



FREDERICK COUNTY BOARD OF APPEALS

March 28, 2024

CASE NUMBER: **B-24-05 (B275849) Joseph Troese**

REQUEST:

The Applicant is requesting a variance under 1-19-4.220 (C) of the Frederick County Code to add approximately 473 square feet of second floor area above the non-conforming area of the existing building. The nonconforming residence is 31.4 ft from the side property line. The RC zoning district requires a minimum 50' setback from all property lines.

PROJECT INFORMATION:

ADDRESS/LOCATION: 6530 S. Clifton Road, Frederick MD 21703
TAX MAP/PARCEL: Tax Map 66, Parcel 0203
ZONE: Resource Conservation (RC)
REGION: Middletown
WATER/SEWER: NPS/NPS
COMP. PLAN/LAND USE: Natural Resources

APPLICANT/REPRESENTATIVES:

APPLICANT: Joseph & Diana Troese, Mike Conrad (Contractor)
OWNERS: Joseph & Diana Troese
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: N/A

STAFF:

Michael Paone, Zoning Planner

RECOMMENDATION:

Based on the findings and conclusions in the staff report, Staff has no objection to the approval of this Application. The Applicant meets the standards and requirements contained in Sections 1-19-4.220(C). (Non-Conforming Structures) and 1-19-6.100 (Design Standards), of the Frederick County Code.

Attachments:

Attachment #1: Site Plan for Property
Attachment #2: Non-Conforming Area of the Proposed Structure
Attachment #3: Variance Area – Second Floor Plan
Attachment #4: Aerial Map
Attachment #5: Comprehensive Plan Map
Attachment #6: Zoning Map
Attachment #7: Environmental Features Map

¹ The term Applicant refers to both the Representative and the Property Owner(s).

Note: All code references herein are to the Frederick County Code, unless otherwise specified.

Background

The required setbacks for this Resource Conservation (RC) zoned property are front – 50', side – 50', rear – 50'. The property is 13.05 Acres in size.

The primary structure is listed as being constructed in 1910, with the addition to the structure in 1953. Both dates are prior to the adoption of the current zoning ordinance, which was adopted on January 24, 1977. The Applicant proposes an addition of master suite approximately 473sq, including deck 5'x12' (60sq), bedroom 16'x12' (192sq), bathroom 8'2"x12' (100sq), closet 5'x12' (60sq). (**Exhibit #3**)

The proposed addition will be built on top of existing home structure (existing family room, kitchen) and will not cause any additional encroachment into the setback nor does not move any part of the home closer to the property line. The Applicant also proposes to remove the structure's rubber roofs over the first floor and reconfigure the second floor to create a new master bedroom on the second floor. The first floor living areas that contain a portion of the kitchen, a half bathroom and a family room will remain. The proposed upward expansion does not increase the original footprint of the structure, extend father into the required setbacks, or include construction related to a nonconforming porch. Therefore, the Applicant is requesting a variance under 1-19-4.220(C). (**Exhibit #4**)

The structure is non-conforming due to the setbacks. Therefore, the Applicant is requesting a variance under section 1-19-4.220 (C) of the Frederick County Code to add approximately 473 square feet of second floor area above the non-conforming area of the existing building.

General Criteria - Variance:

Under the provisions of Section 1-19-3.220(C) of the County Zoning Ordinance, the Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

(A) The Board of Appeals may authorize a variance in height, lot area and yard regulations.

The Applicant states that they understand this requirement. This application is not requesting a variance in height, or lot area. The Applicant is requesting relief from the yard regulations because the structure was constructed in 1910 and added to in 1953, prior to the adoption of the zoning ordinance. It is considered non-conforming due to setbacks because the structure was constructed prior to the adoption of the RC zoning district.

(B) An application for a variance shall be filed with the Board of Appeals only after refusal of zoning approval or an adverse determination has been issued by the Zoning Administrator.

The Applicant states that the Zoning Administrator directed the Applicant to the BOA as the only way to have their request for a second-floor addition approved.

(C) The Board of Appeals shall not grant a variance unless and until a public hearing is held and all the following criteria are met:

The Applicant states that the BOA Hearing is scheduled for Thursday March 28, 2024.

- (1) First, the Board of Appeals shall find that special conditions and circumstances exist which are unique to the land or structure involved and which are not applicable to other lands or structures in the same district.

