in the local area that they can work with. Our goal for the future is to expand our outdoor adventure elopements and create an experience for couples that they will cherish always.

New Service

The Wedding Niche LLC is prepared to introduce the following services to the market: elopement services, small weddings up to 40 guests, planning and officiating. We will plan, execute and officiate small weddings/elopements either on the property, at the Potomac River or along the Appalachian Trail. I will help connect the couples with other vendors for florals, cakes and food. If the elopement or wedding takes place on our property our guest total limit is up to 40.

We will be doing seasonal weddings from May through October.

The existing small barn on the property will be utilized for dinners. The barn opens up completely on two sides. The overhang of the barn is where the caterers will set up and there is a small room where the bartender will set up.

For the elopements there are only 2 guests on the property and we will be utilizing the B and B portion of the house (two bedrooms) for the couple to get ready and two bathrooms for their use.

The barn seats up to 40 guests perfectly and does not have heat or air conditioning. The electric was already installed when we bought this property and we changed out light fixtures.

For small weddings up to 40, guest shuttles are required to drop off and pick up guests.

We require trailered restrooms for small weddings up to 40. We park the trailered restrooms next to barn. We use Jefferson rentals and their restrooms are all one unit which includes; water, heat or AC, generator and dumping

tanks. They bring them in, set them up and pick them up after the event. Nothing is required of us; no electricity, no water and no waste disposal.

All weddings are required to be over by 8pm and everyone is off the property by 9pm. The caterers are required to take all their trash so there is never any food or trash that is left behind.

We have two handicap accessible parking spots in front of the barn.

The bride and groom will be allowed to change in our two guest rooms as part of our B and B.

II. BUSINESS SUMMARY Industry Overview

In the United States, the wedding, elopements and officiant services industry presently makes 30,000,000 dollars in sales.

Research shows that consumers in this industry primarily focus on the following factors when making purchasing decisions: Couples are seeking small intimate elopements and weddings, budget friendly, outdoor weddings and elopements.

Due to Covid, the market is now trending toward elopements and small weddings. This trend will likely continue for the foreseeable future.

I will work with local businesses in Washington County to provide overnight accommodations, vendors and tourism activities for the couples and their guests.

All our wedding ceremonies and elopements are open air outdoors.

Business Goals and Objectives

For 2023 we would like to book 40 weddings total : 20 elopements per year and 20 small weddings per year with 40 guests or less.

We have expanded our offerings to include off site wedding planning and design work at other venues.

Legal Issues

The Wedding Niche LLC affirms that its promoters have acquired all legally required trademarks and patents.

III. MARKETING SUMMARY Target Markets

The Wedding Niche LLC major target markets are as follows: couples in the DC, Maryland, Virginia and West Virginia areas that want a small intimate but beautiful elopement or small wedding.

The estimated number of potential clients within The Wedding Niche's geographic scope is 15,000.

Pricing Strategy

The Wedding Niche LLC has completed a thorough analysis of its competitors' pricing. Keeping in mind our competition's pricing and the costs of customer acquisition, we have decided on the following pricing strategy.

We have elopement packages that range from \$1200.00 for a simple elopement which includes officiant services, ceremony planning and coordinating to a \$3200.00 package which includes; officiant services, a bridal bouquet, a cake, photography, planning and coordination. Our pricing for all inclusive small weddings up to 40 guests starts at \$5700.00.

I officiate all of the elopements and small weddings.

Promotional Strategy

The Wedding Niche LLC will promote sales using the following methods: Here Comes The Guide Maryland, Facebook, Instagram and local vendors.

SWOT Analysis

Strengths

I have event, wedding planning, event coordinating and officiating experience. I have been self-employed for over 30 years. We live on the property and it is in close proximity to tourism, Harpers Ferry, The C & O Canal and the Appalachian Trail. Many couples come out here on weekends to hike and get on the river. They are seeking unique experiences for weddings and for Adventure Elopements.

I plan, officiate, and coordinate all of the elopements. I am licensed to officiate in WV, MD, CA, DC and CO.

Weaknesses

We are seasonal and the weather plays into the number of bookings we get.

Opportunities

I want to work with other wedding vendors in the area to create more local business and create more outdoor adventure weddings. The history of this area and the history of our property also creates a great opportunity to share with guests what has transpired throughout the years.

Threats

Inflation and the economy.

Competition

In the wedding elopements, small weddings and officiant services industry, customers make choices based upon; guest count, cost, ease of planning, locations and uniqueness of the venue or area.

All our small weddings and elopements are open air or outdoors and elopements are usually booked last minute. We do many elopements and we are willing to hike to beautiful vistas so it is much easier to book us.

The competition level for elopements in our area is moderate.

The primary competitors for the business are the following:

Summit Weddings and Elopements (Berryville Va) ; they serve MD, WV, VA

Elopers (Charles Town Wv) ; they serve MD, WV, VA

EZ Elopements (Jarrettsville Md) they serve the Baltimore and Md areas

.

However, we believe that the Company has the following competitive advantages:

Our advantage is that we specialize in small upscale elopements and small intimate weddings. We have unique offerings and I have experience with planning, executing and officiating weddings.

Services

First-rate service is intended to be the focus of the Company and a cornerstone of the brand's success. All clients will receive conscientious, one-on-one timely service in all capacities, be it transactions, conflicts or complaints. This is expected to create a loyal brand following and return business.

Conclusion

This beautiful five acre historic farm needs to be shared and it's the perfect spot for small intimate weddings.

By requiring shuttle services, trailered restrooms and catered food it takes the parking situation , bathrooms and food prep out of the equation so we are compliant with health codes.

By requiring all weddings to be over by 8pm we are compliant with noise ordinance codes and we do not bother our neighbors.

The neighbors that border and surround our property have written a letter to the zoning board confirming that there is no noise or disruption to their lifestyle with The Wedding Niche elopements or small weddings.

The couples that come to us are from all over the world and what they want is a beautiful wedding experience.

All of them find us because we have five star reviews, we cater to the small weddings and they are not the partying crowd. They just want to enjoy a meal with their families and celebrate their wedding in a beautiful historic setting.

By offering small weddings and elopements we provide a service that couples can afford and still have a gorgeous wedding.

- (a) The number of people residing or working in the immediate area concerned.
This is a residential area with very little traffic on this road. This will not increase traffic because we require the weddings to use a shuttle service to drop off and pick up.
- (b) The orderly growth of a community.
This will not increase noise, traffic, or the orderly growth of this community. Our weddings are daytime weddings and all weddings are required to be over by 8pm. Our weddings do not have loud DJ's or music due to the small size of the weddings.
- (c) Traffic conditions and facilities.
This will not increase traffic because we require the weddings to use a shuttle service to drop off and pick up.
- (d) The effect of such use upon the peaceful enjoyment of people in their homes.
Our weddings are required to be over by 8pm, the music is low and only blue tooth speakers are used, there are no homes within site distance of our weddings.
- (e) The conservation of property values.
This business will not effect home values because most no one can see or hear what we do with the weddings.
- (f) The effect of odors, dust, gas, smoke, fumes, vibrations, glare and noise upon the use of surrounding property values.
Our business does not produce dust, fumes, vibrations, glare or noise to the surrounding properties.
- (g) The most appropriate use of land and structure.
Doing small weddings and elopements on our property is an appropriate use for this property due to its size, layout and location.
- (h) Decision of the courts. N/A
- (i) The purpose of these regulations as set forth herein. N/A
- (j) Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like. N/A

SITE PLAN

19414 Keep Tryst Road

Knoxville, MD 21758

Parcel ID: 11-000371

Lot area: 5.02 Acres

Paper Size: 11"x17"



Created by:

