



FREDERICK COUNTY BOARD OF APPEALS

March 28, 2024

CASE NUMBER: B-24-07 (B276169) Noel Manalo (Rep. for Joshua N. Frey and Frey Agricultural Products Inc)

REQUEST: The Applicant is appealing to the BOA, in accordance with Section 1-19-3.230 of the Frederick County zoning ordinance, the December 29, 2023, Zoning Determination (V276038) which found that commercial animal byproduct incineration is not a permitted use or permitted accessory use at the farm located on 8520 Woodville Road, Mt. Airy MD 21771.

PROJECT INFORMATION:

ADDRESS/LOCATION: 8520 Woodville Road, Mt. Airy, MD 21771
TAX MAP/PARCEL: Tax Map 60, Parcel 0028
ZONE: Agricultural (A)
REGION: Walkersville
WATER/SEWER: NPS/NPS
COMP. PLAN/LAND USE: Agricultural/Rural

APPLICANT/REPRESENTATIVES:

APPLICANT: Noel Manalo (Rep. for Joshua N. Frey and Frey Agricultural Products Inc)
OWNER: Joshua Frey
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: Noel Manalo

STAFF: Michael Paone, Zoning Planner

RECOMMENDATION: The Zoning Administrator recommends that the Board review the Appellant's request per Sections 1-19-3.230, 1-19-5.220, 1-19-7.300, 1-19-8.200, 1-19-8.338, and 1-19-1 1.100 of the Frederick County Code and render a decision upholding the December 29, 2023, Determination Letter from the Zoning Administrator.

Attachments: Attachment #1: Aerial Map Showing Business Area
Attachment #2: Aerial Map
Attachment #3: Zoning Map
Attachment #4: Comprehensive Plan Map
Attachment #5: Environmental Features Map

BACKGROUND

The Property is zoned Agricultural (A), and the Comprehensive Plan/Land Use Map designation is Agricultural/Rural. The farm operations include crop production, 500-700 head of cattle/livestock, and wood shaving production for animal bedding (SP-15-04, AP15576, APFO 15577, FRO 15761).

The Appellant has filed this appeal, by letter dated January 12, 2024 (Appellee's Exhibit 1), in connection with a Determination Letter by the Zoning Administrator, dated December 29, 2023 Zoning Determination (V276038) (Exhibit #2) wherein the Zoning Administrator found that animal byproduct incineration is not a permitted use or permitted accessory use at the farm located on 8520 Woodville Road (Tax ID # 19-387135) (the "Farm" or the "Property"). The Determination Letter concluded that the proposed use "does not meet the Frederick County zoning requirements in that the use is not accessory to a Veterinarian Clinic or Animal Hospital." The Zoning Administrator in the "Determination Letter" came to this conclusion based, in part, on the definition of "Animal Incinerator" in section 1-19-11.100 of the County Code. Since this definition supports the Zoning Administrator's decision, there is no need to consider the Appellant's question as to whether animal carcass and byproduct disposal is permissible in the Agricultural zone as part of an Agricultural (i.e., farm and livestock) use.

The Appellant has requested that the Board of Appeals find that the Zoning Administrator erred when he determined that animal byproduct incineration is not a permitted use or permitted accessory use at the farm located on 8520 Woodville Road. The Applicant states in their justification that "with hundreds of animals already located on the Farm, disposition of animal carcasses and byproduct is a typical activity accompanying the principal agricultural use of the Property". The Applicant further states that "the Farm serves the local agricultural community by producing and selling animal bedding (used for horses, sheep, pigs, goats, llamas)". The Appellant also indicated that the service would be available to receive shipments of animal carcasses from Frederick County and surrounding areas.

Since the Farm is covered by a Maryland Agricultural Land Preservation Foundation (MALPF) easement to preserve the agricultural use, the Applicant sought their approval. MALPF recommended approval, conditioned upon the landowner meeting all County, State and Federal requirements. However, under the Frederick County Code, animal byproduct incineration is only allowed as an accessory use to cemetery/memorial garden in the A District, or as a facility for the disposal of animal remains that is operated as an accessory to an animal hospital or veterinary clinic in the Agricultural Zoning District. Additionally, these accessory uses would be subject to the special exception criteria set forth in § [1-19-8.338](#) of the zoning ordinance or as an accessory to a cemetery/memorial garden in the Agricultural Zoning District that complies with § [1-19-8.220](#).

