



FREDERICK COUNTY BOARD OF APPEALS

April 25, 2024

TITLE: **Kirschner/Hyde - ADU**

CASE NUMBER: **B-24-10 B273272**

REQUEST: Requesting approval of a Special Exception to permit an Accessory Dwelling Unit (ADU) Greater than 1,000 sq. ft. in accordance with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Code. The ADU is 1,351.89 sq. ft. and the primary home size is 4,540 sq. ft.

PROJECT INFORMATION:

ADDRESS/LOCATION: 8611B Baltimore National Pike, Middletown, MD 21769.
TAX MAP/PARCEL: Tax Map 55 , Parcel 0024,
ZONE: Low Density Residential (R1)
REGION: Middletown
WATER/SEWER: NPS/NPS
COMP. PLAN/LAND USE: Rural Residential

APPLICANT/REPRESENTATIVES:

APPLICANT: WRB Construction
OWNER: Grace Hyde and Andras Kirschner
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 finds that the proposed Special Exception, to allow an ADU, 1,351.89 sqft. on the subject property, complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code.

ATTACHMENTS:

- Attachment 1: Primary Residence with Addition and ADU**
- Attachment 2: House Rendering**
- Attachment 3: Aerial Map**
- Attachment 4: Zoning Map**
- Attachment 5: Comprehensive Plan Map**
- Attachment 6: Environmental Features Map**

Background:

The Accessory Dwelling Unit (ADU) is to be constructed as an attached structure on the Property. The ADU is located on (R1) Low Density Residential zoned land with the total ADU size of 1,351.89 sqft. and a footprint of 1,351.89 sf. The size of the primary residence is 4,540 sqft., with a footprint of 2,339.59 sqft. The Applicants (including the Owners and WRB Construction) are proposing an addition (not the ADU) to the existing residence of 398.99 sqft. This will bring the house size to 4,938.99 sqft. and the footprint size to 2,738.58 sqft. The addition to the residence is not part of the approval request being considered this evening.

1-19-3.210. SPECIAL EXCEPTIONS.

- (A) An application for a special exception may be made only by persons with a financial, contractual, or proprietary interest in the property for which a special exception is requested.
- (B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:
 - (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of Chapter 1-19 of the Frederick County Code;
The Applicants state that the ADU is consistent with the Frederick County Comprehensive Plan in that it promotes affordable housing for senior citizens and other family members.
 - (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relations to it are such the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located.
The Applicants state that the proposed ADU will be used strictly as a residence. This is consistent with the surrounding rural community.
 - (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration, or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district.
The Applicants state that the use of the ADU will not add to, increase, or create any noise, fumes, vibration, or other ill effects on the neighboring properties, and will be consistent with the surrounding residential use.
 - (4) Parking areas will comply with the off-street parking regulations of Chapter 1-19 of the County Code and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The Applicants state that there is adequate parking to accommodate the main house and the ADU in the driveway. The site plan shows where parking can and will be provided. The Applicants will provide 1 additional parking space.

(5) The road system providing access to the proposed use is adequate to serve the intended use.

The Applicants state that the approval of this application will require no changes to the subject property's road access

(C) In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in Sections [1-19-8.320](#) through [1-19-8.355](#) of this Code.

The Applicants state that they understand and agree to this requirement.

(D) The special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under this chapter (Chapter 1-19 of the County Code) and is hereby authorized to add to the specific requirements any additional conditions that may deem necessary to protect the adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of this chapter (Chapter 1-19 of the County Code) and may be grounds for termination of the special exception.

The Applicants state that they understand and agree to this requirement.

(E) The Board of Appeals may not grant a special exception unless and until:

(1) A written application for a special exception is submitted indicating the section of this chapter (Chapter 1-19 of the County Code) under which the special exception is sought and stating the grounds on which it is requested; and

(2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

The Applicants state that the BOA Hearing is scheduled for April 25, 2024.

(F) The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

The Applicants state that they understand and agree to this requirement.

(G) No use of activity permitted as a special exception shall be enlarged or extended beyond the limited authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.

The Applicants state that they understand and agree to this requirement.

(H) If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

The Applicants state that they understand and agree to this requirement.

- (I) A decision of the Board of Appeals granting a special exception will be void 5 years from the 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 the 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 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The Applicants state that they understand and agree to this requirement.

Sect. 1-19-8.321 ACCESSORY DWELLING UNITS GREATER THAN 1000 SQUARE FEET.