GETASITEPLAN.COM
WITH BEST QUALITY IN SHORT TIME

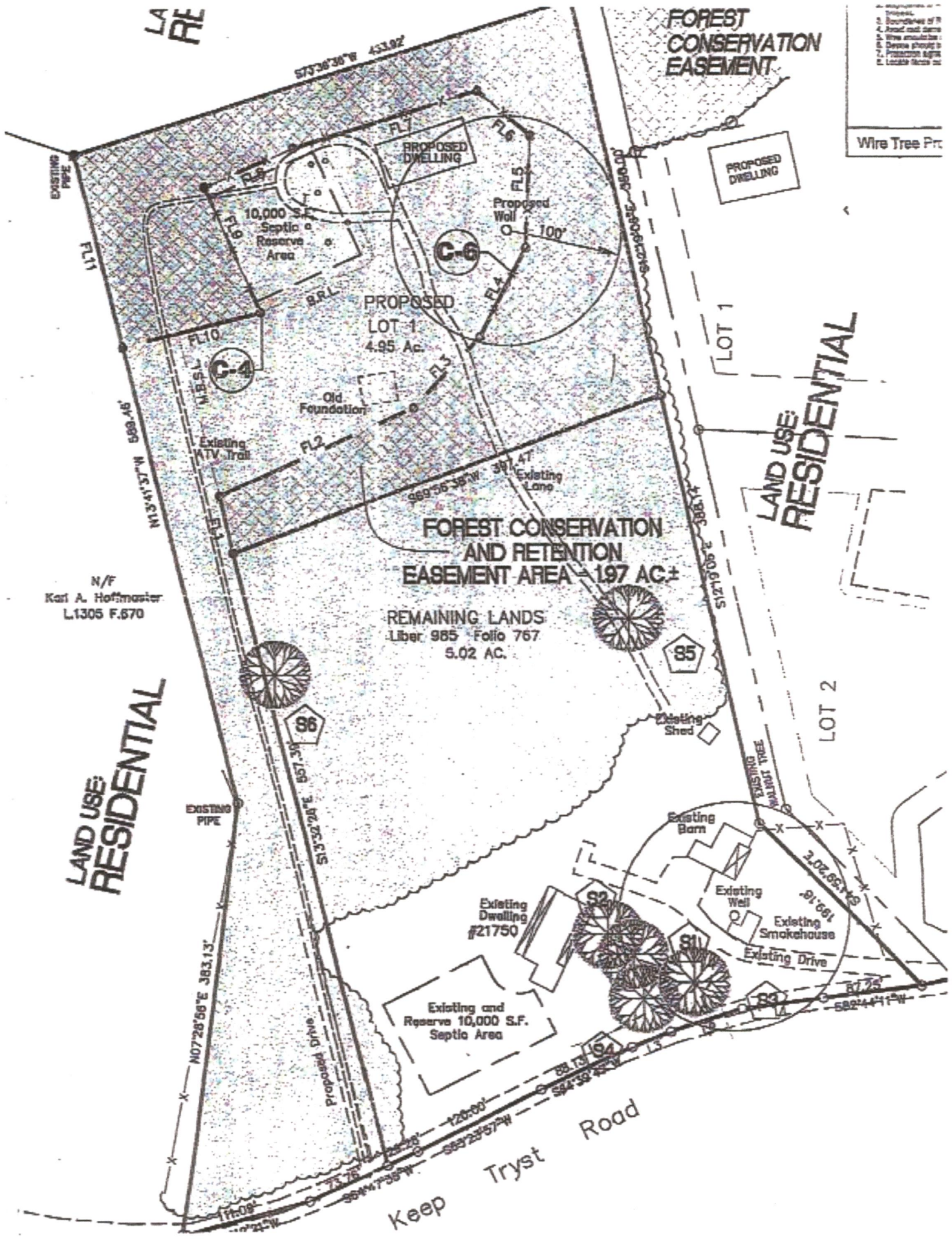


LA RE

FOREST
CONSERVATION
EASEMENT

1. Tract
2. Boundaries of P
3. Road right of way
4. Wire easement
5. Deed showing
6. Precession right
7. Locable fence

Wire Tree Pr



N/F
Karl A. Hoffmaster
L1305 F.670

LAND USE:
RESIDENTIAL

LAND USE:
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FOREST CONSERVATION
AND RETENTION
EASEMENT AREA - 197 AC±

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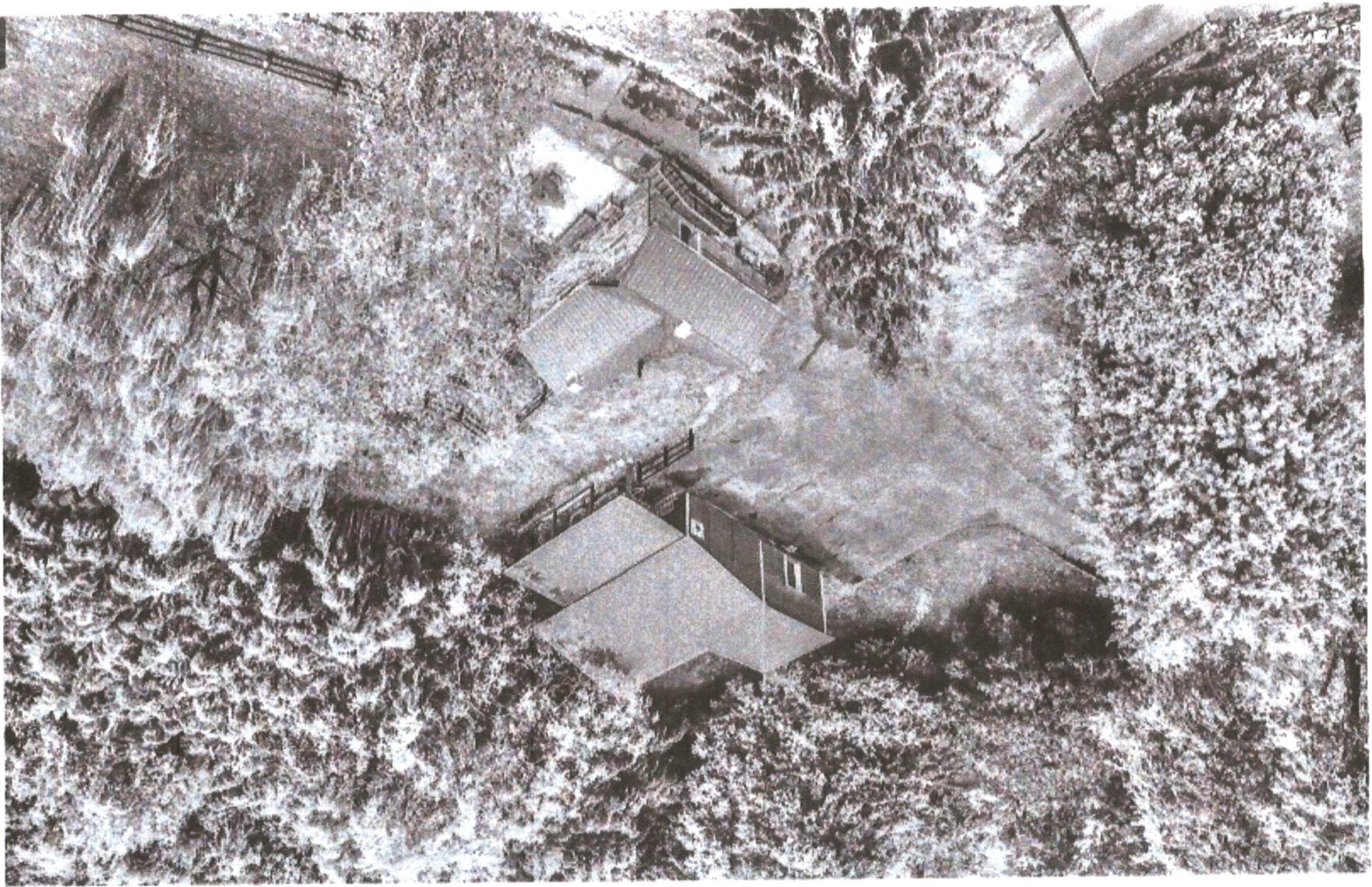
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From: Lisa Hall theweddingniche@gmail.com
Date: Mar 17, 2023 at 8:08:41 AM
To: theweddingniche@gmail.com