APPLICABLE LAW:

§ 1-19-3.230. APPEALS.

(A) Appeals to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the jurisdiction affected by any decisions of the administrative officer. Such appeal shall be taken within 30 days after the date of the action or decision being appealed, by filing with the officer from whom the appeal is taken and with the Board of Appeals a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

Sect. 1-19-5.220. AGRICULTURAL ZONING DISTRICT

The purpose of the Agricultural District (A) is to preserve productive agricultural land and the character and quality of the rural environment and to prevent urbanization where roads and other public facilities are scaled to meet only rural needs.

Sect. 1-19-7.300. AGRICULTURAL DISTRICT

- (A) In the Agricultural Zoning District, the preferred use is agriculture. The operation at any time of any machinery used in farming procedures and all other agricultural operations shall be permitted and have preference over all other uses.

Sect. 1-19-8.220. ACCESSORY USE OF A CREMATORY.

- (A) Crematory operations are permitted as an accessory use to cemetery/memorial gardens or funeral home. Animal incinerator operations are permitted as an accessory use to cemetery/memorial garden in the A District.
- (B) Crematory and animal incinerator operations as an accessory use to a cemetery/memorial Gardens requires a minimum lot size of 15 acres.
- (C) Crematory and animal incinerator operations as an accessory use to a cemetery/memorial gardens require all yard setbacks be a minimum of 50 feet.
- (D) Crematory and animal incinerator operations must comply with all state and federal regulations including all licensing requirements.

Sect. 1-19-11.100 AGRICULTURAL ACTIVITY. Land used exclusively as a bona fide agricultural operation by the owner or tenant. The use of land for agricultural purposes includes farming, viticulture (grape production), fish culture, animal and poultry husbandry, and equine activities. Necessary accessory uses such as packing, treating, or storing of produce, composting and power generation from farm animal waste are allowed provided that the operation of the accessory use is clearly incidental to the agricultural activity. The business of intensive swine feeding operations, garbage feeding of hogs, fur farms or the raising of animals for use in medical or other tests or experiments, commercial slaughtering of livestock, poultry, fish, or meat processing is excluded from this definition.

Sect. 1-19-11.100 ANIMAL INCINERATOR.

A facility for the disposal of animal remains that is operated as an accessory to an animal hospital or veterinary clinic in the Agricultural Zoning District and that complies with the special exception criteria set forth in § [1-19-8.338](#) of the zoning ordinance or as an accessory to a cemetery/memorial garden in the Agricultural Zoning District and that complies with § [1-19-8.220](#).

DOCUMENTATION: (All of which are incorporated herein)

- Exhibit # 1 — Agricultural Board and MALPF Minutes
- Exhibit # 2 — Frey Administrative Appeal
- Exhibit # 3 — Owners Affidavit
- Exhibit # 4 — B-24-07 - Supporting Documents
- Exhibit # 5 — B-24-07 – Zoning Determination
- Exhibit # 6 — Frey Decision Letter
- Exhibit # 7 — Adjoining and Confronting Property Owners
- Exhibit # 8 — Frey Backup Material
- Exhibit # 9 — Frey Disclosure Form
- Exhibit # 10 — Frey Justification Statement
- Exhibit # 11 — Frey Owners Affidavit
- Exhibit # 12 — Portal Submission

DISCUSSION:

The Project is proposed to be located on a 257.4 acre parcel located at 8520 Woodville Road, Mt. Airy, MD 21771. The Farm operations include crop production, 500-700 head of cattle/livestock, and wood shaving production for animal bedding (SP-15-04, AP15576, APFO 15577, FRO 15761).

While an animal incinerator is a permitted accessory use for animal hospitals or veterinarian clinics, the Appellant has not provided any evidence that the proposed incinerator would be accessory to either of these uses, and therefore cannot be approved.