The following provisions shall apply to all accessory dwelling units greater than 1,000 square feet in the RC, A, R1, R3, RS, R12, R16, VC, MXD, PUD and MX districts.

- (A) Only 1 accessory dwelling unit may be created on a lot.

The Applicants state that they understand and agree to this requirement. The Applicants are applying for 1 ADU.

- (B) Accessory dwelling units greater than 1,000 square feet shall be allowed in single-family dwellings, in an accessory structure, or built as a separate accessory structure, on a single-family lot.

The Applicants state that they understand and agree to this requirement.

- (C) The owner of the property must reside in the principal dwelling or in the accessory dwelling unit.

The Applicants state that the Owners intend to live in the primary dwelling.

- (D) There must be at least 1 additional parking space provided for the accessory dwelling unit. On-street parking may be utilized to meet this requirement.

The Applicants state that they understand and agree to this requirement. One additional parking space will be provided.

- (E) An accessory dwelling unit located in an accessory structure or built as a separate accessory structure must comply with the accessory structure requirements of§ 1-19-8.240(B).

The Applicants state that the proposed Accessory Dwelling Unit meets all the requirements of Sect. 1-19-8.240(B).

- (F) ADUs are intended to serve ongoing housing needs of county residents. Short term rental of ADUs in the nature of extended stay hotels, Airbnb, or seasonal temporary housing is not permitted.

The Applicants state that they understand and agree to this requirement.

- (G) The owner of the principal residence shall file an annual statement with the zoning administrator verifying that the conditions under which the special exception was granted remain the same.

The Applicants state that they understand and agree to this requirement and will file an annual statement.

(H) If the ownership of the lot changes, the subsequent owner must provide a statement to the Zoning Administrator as to the continuing use and eligibility of the accessory dwelling unit.

The Applicants state that they understand and agree to this requirement.

(I) Due to the nature of this use, site plan approval can be granted by the Zoning Administrator in lieu of the Planning Commission.

The Applicants state that they understand and agree to this requirement.

(J) An ADU meeting the provisions of Sect. 1-19-8.212 shall be considered a permitted accessory use and therefore not subject to this section.

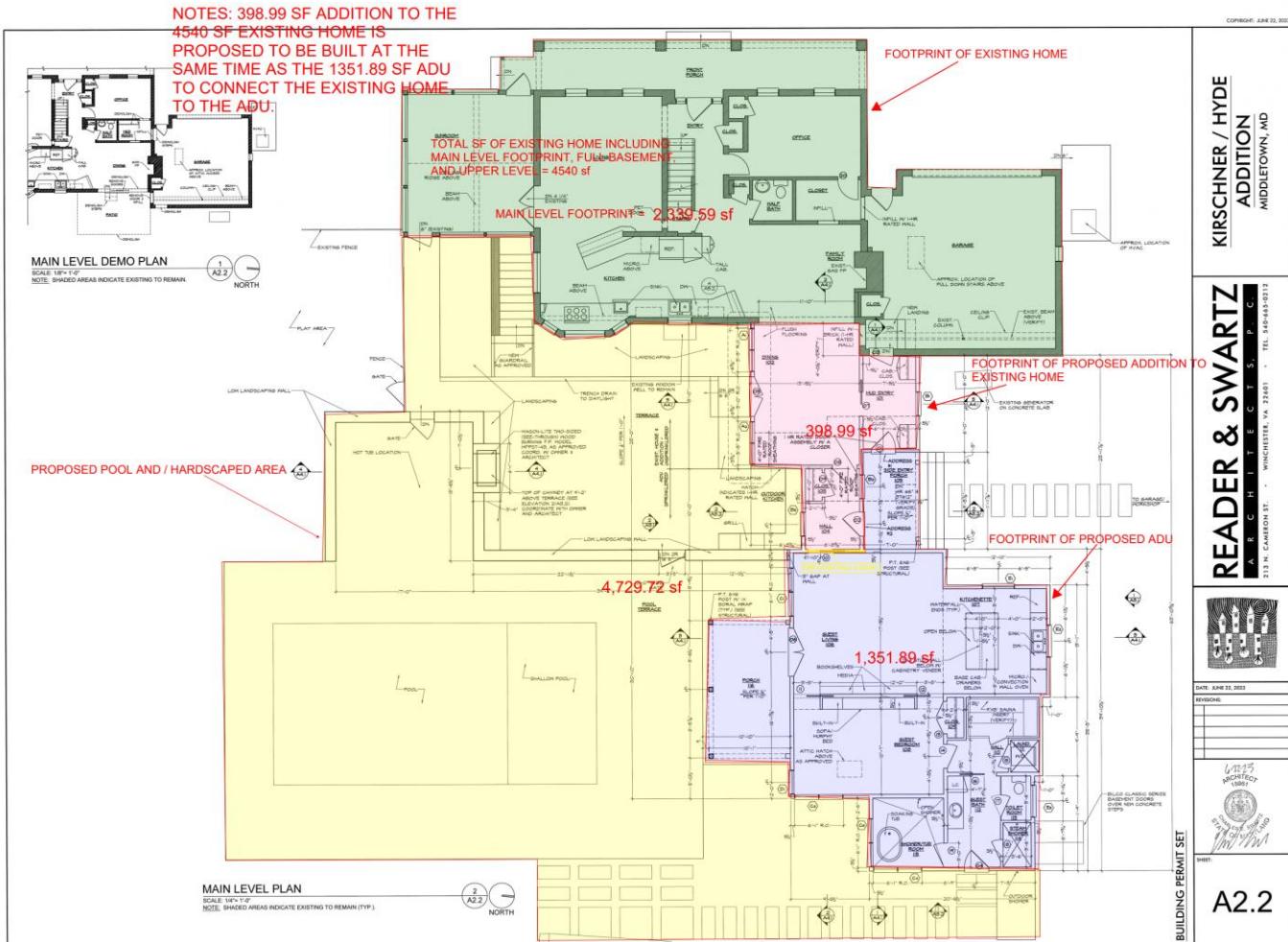
The Applicants state that they understand and agree to this requirement.