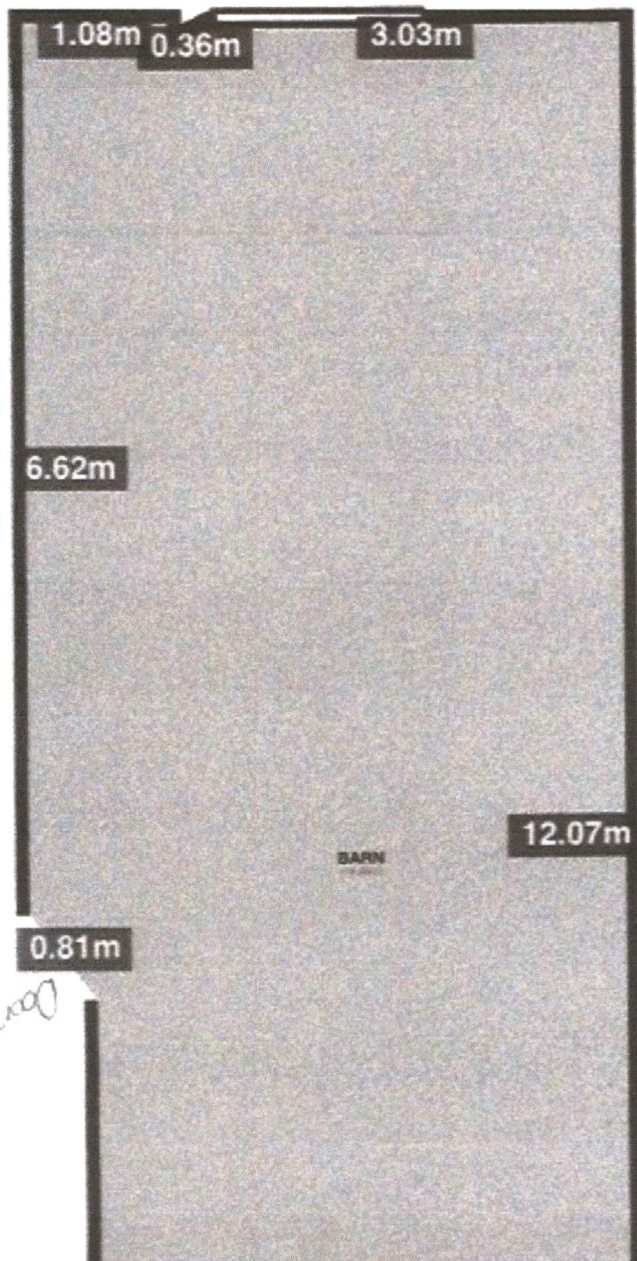
Barn

Internal floor area 57.2m², perimeter 36.0m.

Locometric RoomScan

<https://apps.apple.com/gb/app/roomscan-lidar/id1504050801>

Barn Doors



Barn Doors

From: Lisa Hall theweddingniche@gmail.com

Date: Mar 17, 2023 at 8:27:47 AM

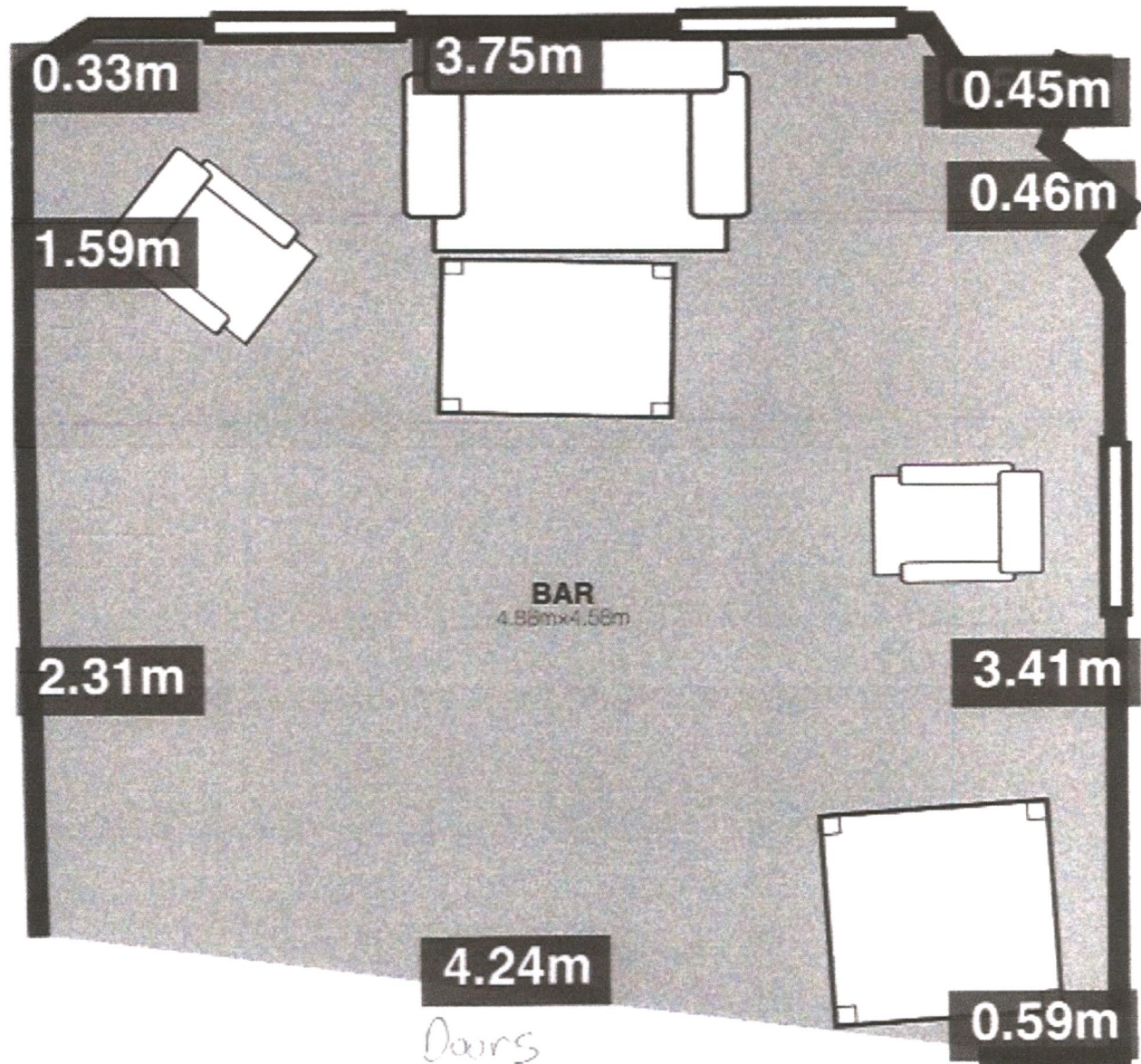
To: theweddingniche@gmail.com

Bar

Internal floor area 20.9m², perimeter 18.4m.

Loometric RoomScan

<https://apps.apple.com/gb/app/roomscan-lidar/id1504050801>



Sent from my iPhone

Property and owners that touch our property.

-David and Mary Hunter
19409 Keep Tryst Rd Knoxville Md 21758

-Jonathan Stovall
547 Prospect Hill Rd Knoxville Md 21758

-Ryan and Erica Barger
19408 Keep Tryst Rd Knoxville Md 21758

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

LISA HALL

Appellant

Appeal No.: AP2023-015

* * * * *

OPINION

Lisa Hall (hereinafter “Appellant”) requests a special exception to establish a banquet/reception hall in the existing barn, and variances to reduce the side yard setback from 100 feet to 13 feet, and to reduce the required number of paved parking from three (3) spaces to two (2) spaces at the subject property. The subject property is located at 19414 Keep Tryst Road, Knoxville, Maryland and is zoned Environmental Conservation. The Board held a public hearing in this matter on April 26, 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 19414 Keep Tryst Road, Knoxville, Maryland. The subject property is zoned Environmental Conservation.
2. The subject property consists of approximately five (5) acres with the original farmhouse, a barn constructed circa 1900, a spring and working spring house. The entrance to the subject property contains part of an old stagecoach stop.

3. The subject property is listed as a historic property in Maryland.
4. Appellant has owned the property for three (3) years. She currently operates a bed and breakfast as an accessory use to her primary residence in the farmhouse.
5. Appellant proposes to operate the Wedding Niche, a business that will host and coordinate small weddings and elopements in the barn structure on the subject property.
6. Small weddings would consist of a maximum of forty (40) guests and would end by no later than 8:00 p.m. Guests would be transported to the property by bus or shuttle service from off site. Appellant plans to use local food and beverage vendors, as well as party rental companies, including rental restroom trailers for events.
7. Appellant anticipates operating seasonally from May to October each year and expects approximately ten (10) small weddings and twenty (20) elopements annually.
8. The existing barn is the original footprint and is located very close to the side yard boundary.
9. There are currently five (5) paved parking spaces serving the bed and breakfast and barn on the subject property. Two (2) spaces would be reserved for the bed and breakfast.
10. There was no opposition presented to this appeal.

Rationale

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 the instant case, the proposed business makes use of the existing elements on the property and is directly related to the bed and breakfast currently being operated. The proposed events will be small, intimate gatherings in which guests are brought to and from the property by shuttle service. The bed and breakfast will also serve as a place for the wedding party to stay on-site.

Based on Appellant’s testimony, there does not appear to be any noise, gas, odors, dust, or other byproducts of the proposed use that would affect the surrounding properties. The subject property has adequate buffering to shield events from the neighbors. In addition, the events will take place in the existing barn area which will limit any outward disturbances. Traffic will be controlled by requiring guests to park off-site and be transported by shuttle, which will also ease any parking concerns. 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 secures public safety and welfare and upholds the spirit of the Ordinance.