The sections of the County Code cited above provide examples of agricultural activities and valid accessory uses commonly related to agriculture. The Appellant's proposed use is not described as an agricultural activity in Section 1-19-11.100 Agricultural Activity, nor is there a similar permitted use that allows carcasses to be brought to the property from any other farm for incineration. The only option that the Appellant has to move forward with the use that is requested, is to request that a County Council member, or the County Executive, support an amendment to the Frederick County Zoning Ordinance to allow the proposed use.

Therefore, based on the evidence provided to the Zoning Administrator and the applicable law, the Zoning Administrator did not err in his December 29, 2023, Determination Letter.

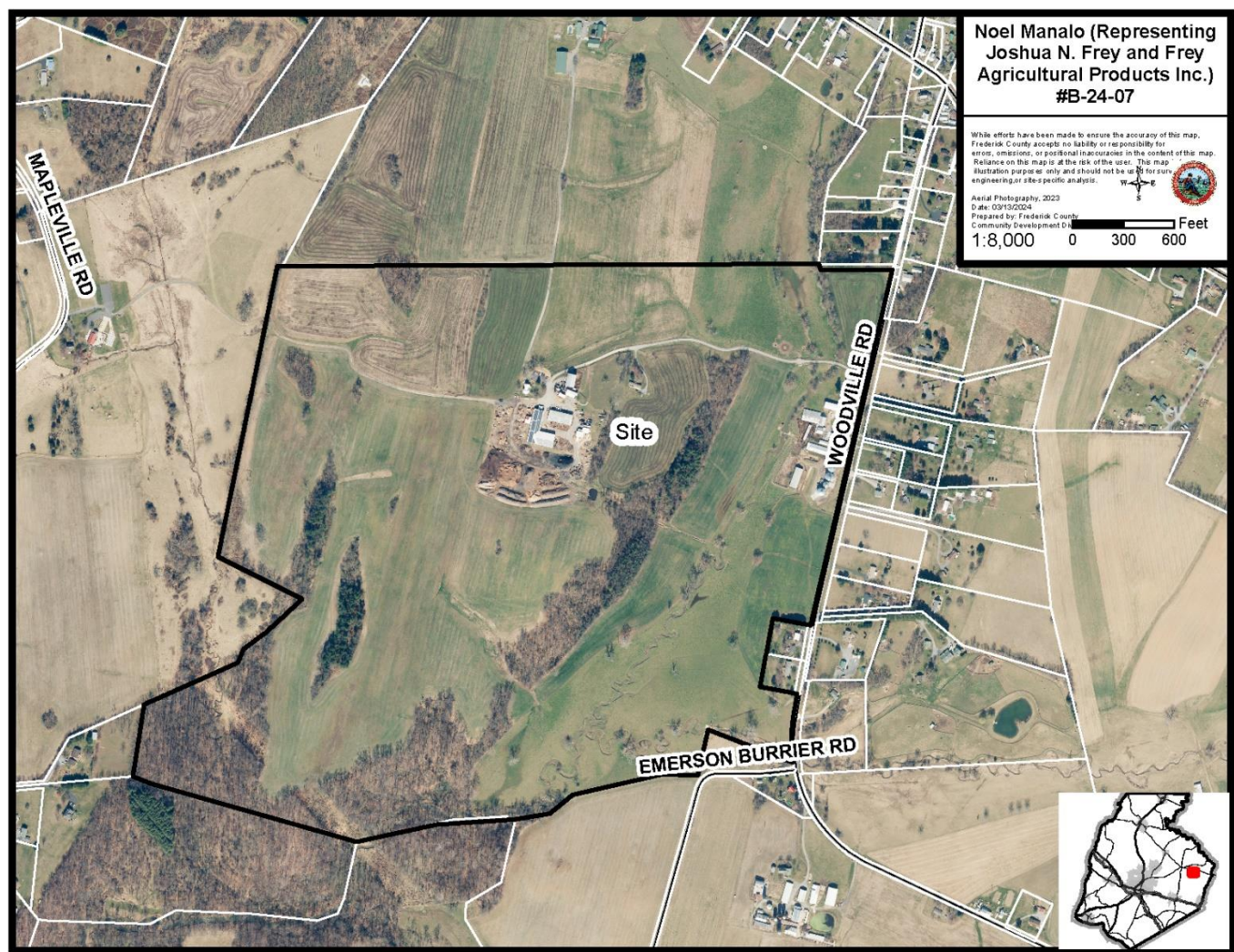
ACTION NEEDED:

The Zoning Administrator requests that the Board review the Appellant's request per Sections 1-19-3.230, 1-19-5.220, 1-19-7.300, 1-19-8.200, 1-19-8.338, of the Frederick County zoning ordinance and render a decision upholding the December 29, 2023, Determination Letter from the Zoning Administrator.