FINDINGS

Staff finds the application meets the requirements of Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code. Based on the findings in the staff report, Staff finds that the proposed Special Exception, to allow an ADU on the subject property, 1,351.89 sqft. complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code.

A decision of the Board of Appeals granting a special exception will be void 5 years from the 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 the 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 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months

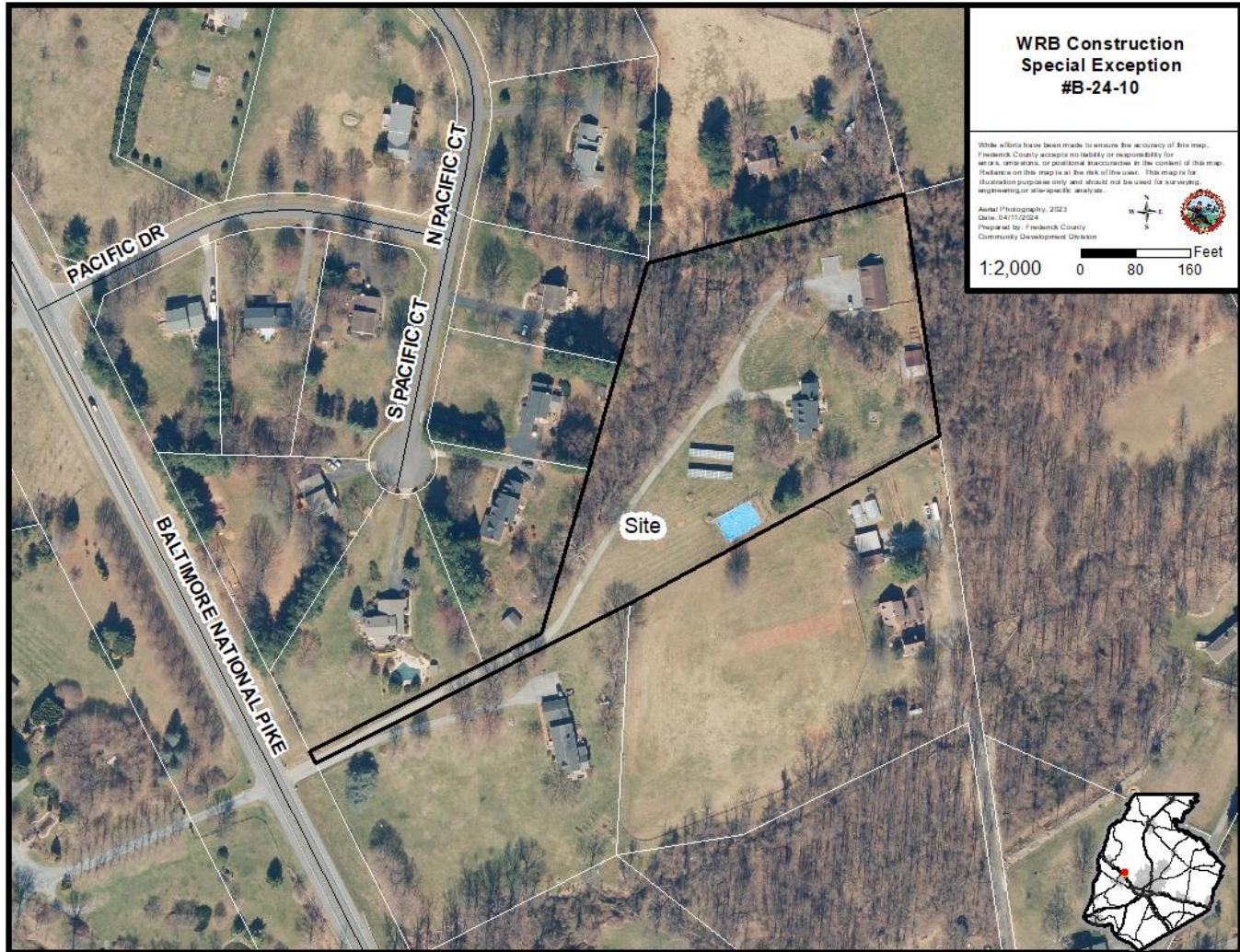
Attachment 1. Primary Residence with Addition and ADU