The Applicant states that special conditions and circumstances exist in that RC zoning and the associated required setbacks did not exist when this home was constructed (1910) and when an addition was constructed in 1953.

- (2) Upon making this finding the Board of Appeals shall also find that the following criteria are met:

- (a) That the special conditions and circumstances do not result from the actions of the applicant; and

The Applicant states that the setbacks are not the result of any action taken by the Applicant as the building was constructed at this location in 1910, added to in 1953. Both years are prior to the current zoning ordinance that were adopted in January 1977.

- (b) The literal interpretation of the provisions of Chapter 1-19 of the Frederick County Code would result in unreasonable hardship and deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of Chapter 1-19 of the Frederick County Code; and

The Applicant states that without the variance from the BOA, they would not be able to expand the house upward. Many property owners enjoy the ability to expand their home upward or outward. The owner of this property is not able to expand the house outward, due to zoning requirements that were adopted about 67 years after the house was originally constructed.

- (c) That the granting the variance will not confer on the applicant any special privilege that is denied by Chapter 1-19 of the Frederick County Code to other lands or structures in the same district; and

The Applicant states that granting the variance will not confer on the applicant any special privilege that is denied by Chapter 1-19 of the Frederick County Code, to other lands or structures in the same district. Variances to allow a nonconforming structure to add to a second floor without expanding the footprint is allowed by the Frederick County zoning ordinance and other persons in a similar situation may also apply for the same variance.

- (d) That the granting of the variance will be in harmony with the general purpose and intent of Chapter 1-19 of the Frederick County Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare,

The Applicant states that the variance will be in harmony with the neighborhood and with the purpose and intent of Chapter 1-19. It will not be injurious to the neighborhood and will not be detrimental to the public welfare. This application does not interfere with or impact the use of any other property.

(D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with Chapter 1-19 of the Frederick County Code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of Chapter 1-19 of the Frederick County Code.

The Applicant states that they understand this requirement.

(E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of Chapter 1-19 of the Frederick County Code in the zone involved, or any use expressly or by implication prohibited by the terms of Chapter 1-19 of the Frederick County Code in said zone.

The Applicant states that they understand this requirement. The requested use is permitted, and not prohibited, under the terms of Chapter 1-19 of the Frederick County Code.

(F) Except as specified in § [1-19-4.220\(C\)](#), the Board of Appeals shall not grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.

The Applicant states they believe that section 1-19-4.220 (C) applies to this case and that the Board of Appeals can grant a variance. Section 1-19-4.220. (C) of the Frederick County Zoning Ordinance applies to this case.

(G) A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The Applicant states that they understand this requirement.

§ 1-19-4.220. NONCONFORMING STRUCTURES.

(A) A nonconforming structure is a structure lawfully existing on or before January 24, 1977, or on the effective date of an amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) The conforming portion of a nonconforming structure may be expanded or modified provided that the expansion or modification does not increase the portion of the structure determined by the Zoning Administrator to be nonconforming.
- (2) The nonconforming portion of a nonconforming structure may be modified in accordance with the requirements of this chapter provided that the modification reduces the portion of the structure determined by the Zoning Administrator to be nonconforming, or if the modification meets the conditions set forth in subsection (C) below.

The Applicant states that they understand this requirement. This application is not expanding the non-conformity.

- (3) Such structure once destroyed by any means will not be reconstructed unless:
 - (a) It is in conformity with Chapter 1-19 of the County Code; or
 - (b) The Board of Appeals grants a variance.

The Applicant states that they understand this requirement.

- (4) Such structure once moved, will thereafter conform to the regulations for the district to which it is moved.

The Applicant states that they understand this requirement.

- (5) This movement does not include minor shifting or settling of the structure from natural or accidental causes.

The Applicant states that they understand this requirement.

- (B) Except as specified below in subsection (C), the Board of Appeals shall not grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.

The Applicant states that they understand this requirement and are seeking variance relief in accordance with 1-19-4.220. C.

- (C) The Board of Appeals may grant a variance to expand a nonconforming portion of an existing nonconforming structure only if the proposed expansion does not.

- (1) Increase the original footprint of the nonconforming portion of the structure.

The Applicant states that they are seeking a variance to expand a nonconforming portion of an existing nonconforming structure but that the expansion does not increase the footprint because the additional is vertical.