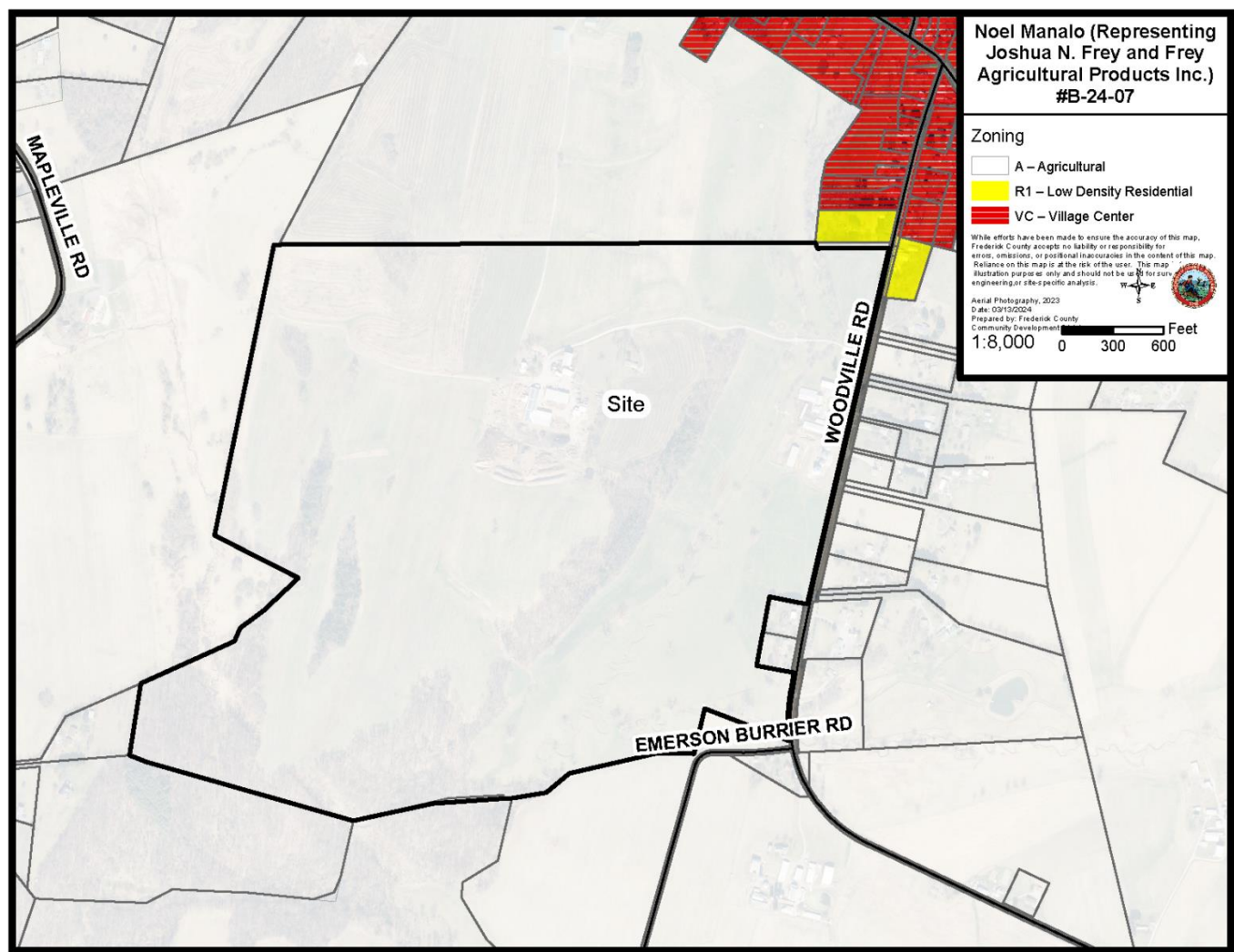
Attachment #1: Aerial Map Showing Business Area