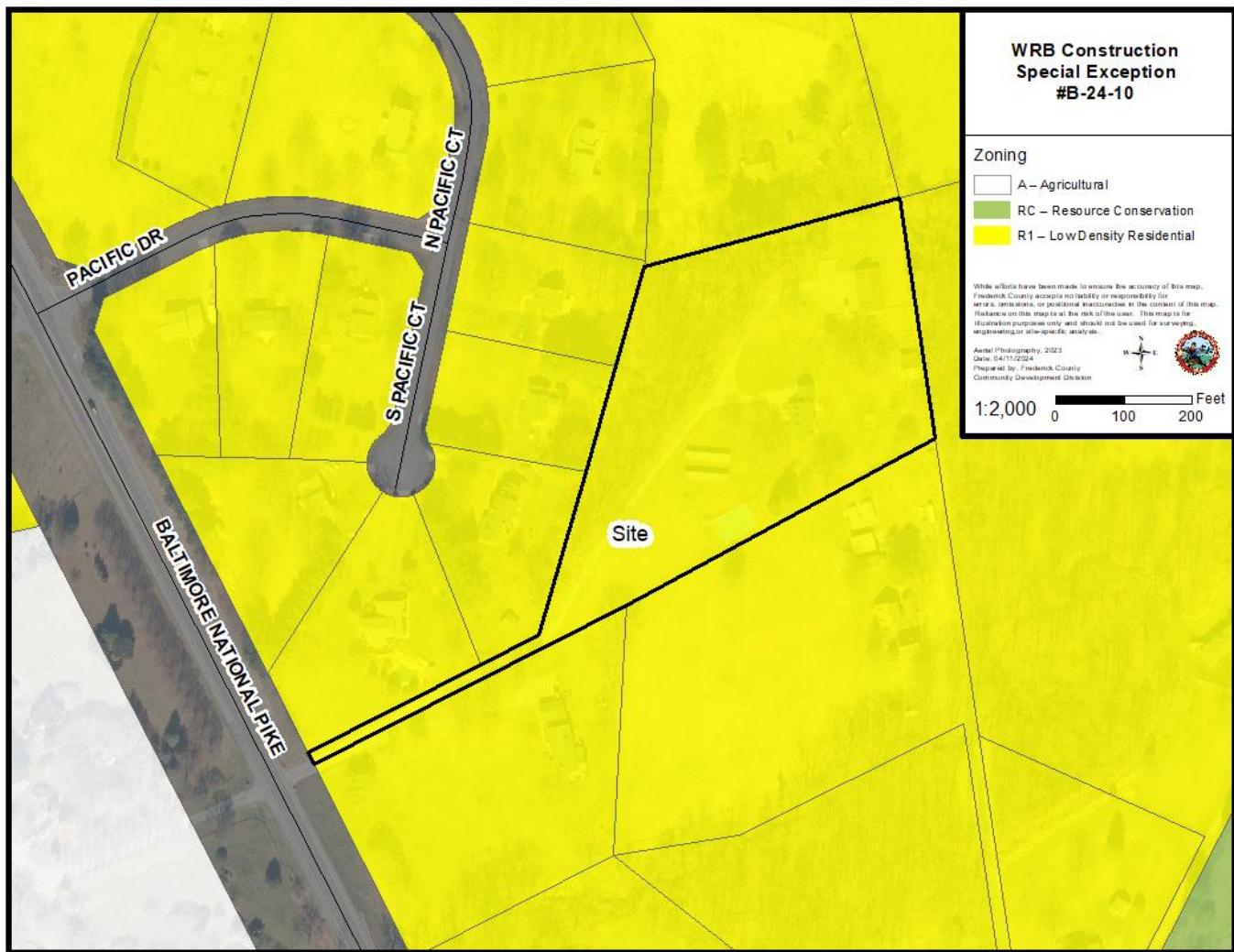
Attachment 2. House Rendering