Variances

The Board has authority to grant a variance upon a showing of practical difficulty or undue hardship. §§ 25.2(c) and 25.56.¹ “Practical Difficulty” may be found by the Board

¹ “When the terms unnecessary hardship (or one of its synonyms) and practical difficulties are framed in the disjunctive (“or”), Maryland courts generally have applied the more restrictive hardship standard to use variances, while applying the less restrictive practical difficulties standard to area variances because

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).)

In the instant case, the historic nature of the property creates a clear practical difficulty in modifying existing setbacks and structures. The barn is the original footprint from 1900 and cannot be moved. However, based on the proposed special exception use, it does not meet the setback requirements. The requested side yard setback is the minimum necessary to afford relief, given that it is based on the actual distance of the barn from the boundary line. The Board finds that this variance request should be granted.

The proposed use of the subject property also requires Appellant to maintain four (4) paved parking spaces. As noted, there are currently five (5) total spaces, with two (2) being reserved for the bed and breakfast operation. Appellant testified that the three (3) remaining spaces would be more than sufficient for the proposed wedding and event

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).

business. She further noted that since the bed and breakfast would be offered to the wedding party as part of the event, it was likely that all the existing parking spaces would be utilized for the wedding events. As with the setback requirements, the historic nature of the property as an old farm is not consistent with paving over more area to create an additional parking space. The Board finds that the variance relief should be granted to reduce the number of required paved parking spaces.

Accordingly, the request for a special exception to establish a banquet/reception hall in the existing barn as the subject property is GRANTED, by a vote of 5-0. The request for a variance to reduce the side yard setback from 100 feet to 13 feet as the subject property is GRANTED, by a vote of 5-0. The request for a variance to reduce the required number of paved parking from three (3) spaces to two (2) spaces at the subject property is GRANTED, by a vote of 3-2. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

Date Issued: May 25, 2023

BOARD OF APPEALS

By: Jay Miller, Chair

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: Douglas & Charlene Novic
14428 Marsh Pike
Hagerstown MD 21742

Appellant: Michael & Lisa Mowen
14420 Marsh Pike
Hagerstown MD 21742

Property Location: 14428 Marsh Pike
Hagerstown, MD 21742

Description Of Appeal: Variance from the required minimum lot size of 40,000 sq. ft. for parcel without public water and sewer to 28,873 sq. ft. The 11,127 sq. ft. to be added to adjacent lot via future subdivision.

Docket No: AP2023-016

Tax ID No: 27011411

Zoning: RV

RB Overlay: No

Zoning Overlay:

Filed Date: 04/04/2023

Hearing Date: 04/26/2023

Appellant's Legal Interest In Above Property: **Owner:** No

Lessee: No

Other:

**Contract to
Rent/Lease:**

No

**Contract to
Purchase:**

Yes

Previous Petition/Appeal Docket No(s): AP2022-051

Applicable Ordinance Sections: Washington County Zoning Ordinance Section: 5D.3(a)

Reason For Hardship: Health Dept. requires access to well on property.

If Appeal of Ruling, Date Of Ruling:

Ruling Official/Agency:

Existing Use: Residential Lot

Proposed Use: Residential Lot

Previous Use Ceased For At Least 6 Months:

Date Ceased:

Area Devoted To Non-Conforming Use -

Existing:

Proposed:

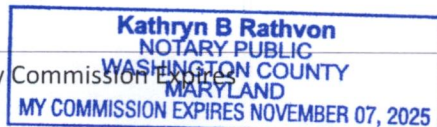
I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

Michael J. Mowen

Appellant Signature

State Of Maryland, Washington County to-wit:

Sworn and subscribed before me this 4 day of April, 2023.



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: AP2023-016

State of Maryland Washington County, To Wit:

On 4/4/2023, before me the subscriber, a Notary of the public of the State and County aforesaid, personally appeared Michael & Lisa Mowen and made oath in due form of law as follows:

Michael & Lisa Mowen 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 04/26/2023, 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 04/11/2023 and will remain until after the above hearing date.

Michael J. Mowen

Michael & Lisa Mowen

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

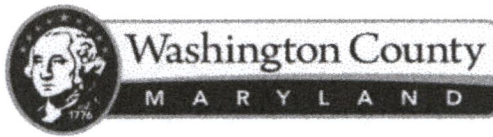
Kathryn B Rathvon

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

Notary Public

Seal

My Commission Expires



BOARD OF ZONING APPEALS

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

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

Appeal for Variance

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

Location 14428 Marsh Pike, Hagerstown, MD 21742

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

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

☒ Contract to Purchase ☐ Other _____

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

5D.3(a)

Specify the particular requirement(s) from which a variance is desired in that section or subsection:

40,000 sq ft. for lot to 28,873 sq ft

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

Reduction of 1,627 sq ft.

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): AP 2022-051

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

Michael J. Moore

Signature of Appellant

li3mow@comcast.net

Email of Appellant

14420 MARSH PIKE HAG. MD

Address and of Appellant

240-217-7972

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.

Appeal Explanation

Page 1: On November 30, 2022, we went before the Zoning Board for a variance from the require minimum lot size of the required zoned Rural Village 40,000 sq. ft. to 30,500 sq. ft. at the property of 14428 Marsh Pike. The 9,500 sq. ft. reduction was going to be added the adjacent lot at 14420 Marsh Pike. This was approved by the Zoning Board. (AP2022-051)

Page 2: We took our hand drawn drawings to the Washington County Health Department (Environmental Division). After they reviewed these drawings, Kim Armstrong said according to COMAR regulations, the property on 14428 Marsh Pike needed to have to its own water supply. Also, the well would have to be on the property owned by 14428 Marsh Pike. If we wanted to purchase the property as shown on the drawings, they would have to move their well. I asked Kim to reference the COMAR regulation. She did provide a website.

Page 3: This gives the COMAR regulation Kim Armstrong referred to.

Page 4: We then asked if we could purchase a smaller piece of the property and have the well remain on the property of 14428 Marsh Pike, how far does the well have to be from the property lines. Kim Armstrong said 10'

Page 5: We redid the original drawings (page 1) and showed 89.6' x 17.83 area of the land that the owners of 14428 Marsh Pike would retain and their well would remain on their property

Page 6: After Kim Armstrong reviewed the drawings, she said the submitted drawings would be fine for subdivision, but she added another step. Both properties involved (14420 and 14428 Marsh Pike) had to have a perc test to establish a repair area and have both properties existing septic systems evaluated because they did not have records in their files for each property.

Page 7: Show the results of tests for 14420 Marsh Pike, which were satisfactory.

Page 8: Show the results of tests for 14428 Marsh Pike, which were satisfactory.

Page 9: After getting approval from the Zoning Board and the Health Department, our next step was to provide engineered drawings to our neighbors at 14428 Marsh Pike. They would give them to their mortgage company for approval. We had Ed Schreiber (Frederick, Siebert, Associates, Inc) do this drawing. He asked what the minimum acreage for our neighbor's lot based on the Board of Zoning appeal. We got approval for a reduction of 40,000 sq. ft. to 30,500 sq. ft. It would seem that the property sq. ft. of 14428 Marsh Pike would increase because of not purchasing as much from the original drawing (page 1) compared to the newer drawing (page 5). This is not the case.

Page 10: After getting the drawing back from Ed Schreiber, it did not look like the drawing (page 5) I gave the Health Department or to Ed. After questioning Ed about this, he said he use the 30, 500 sq. ft. that I had given him which was approved by the Zoning Board. In other words, this drawing shows 14428 actually having the 30,500 sq. ft., which made the 89.6' x 17.83 sq. ft from the updated drawing (page 5) bigger. This is not what we wanted.

Page 11: What had happened was my hand drawing and use of a 100' tape measure was incorrect when calculating the sq. ft. When Ed Schreiber used his data, the 30,500 sq. ft. requested, should have been 28, 982 sq. ft. (approximately) reduction in the property at 14428 Marsh Pike. We then contacted Kathryn Rathvon and told her about this error and did we have to go back through the appeal process again.

Page 12: The answer was yes; we do have to file with the Board of Zoning for another variance

Last page: After more corrections and accurate data from Ed Schreiber, this is the correct drawing. We are asking for a variance from the required minimum lot size of 40,000 sq. ft. for a parcel (14428 Marsh Pike) without public water and sewer to 28,873 sq. ft. The 11,127 sq. ft. to be added to adjacent lot (14420 Marsh Pike) via future subdivision.