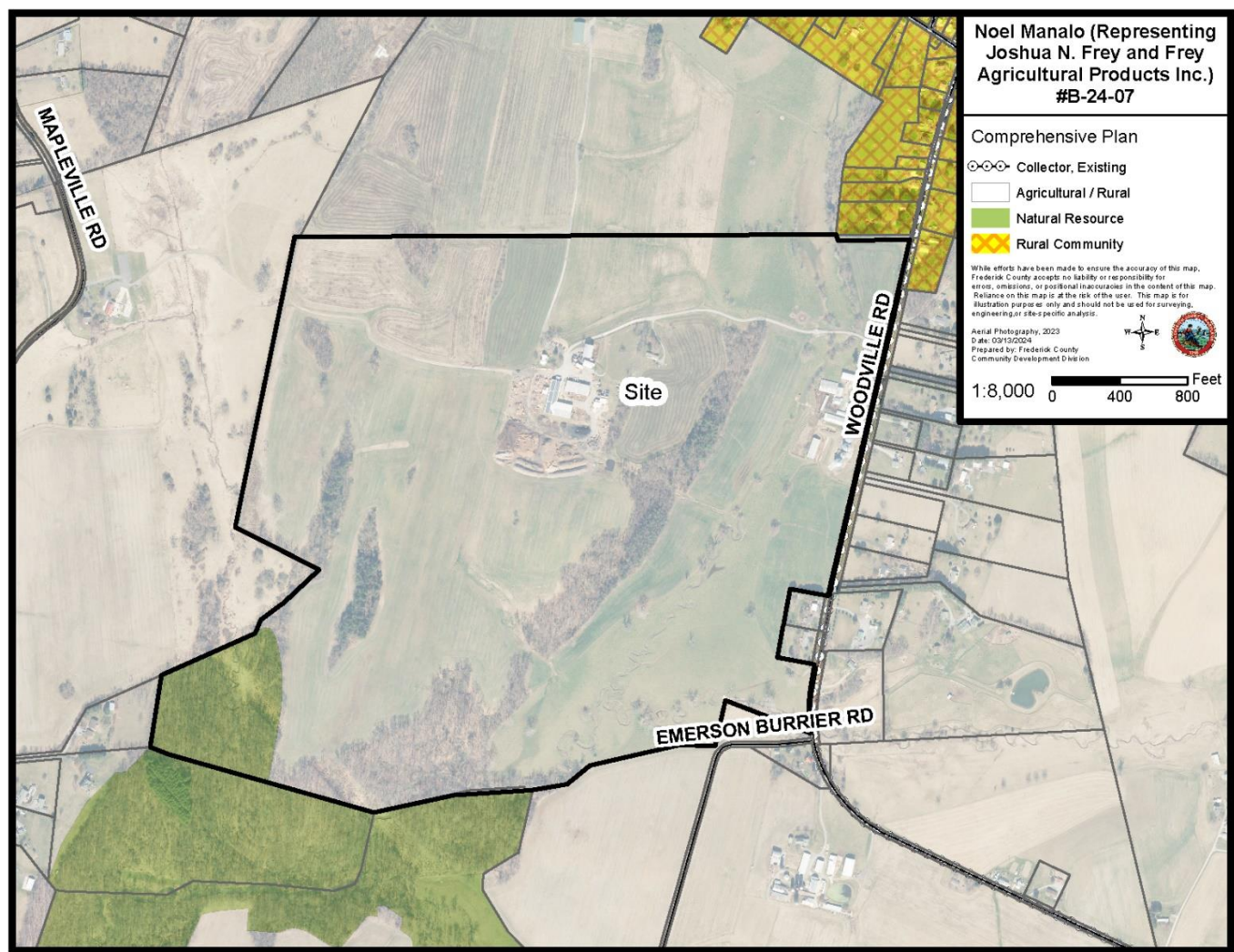
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