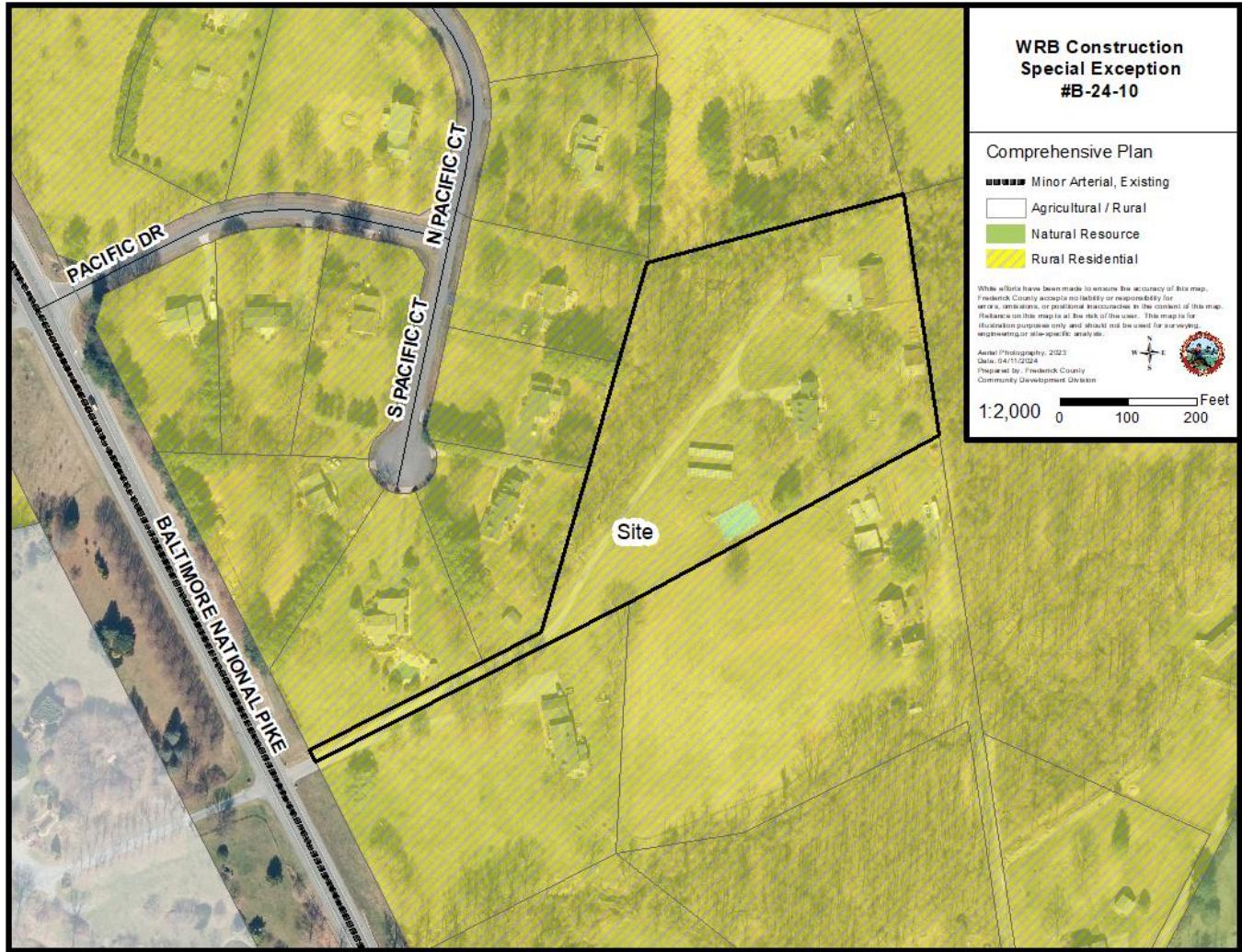
Attachment 3. Aerial Map