- (2) Extend farther into the required setback (s) than the existing nonconforming portion(s) of the nonconforming structure: or

The Applicants state that the expansion does not extend farther into the required setback than the existing nonconforming portions of the nonconforming structure.

- (3) Include the construction of a nonconforming porch, enclosure of an existing nonconforming porch, or the addition of stories on top of a nonconforming porch.

The Applicants state that they understand this requirement. The proposal does not include the construction of a porch, or the addition of stories on top of a non-conforming porch.

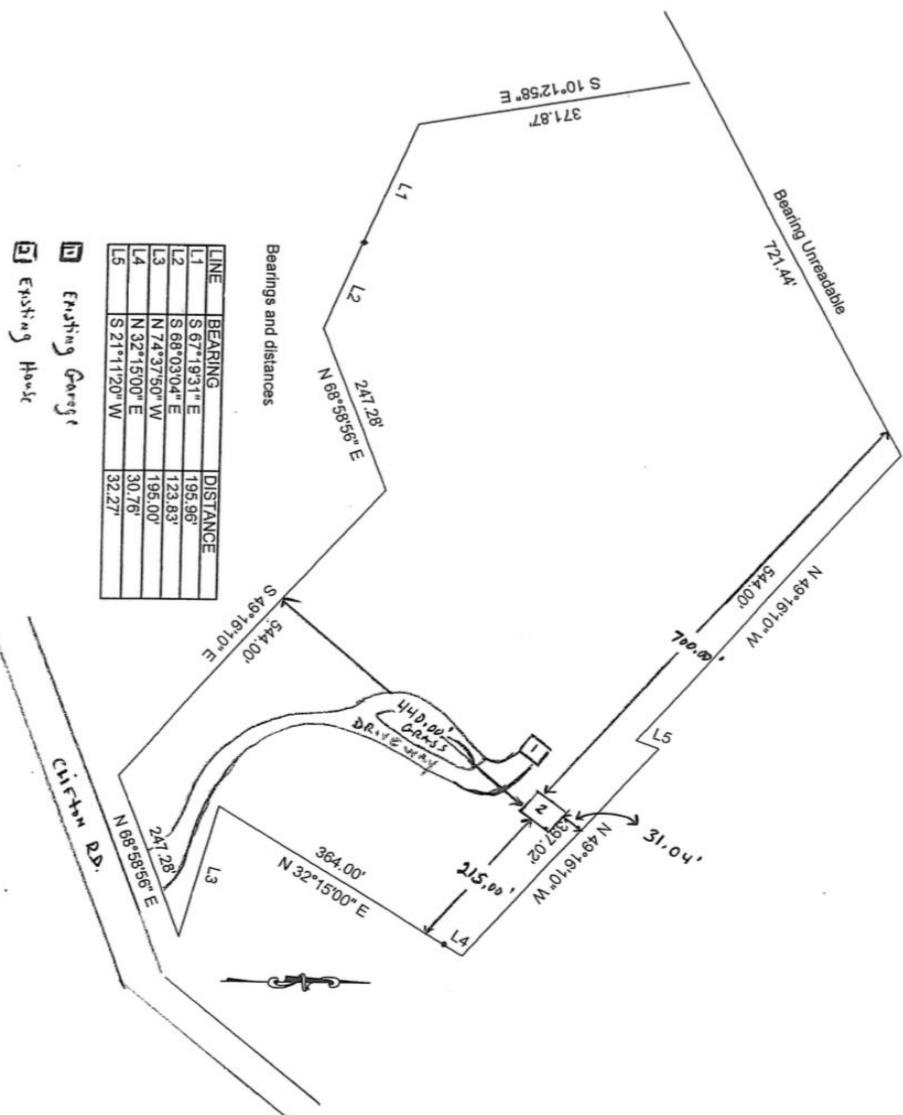
Based on the findings and conclusions in the staff report, Staff has no objection to the approval of this Application. The Applicant meets the standards and requirements contained in Sections 1-19-4.220(C). (Non-Conforming Structures) and 1-19-6.100 (Design Standards), of the Frederick County Code.