Washington County

M A R Y L A N D

BOARD OF ZONING APPEALS

OWNER REPRESENTATIVE AFFIDAVIT

This is to certify that MIKE + LISA MOWEN
is authorized to file an appeal with the Washington County Board of Appeals for
SURVEY REVIEW + PARTIAL RELEASE OF PROPERTY on property
located 14428 MARSH PIKE, HAGERSTOWN, MD. 21742.
The said work is authorized by DOUGLAS + CHARLENE NOVIC
the property owner in fee.

PROPERTY OWNER

DOUGLAS + CHARLENE NOVIC

Name

14428 MARSH PIKE

Address

HAGERSTOWN, MD. 21742

City, State, Zip Code

[Signature]
Owner's Signature

Sworn and subscribed before me this 1ST day of April, 2023.

[Signature]
Notary Public

My Commission Expires: 4/26/2025

AUTHORIZED REPRESENTATIVE

MICHAEL + LISA MOWEN

Name

14420 MARSH PIKE

Address

HAGERSTOWN, MD. 21742

City, State, Zip Code

[Signature] [Signature]
Authorized Representative's Signature

Sworn and subscribed before me this 1ST day of April, 2023.

[Signature]
Notary Public

My Commission Expires: 4/26/2025

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

WWW.WASHCO-MD.NET

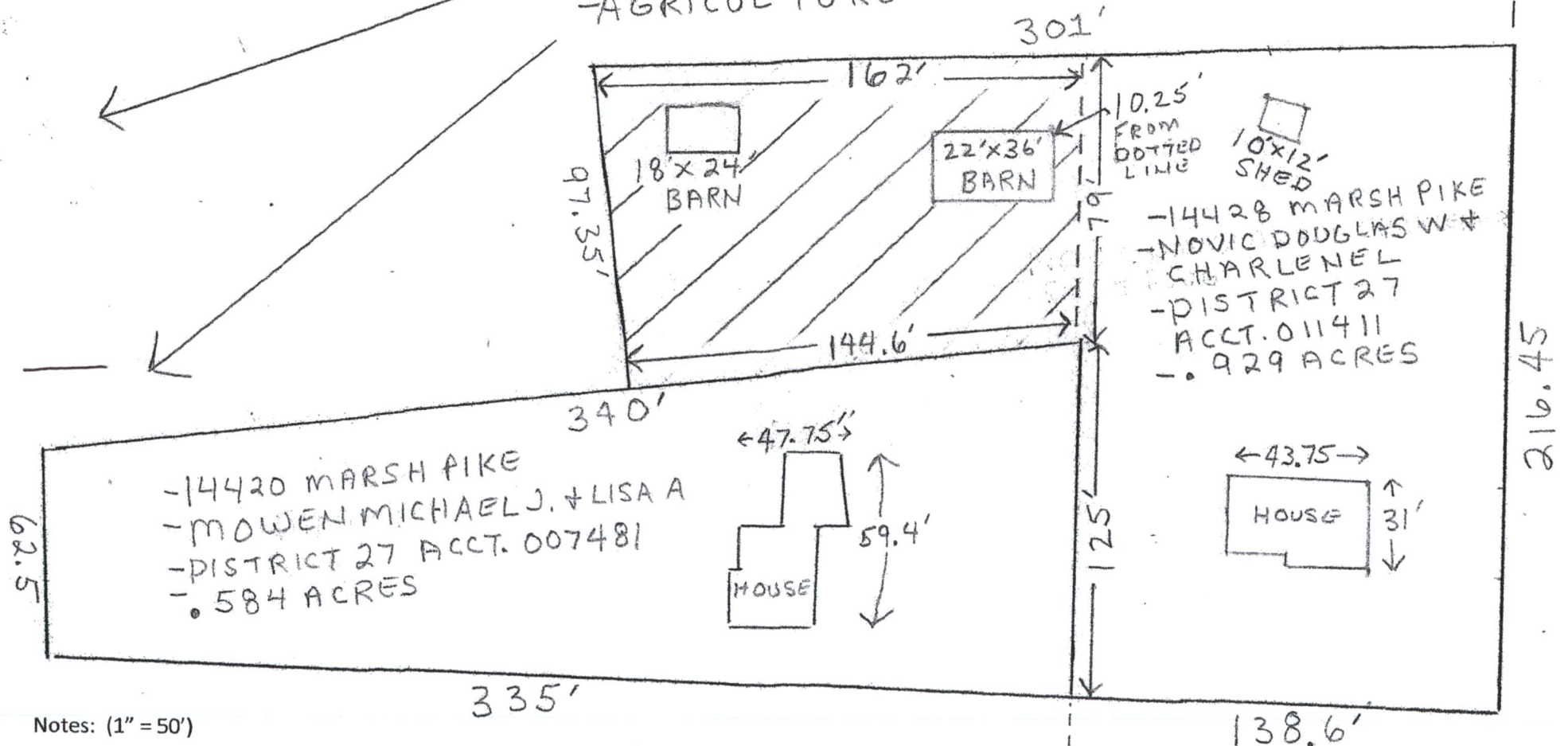
1. Name and mailing addresses of owners of land adjoining the subject property, developed or not, on all sides, including land across any street:

Don and Karlene Eshleman
19707 Reidtown Road
Hagerstown, MD 21742-1342

David and Barbara Burkholder
14436 Marsh Pike
Hagerstown, MD 21742-1646

Mike and Lisa Mowen
14420 Marsh Pike
Hagerstown, MD 21742

- REIDTOWN RD
 - ESHLEMAN DON R + KARLENEJ
 - DISTRICT 27 ACCT. 004865
 - 108.51 ACRES
 - AGRICULTURE



Notes: (1" = 50')

- The section that contains both the crosslines and no crosslines is owned by Douglas & Charlene Novic, as indicated with account # 011411.
- The section indicated as account # 007481 is owned by Michael & Lisa Mowen.
- Michael and Lisa Mowen would like to purchase from Douglas & Charlene Novic the section that has crosslines.
- The 18' side of the barn is located 25' off of property line. The 24' side is located 10' off of property line
- The 22' side of the barn is located 10.25' off of property line. The 36' side is located 19.6' off of property line.

Kimmy Armstrong -MDH- <kimmy.armstrong@maryland.gov>

12/21/2022 7:36 AM

Re: Moving of Well

To li3mow@comcast.net

see link

<https://dsd.maryland.gov/regulations/Pages/26.04.03.01.aspx>

On Tue, Dec 20, 2022 at 3:49 PM <li3mow@comcast.net> wrote:

Thanks for answering questions about the Marsh Pike properties. You said since the well at 14428 Marsh pike had to have it's own water supply and if we were to purchase the land their well sits on, they would have to move their well to their property. Could you please reference the Comar regulation you are referring to?

The well goes directly to their property only. This would be greatly appreciated.

Thanks,
Mike Mowen

--
Kimmy Armstrong, REHS
Washington County Health Dept.
Div. of Env. Health
1302 Pennsylvania Ave.
Hagerstown, MD 21740
240-313-3426
<https://i.ibb.co/bQ88116/WCHD-Logo.png>

Maryland Department of Health is committed to customer service. [Click here](#) to take the Customer Satisfaction Survey.

NOTICE: This message and the accompanying documents are intended only for the use of the individual or entity to which they are addressed and may contain information that is privileged, or exempt from disclosure under applicable law. If the reader of this email is not the intended recipient, you are hereby notified that you are strictly prohibited from reading, disseminating, distributing, or copying this communication. If you have received this email in error, please notify the sender immediately and destroy the original transmission.

2

26.04.03.01

.01 Purpose.

A. It is the intent of this chapter to ensure that subdivisions developed in the State are served by an adequate community water supply and community sewerage system or, when developed in the absence of either a community water supply or community sewerage system, provide for an adequate and safe supply of drinking water and for the safe disposal of sewerage on each building site until such time as community water and sewerage facilities are made available.