1-19-3. 220.G: A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1-time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

Exhibit #1: Property Site Plan

6530 S. Clifton Rd.

Fredrick, MD. 21703



Scale 1"=200'

Exhibit #2: Non-Conforming Area of the Proposed Structure

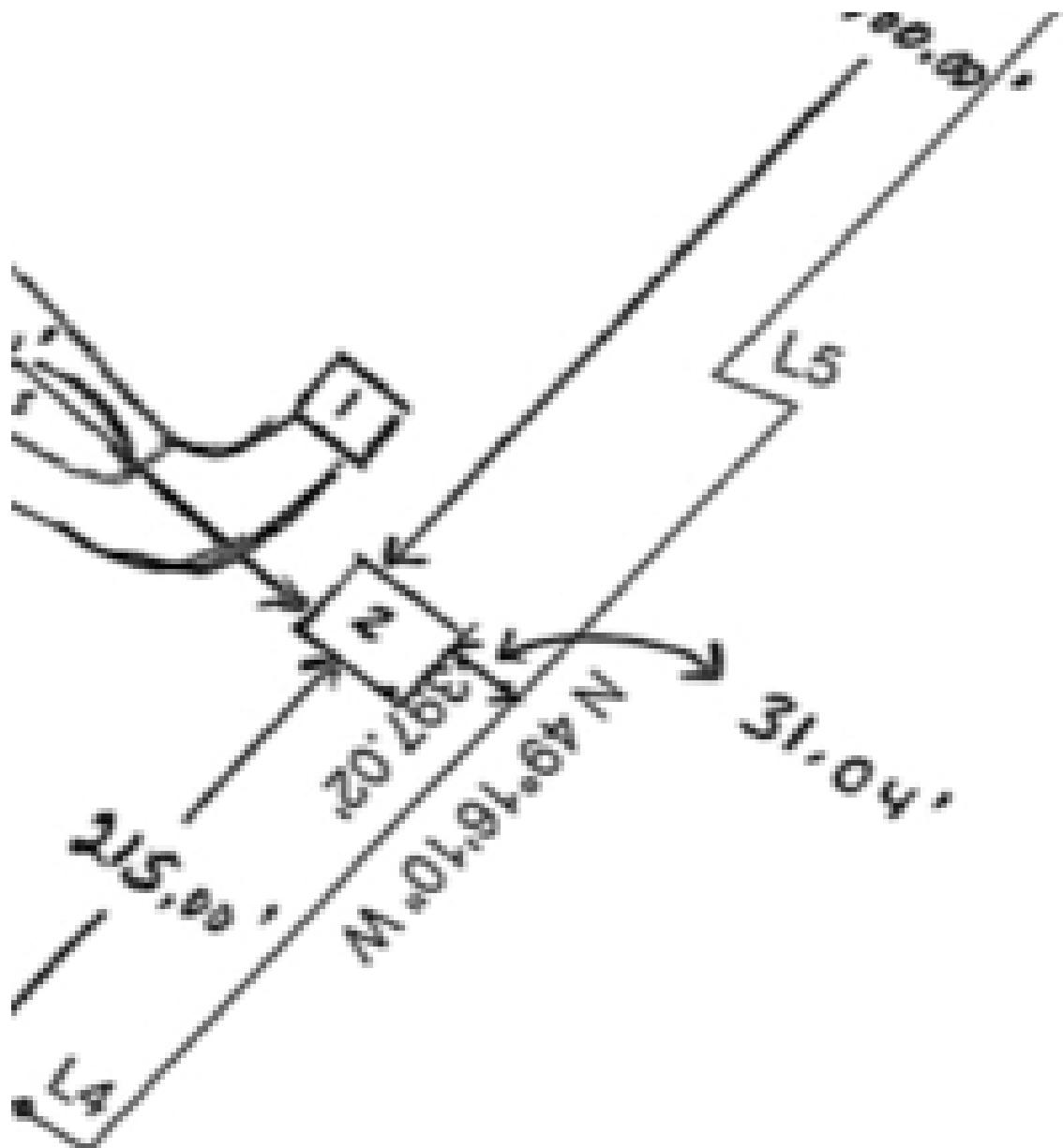


Exhibit #3 – Variance Area in Red

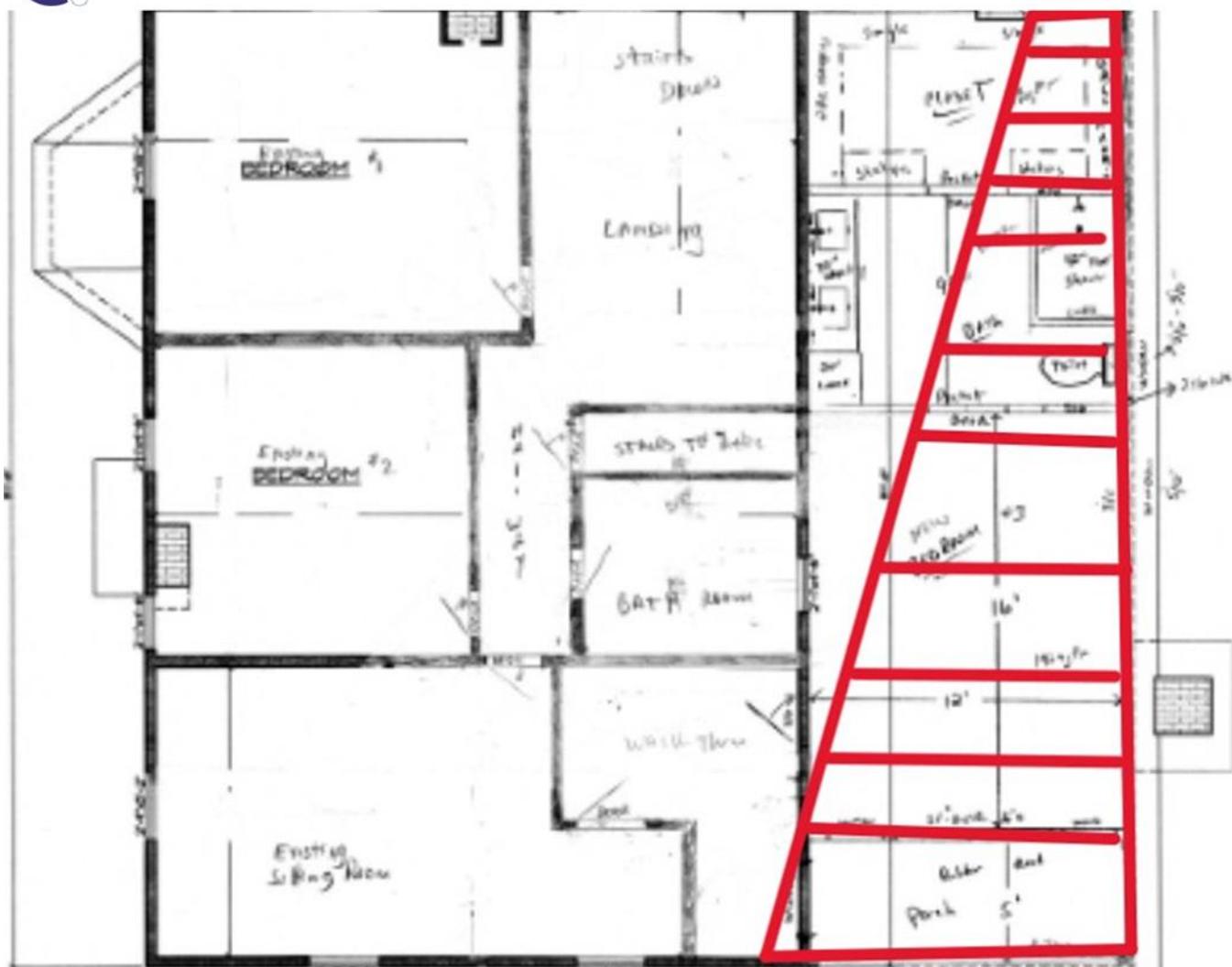


Exhibit 4 - House Drawing with Addition