Kimmy Armstrong -MDH- <kimmy.armstrong@maryland.gov>

12/29/2022 2:04 PM

Re: Moving of Well

To li3mow@comcast.net

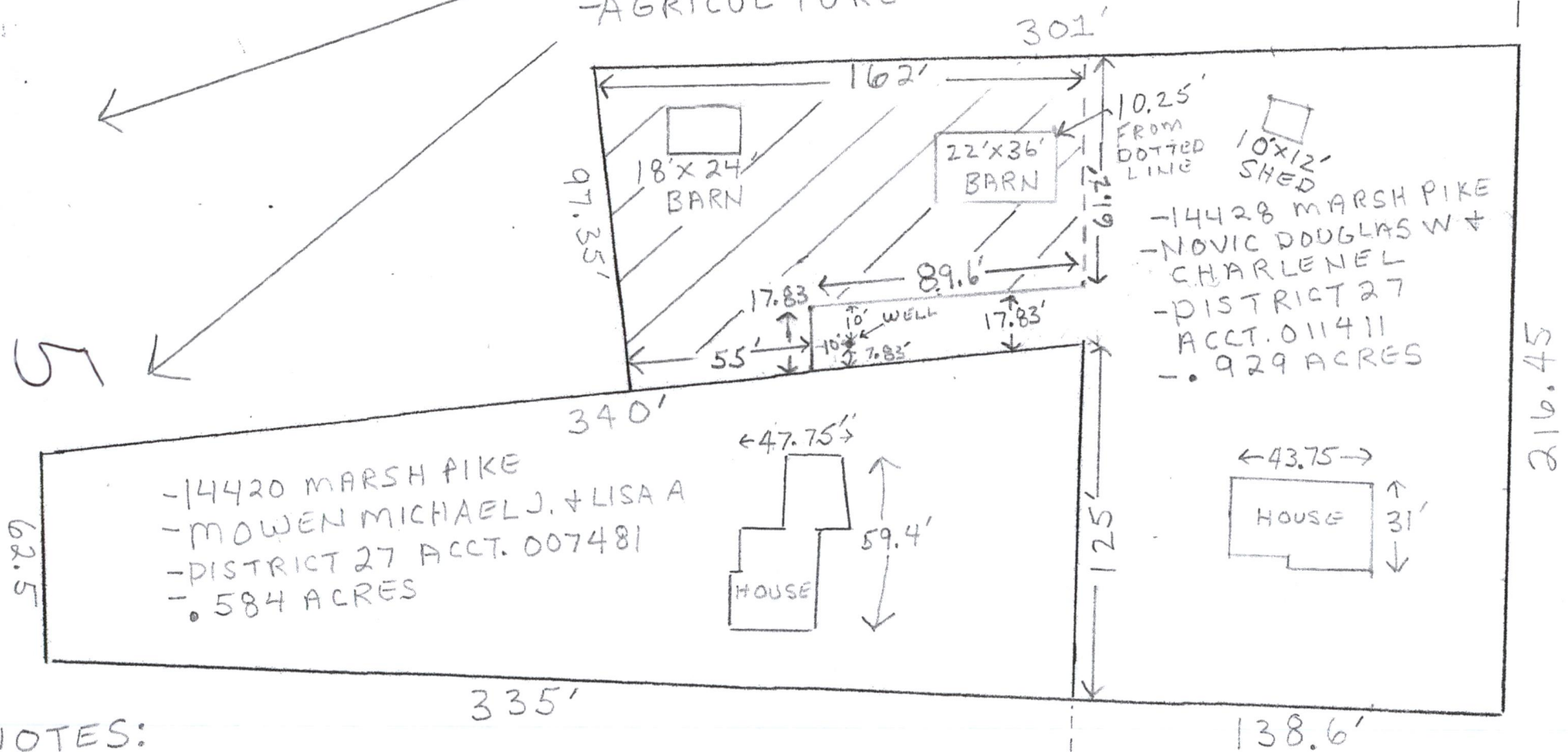
Yes 10 feet

On Thu, Dec 29, 2022 at 12:55 PM <li3mow@comcast.net> wrote:

Good afternoon Kim, I wanted to be sure of something we talked about. Because our neighbors well sits on the property we want to purchase, the well would have to be moved according to COMAR regulations. If we were to purchase a smaller amount of this land, how far from the well does the property line have to be from their well? I believe you told 10 feet, is this correct? (sorry, this has to do with 11420 Marsh Pike and 14428 Marsh Pike)

4

- REIDTOWN RD
 - ESHLEMAN DON R + KARLENEJ
 - DISTRICT 27 ACCT. 004865
 - 108.51 ACRES
 - AGRICULTURE



NOTES:

1. 1" = 50'
2. THE SECTION WITH CROSS LINES IS OWNED BY DOUGLAS + CHARLENE NOVIC. IT IS NOW PART OF THE ORIGINAL LAND THEY OWN NOW, WHICH INCLUDES THE NON-CROSS LINE PROPERTY. MIKE + LISA MOWEN WOULD TO PURCHASE THIS PIECE OF LAND THAT HAS THE CROSS LINES ON IT.

Kimmy Armstrong -MDH- <kimmy.armstrong@maryland.gov>

1/6/2023 1:15 PM

Re: Moving of Well

To li3mow@comcast.net • Mikala Stephenson -MDH- <mikala.stephenson@maryland.gov>

Yes, I have received them and talked it over with Mikala Stevenson with our office. The drawing as submitted will be fine for subdivision. However, the next step before proceeding would be to pay and apply for a perc test to establish a repair area for each dwelling. The application can be found here:

<https://washcohealth.org/forms-applications/>

Also, please have each septic system evaluated by a licensed installer or property transfer inspector to make sure that the system is functioning and up to standards. Please have them use the attached form, and it must be completed in its entirety.

Kimmy Armstrong

On Fri, Jan 6, 2023 at 1:02 PM <li3mow@comcast.net> wrote:

Good afternoon Kim, just wanted to be sure you received my drawings I drop off this week.

Thanks, Michael Mowen

6



WASHINGTON COUNTY HEALTH DEPARTMENT

1302 Pennsylvania Avenue • Hagerstown, MD 21742

<https://washcohealth.org/>

February 27th, 2023

To whom it may concern,

On February 21st, 2023, a site evaluation of a previously approved lot was completed on the property located at Tax Map 11, Parcel 22, 14420 Marsh Pike, MD to determine suitability for an on-site sewage disposal system in accordance with Code of Maryland Regulations (COMAR) 26.04.02.

The results of this evaluation are satisfactory for the installation of a LPD bed onsite sewage disposal system. A BAT (Best Available Technology) unit is also required depending on preliminary design layout and/or variances. Please note that the installation of this system is limited between May 1st and October 31st weather permitting.

Soil Type: Hagerstown

Perc Rate: 4 min/in

Excavation Depth/
Limiting layer: Limited space, no soil observation.

In order to begin construction of your septic system, a full hydraulic design must be submitted to our office and be approved prior to the issuance of a septic permit. Please contact a qualified septic contractor to start this process.

M. Stephenson
Mikala Stephenson, BS, LEHS

ENVIRONMENTAL HEALTH
1302 Pennsylvania Avenue
Hagerstown, Maryland 21742

240-313-3400 Voice • 240-313-3391 TDD • 240-313-3424 Fax

7



WASHINGTON COUNTY HEALTH DEPARTMENT

1302 Pennsylvania Avenue • Hagerstown, MD 21742

<https://washcohealth.org/>

February 27th, 2023

To whom it may concern,

On February 21st, 2023, a site evaluation of a previously approved lot was completed on the property located at Tax Map 11, Parcel 23, 14428 Marsh Pike, MD to determine suitability for an on-site sewage disposal system in accordance with Code of Maryland Regulations (COMAR) 26.04.02.

The results of this evaluation are satisfactory for the installation of a LPD bed onsite sewage disposal system. A BAT (Best Available Technology) unit is also required depending on preliminary design layout and/or variances. Please note that the installation of this system is limited between May 1st and October 31st weather permitting.

Soil Type: Hagerstown
Perc Rate: 8 min/in
Excavation Depth/
Limiting layer: Limited space, no soil observation.

In order to begin construction of your septic system, a full hydraulic design must be submitted to our office and be approved prior to the issuance of a septic permit. Please contact a qualified septic contractor to start this process.

M. Stephenson
Mikala Stephenson, BS, LEHS

ENVIRONMENTAL HEALTH
1302 Pennsylvania Avenue
Hagerstown, Maryland 21742

240-313-3400 Voice • 240-313-3391 TDD • 240-313-3424 Fax

8

li3mow@comcast.net

3/8/2023 11:35 AM

RE: 14428 Marsh Pike

To Ed J. Schreiber <eschreiber@fsa-inc.com>

From 40,000 sq. ft to 30,500 sq.ft. This was before we had to change the drawings because of the well. Because of this, their sq. ft. will now increase. I don't if you can look it up, but our appeal # is AP2022-051. Also I contacted the zoning board and they said we do not have to re-appeal because the sq. ft. is lower, not higher. Hope this helps.

On 03/08/2023 10:59 AM Ed J. Schreiber <eschreiber@fsa-inc.com> wrote:

Mike,

Can you tell me what the minimum acreage for you neighbors lot can be based on the BZA hearing?

Ed Schreiber

Project Coordinator

FREDERICK, SEIBERT & ASSOCIATES, INC.

CIVIL ENGINEERING | LAND SURVEYING | LANDSCAPE ARCHITECTURE

128 S. Potomac St, Hagerstown, MD 21740

O: 301.791.3650 C: 301.992.6436

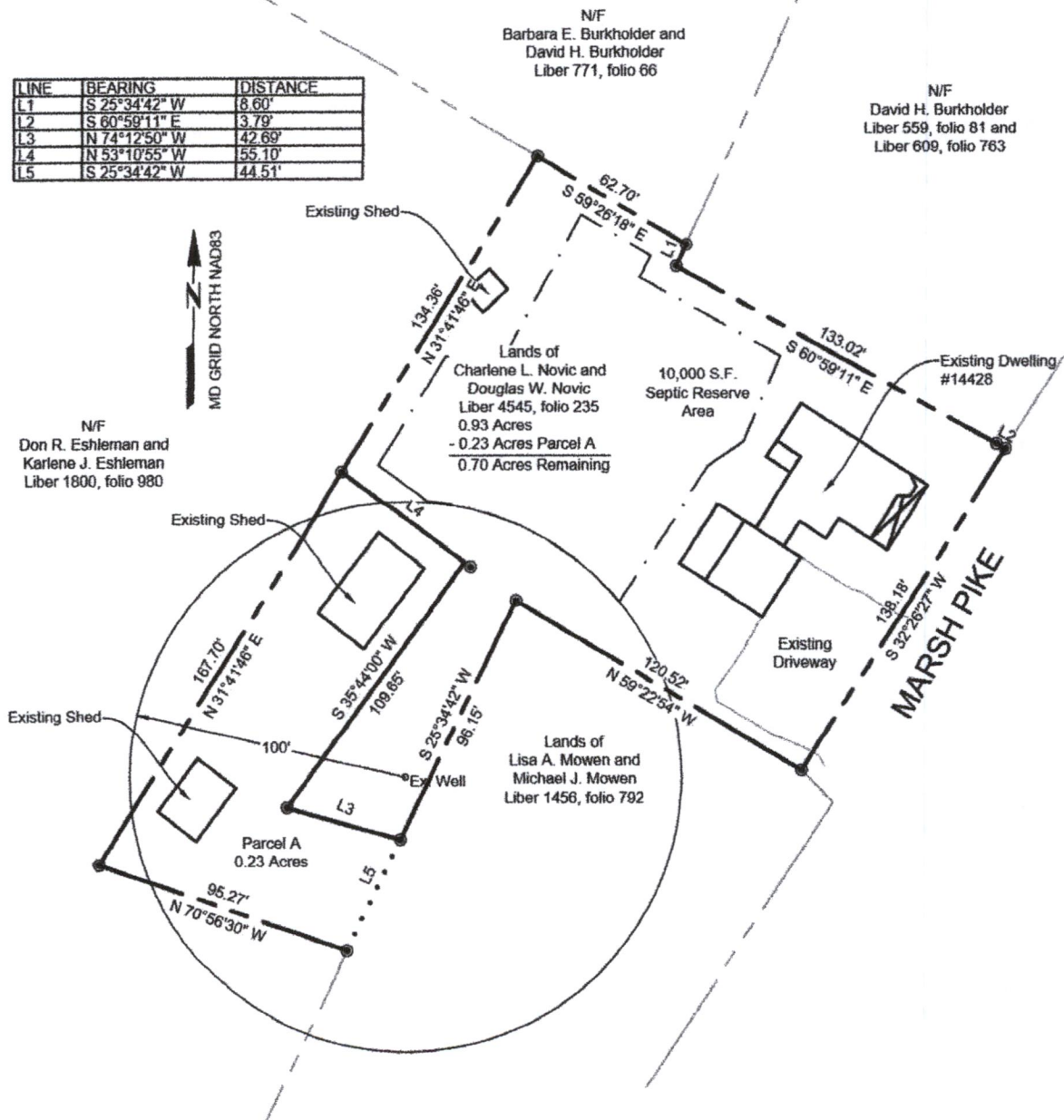
www.fsa-inc.com

HAGERSTOWN, MD | CARLISLE, PA | GREENCASTLE, PA | NEW BLOOMFIELD, PA

9

CONCEPT OF SIMPLIFIED SUBDIVISION
14428 Marsh Pike, Hagerstown, Maryland

LINE	BEARING	DISTANCE
L1	S 25°34'42" W	8.60'
L2	S 60°59'11" E	3.79'
L3	N 74°12'50" W	42.69'
L4	N 53°10'55" W	55.10'
L5	S 25°34'42" W	44.51'



PROPERTY INFORMATION	
11-21-23	
DWN BY	DATE
LEJ	3.8.2023
PROJECT MANAGER	EMAIL
EJS	ESchreiber@fsa-inc.com
SCALE	
1" = 50'	
SHEET 01 OF 01	



FREDERICK, SEIBERT & ASSOCIATES, INC.
CIVIL ENGINEERS • SURVEYORS • LANDSCAPE ARCHITECTS • LAND PLANNERS

© 2023

fsa-inc.com

120 SOUTH POTOMAC STREET
HAGERSTOWN, MD 21740
301.791.3650

20 WEST BALTIMORE STREET
GREENCASTLE, PA 17225
717.697.1007

505 SOUTH HANOVER STREET
CARLISLE, PA 17013
717.701.8111

15 EAST MAIN STREET
NEW BLOOMFIELD, PA 17068
717.567.3680

PROJECT NO.
6361

10

li3mow@comcast.net

3/10/2023 3:13 PM

RE: Question on RV zoning

To Rathvon, Kathryn B. <krathvon@washco-md.net>

Good afternoon Kathryn, I called you earlier this week with a question about zoning on a property we would like to purchase. I was not sure I made my self clear or not on the phone. So let me explain my situation.

On November 30, 2022 we went before the zoning board for a variance to reduce the required minimum lot size of 40,000 square feet to 30,500 square feet. This was on 14428 Marsh Pike, our neighbors property. This was approved by the board. The appeal # is AP2022-051.

Since that time, I took my drawings to the health dept. The problem they had with it was that our neighbors well would be sitting on the property we would be purchasing. Kim Armstrong said each property must have its "own source of water." The only way to get around this was not to purchase an approx. 17.83' wide by 86.5' long strip of the their property. This then would meet the requirement of "own water source" that Kim asked for.

This may sound like it would be less square feet, but it seems the hand drawings I did myself were just a little off of the square footage we wanted to purchase. Frederick, Siebert and Assoc. drew up the drawing for the bank for us and I found out because of my error, and them using more accurate data, the first reduced size of 30,500 square feet is incorrect. The new reduced size is 28,982 square feet, an difference of 1,518 square feet. This would get us the land we want and also meet the requirement of the health dept.

After all of this, my question is this, do we have to go back to the board again for this extra 1,1518 square footage? Is there anyway this could be done within your dept. by someone who has the authority to do so? Can a addendum be attached to the original appeal?

We will be out of the country starting Monday the 13th for ten days, sorry I just found out this yesterday. I will be checking our emails if we can.

Thanks for your help in the past and again now,
Mike Mowen
240-217-7972 (C)

On 12/12/2022 10:05 AM Rathvon, Kathryn B. <krathvon@washco-md.net> wrote:

Good morning,

You will need to start now with the subdivision process with Frederick & Siebert, they will then provide this to the County and a planner will advise you on the process, as I do not handle this and do not want to misguide you.

11

Rathvon, Kathryn B. <krathvon@washco-md.net>

3/14/2023 8:32 AM

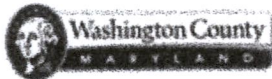
RE: Question on RV zoning

To li3mow@comcast.net <li3mow@comcast.net>

Good morning,

I was able to check with Jill and unfortunately we will have to file with the Board of Zoning Appeals for another variance. It will be the same process as before, I have attached a copy of the appeal filing procedures, affidavit, and application.

Please let me know what questions you may have.