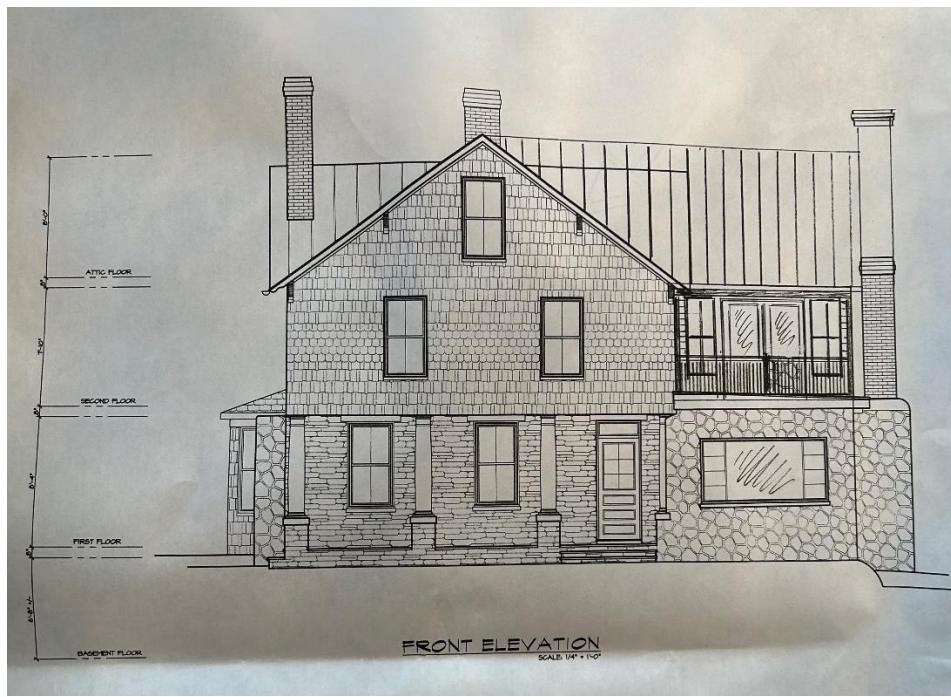


Exhibit 4: Aerial Map

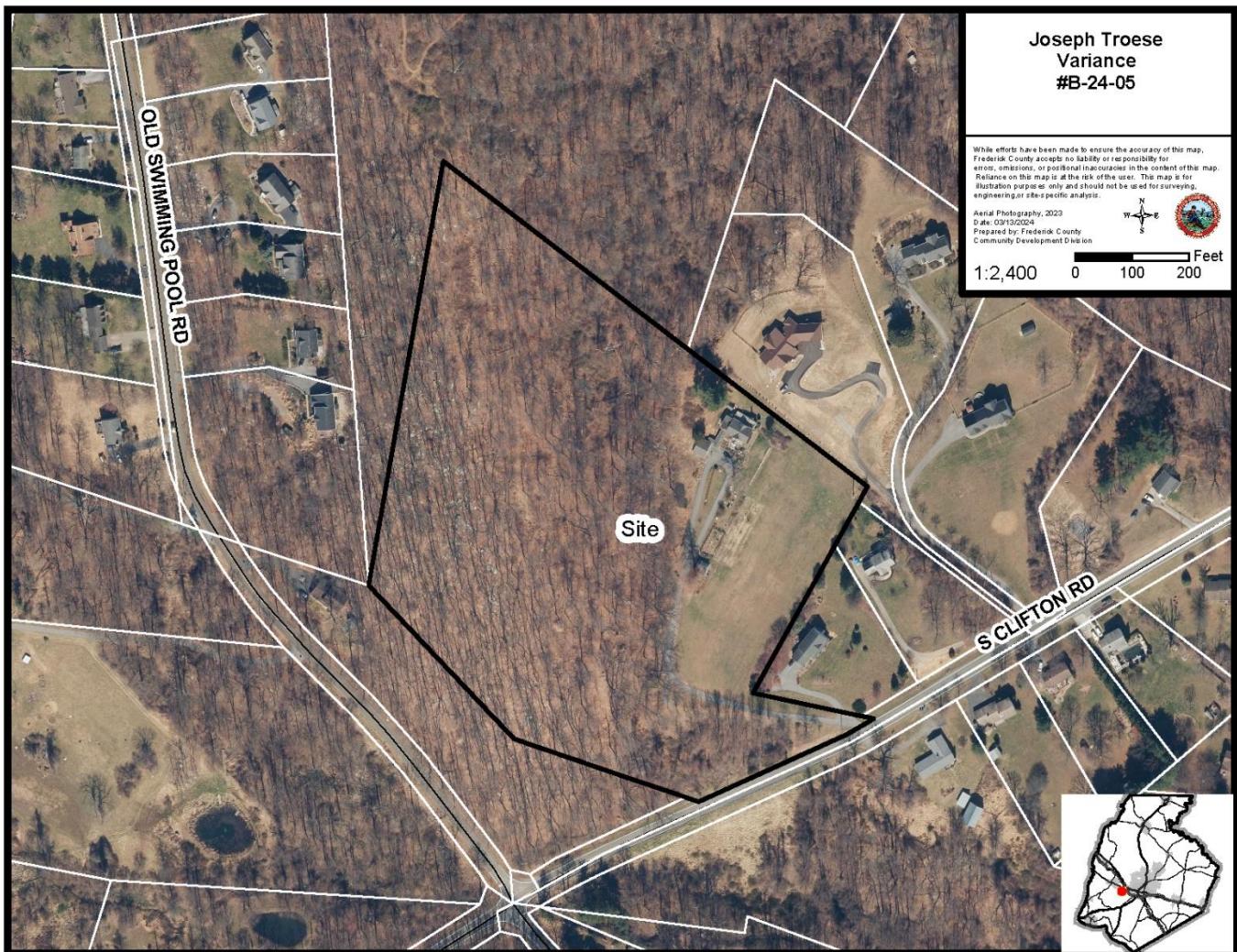


Exhibit 5: Comprehensive Plan Map

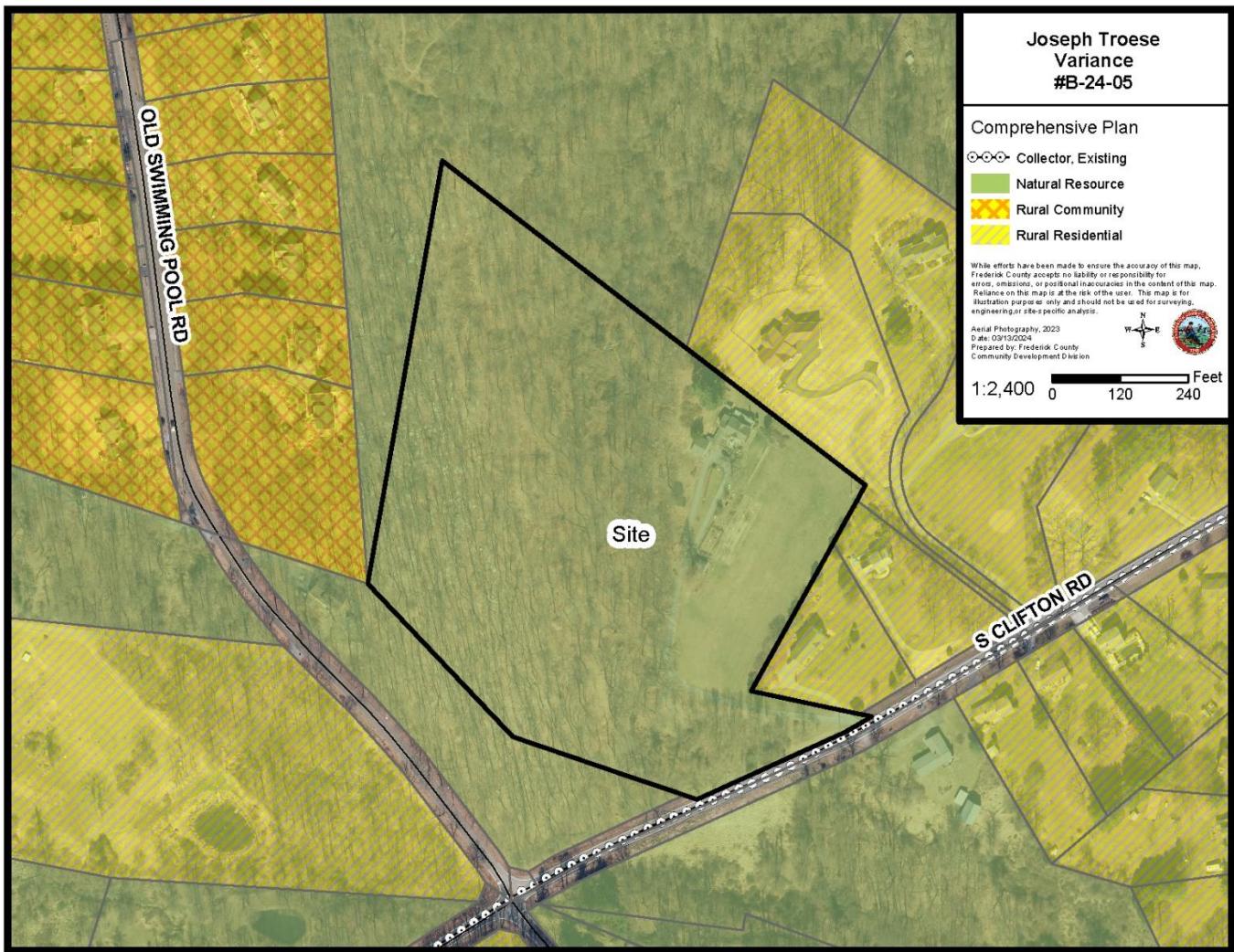


Exhibit 6: Zoning

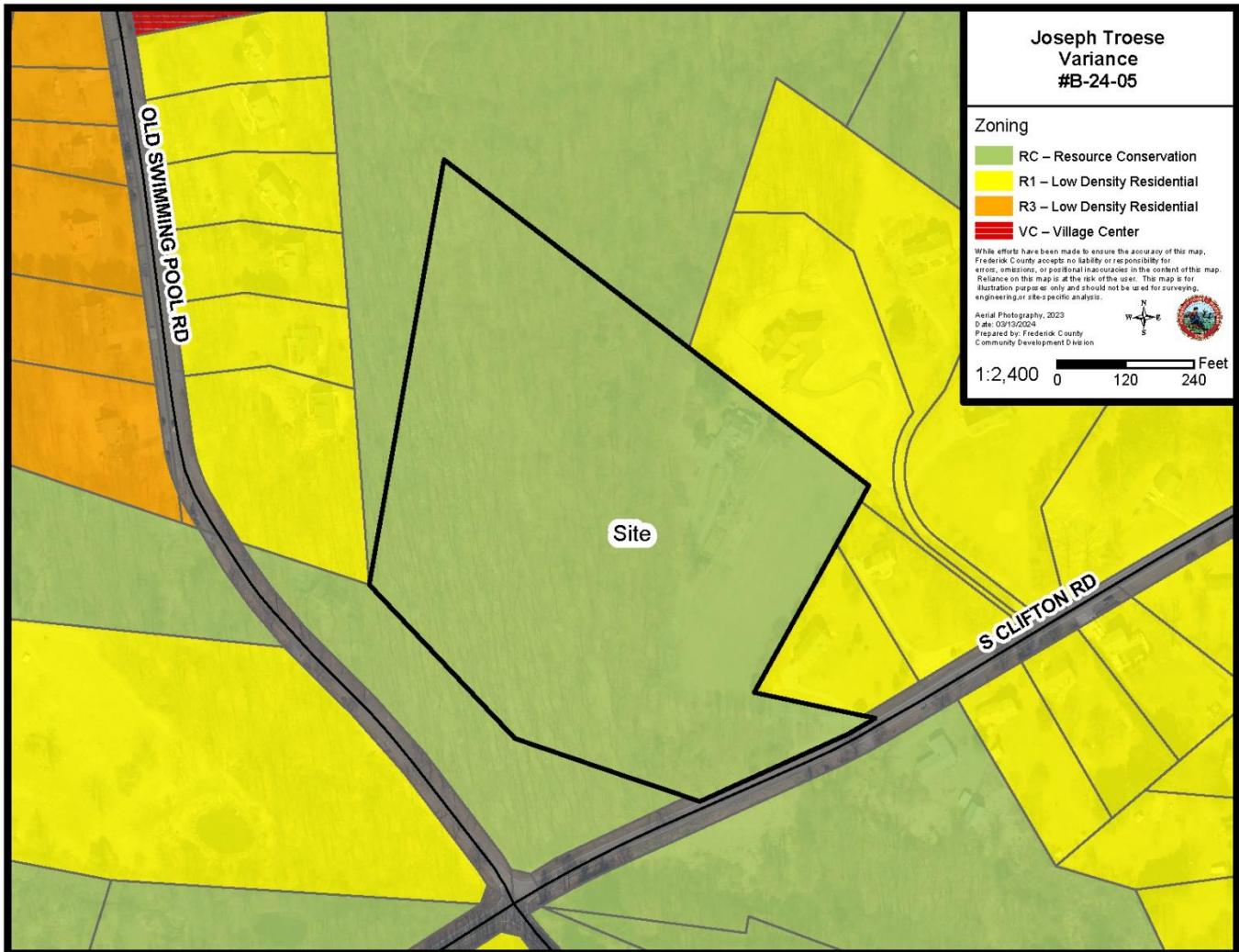


Exhibit 7: Environmental Features Map