Katie Rathvon
Zoning Coordinator, Division of Planning & Zoning
747 Northern Avenue,
Hagerstown, MD, 21742
P: (240) 313-2464
krathvon@washco-md.net



From: li3mow@comcast.net <li3mow@comcast.net>
Sent: Friday, March 10, 2023 5:22 PM
To: Rathvon, Kathryn B. <krathvon@washco-md.net>
Subject: RE: Question on RV zoning

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Thank you, anything you can will be greatly appreciated

On 03/10/2023 3:40 PM Rathvon, Kathryn B. <krathvon@washco-md.net> wrote:

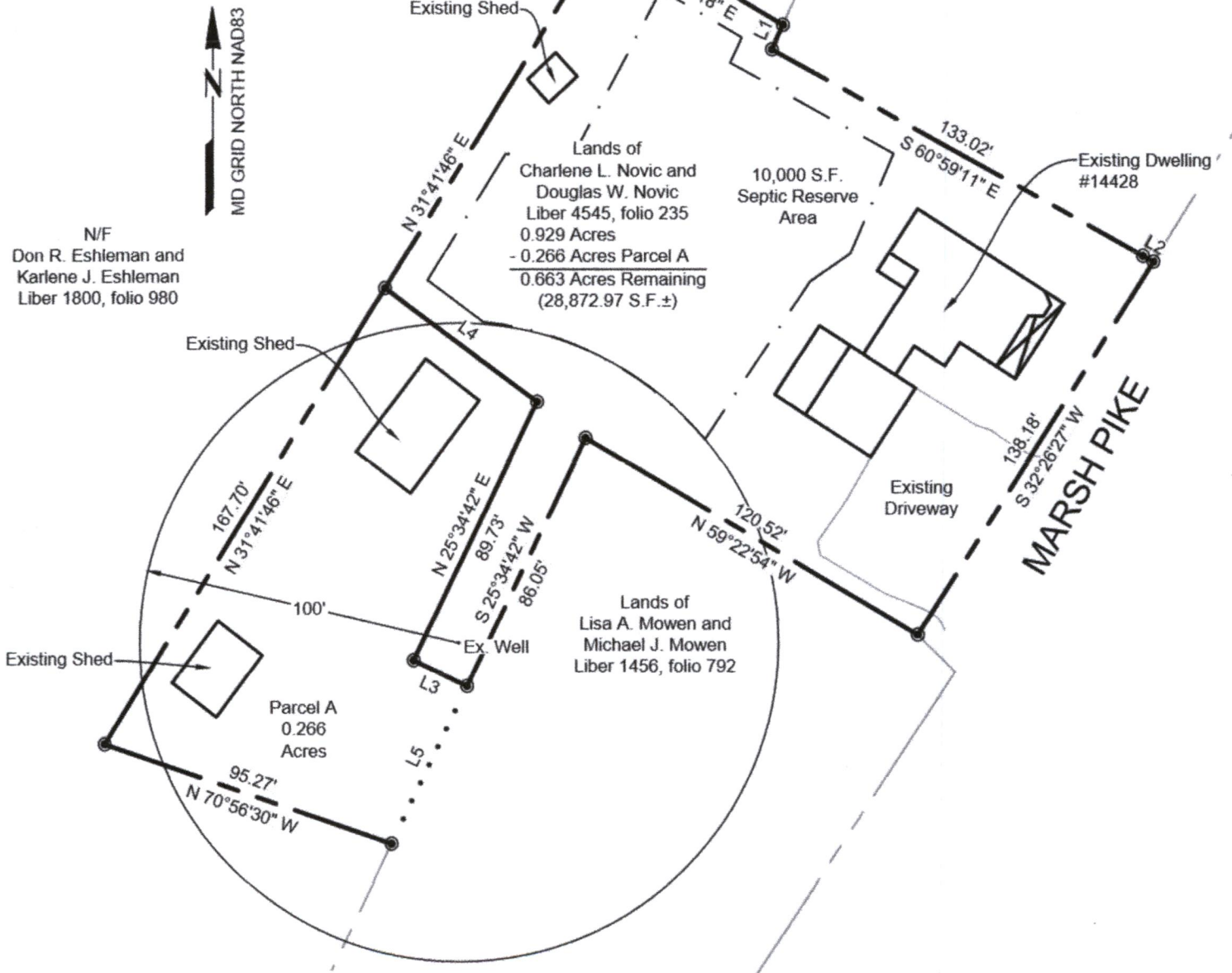
Good afternoon,

I will need to get with my supervisor and double check to see if we can do this via a administrative adjustment as we can do up to 20% adjustment but I will need to verify as we cannot do this if it is considered as an error after the fact adjustment.

12

EXHIBIT OF SUBDIVISION CONCEPT 14428 Marsh Pike, Hagerstown, Maryland

LINE	BEARING	DISTANCE
L1	S 25°34'42" W	8.60'
L2	S 60°59'11" E	3.79'
L3	N 64°25'18" W	18.54'
L4	N 53°10'55" W	59.38'
L5	S 25°34'42" W	54.62'



PROPERTY INFORMATION

11-21-23

DWN BY

LEJ

DATE

3.24.2023

PROJECT MANAGER

EJS

EMAIL

ESchreiber@fsa-inc.com

SCALE

1" = 50'

SHEET 1 OF 1



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505 SOUTH HANOVER STREET
CARLISLE, PA 17013
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15 EAST MAIN STREET
NEW BLOOMFIELD, PA 17068
717.567.3680

PROJECT NO.

6381

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

MICHAEL AND LISA MOWEN

Appellant

Appeal No.: AP2023-016

* * * * *

OPINION

Michael and Lisa Mowen (hereinafter “Appellants”) request a variance to reduce the required minimum lot size of 40,000 square feet for a parcel without public water and sewer to 28,873 square feet at the subject property. The subject property is located at 14428 Marsh Pike, Hagerstown, Maryland and is zoned Rural Village. The Board held a public hearing in this matter on April 26, 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. The subject property is located at 14428 Marsh Pike, Hagerstown, Maryland and is owned by Douglas and Charlene Novic. The subject property is zoned Rural Village.
2. Appellants own and reside at 14420 Marsh Pike, Hagerstown, Maryland which shares a boundary line to the side and rear with the subject property.
3. Appellants have contracted with Mr. and Mrs. Novic to purchase a portion of the adjacent property to the rear of 14420 March Pike.

4. The subject property consists of approximately .929 acres and is L-shaped, extending along the rear boundary line of Appellants' property.

5. Appellants' property consists of approximately .584 acres and the home is located approximately thirty (30) feet from the rear property line. Appellants are interested in purchasing a small portion of the subject property to augment their backyard.

6. Appellants propose to subdivide the portion from the subject property and add to their existing parcel upon vacating the rear lot line. This would result in the subject property being 28,873 square feet, which is less than the minimum required lot size.

7. Appellants' lot is unusually shaped, with very little depth from the front boundary to the rear.

8. Appellants previously brought this variance request in November 2022, albeit for a reduction to 30,500 square feet. The Board granted the request in Case No. AP2022-051.

9. The previous variance relief resulted in the well which serves the subject property being located on Appellants' newly subdivided property. The Health Department informed Appellants that the planned subdivision could not be approved because the well must be located on the property it serves.

10. In addition to the well issue, Appellants discovered that the calculations for the total area of the subdivision were incorrect.

11. Appellants have created a new proposed subdivision that carves out the existing well and maintains the 10-foot setback on all sides. It also correctly recites the total area reduction from the subject property.

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 25.56.¹ “Practical Difficulty” may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variance would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. § 25.56(A).

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

The Board previously determined that the subject property is unique because of the skinny depth and the location of the home so close to the rear property line. Appellants seek to expand the size of their backyard while also creating privacy for their home. Mr. and Mrs. Mowen testified that the subject property was generally unused by Mr. and Mrs. Novic, and they were willing to sell to them to extend the rear of Appellants’ property. In so doing, the subdivision of a portion of the subject property would render it non-compliant with the minimum lot area requirements in the Ordinance. These

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

conditions together with the narrow depth of the subject property create a hardship and without variance relief, Appellant would be unable to make reasonable use of the subject property. Strict compliance with the minimum lot requirements would result in Appellant being denied the opportunity to improve the peace and enjoyment of their home and to ensure security and privacy. Appellants have presented a corrected subdivision request that maintains the existing well on the subject property, meets setback requirements and properly calculates the total area reduction proposed. Based on the foregoing, the Board finds that requiring strict compliance with the Ordinance would prevent Appellant from making reasonable use of the property, that the difficulties are peculiar to the subject property, and are not the result of Appellants' own actions.

Accordingly, the request for a variance to reduce the required minimum lot size of 40,000 square feet for a parcel without public water and sewer to 30,500 square feet at the subject property is GRANTED, by a vote of 5-0. The application is granted upon the condition that the proposed use be consistent with the testimony and evidence presented herein.

BOARD OF APPEALS

By: Jay Miller, Chair

Date Issued: May 25, 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.