Attachment 4. Zoning Map

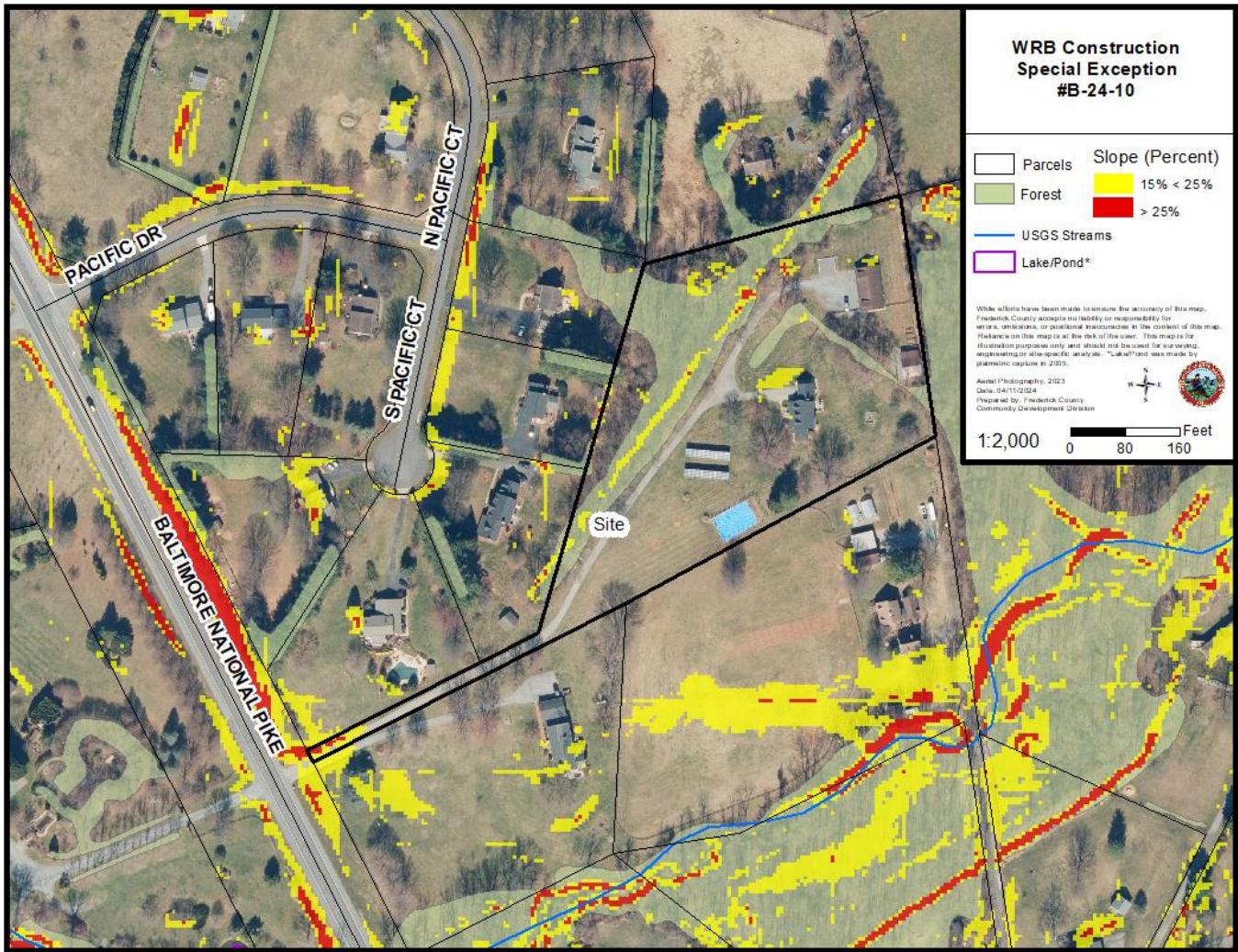


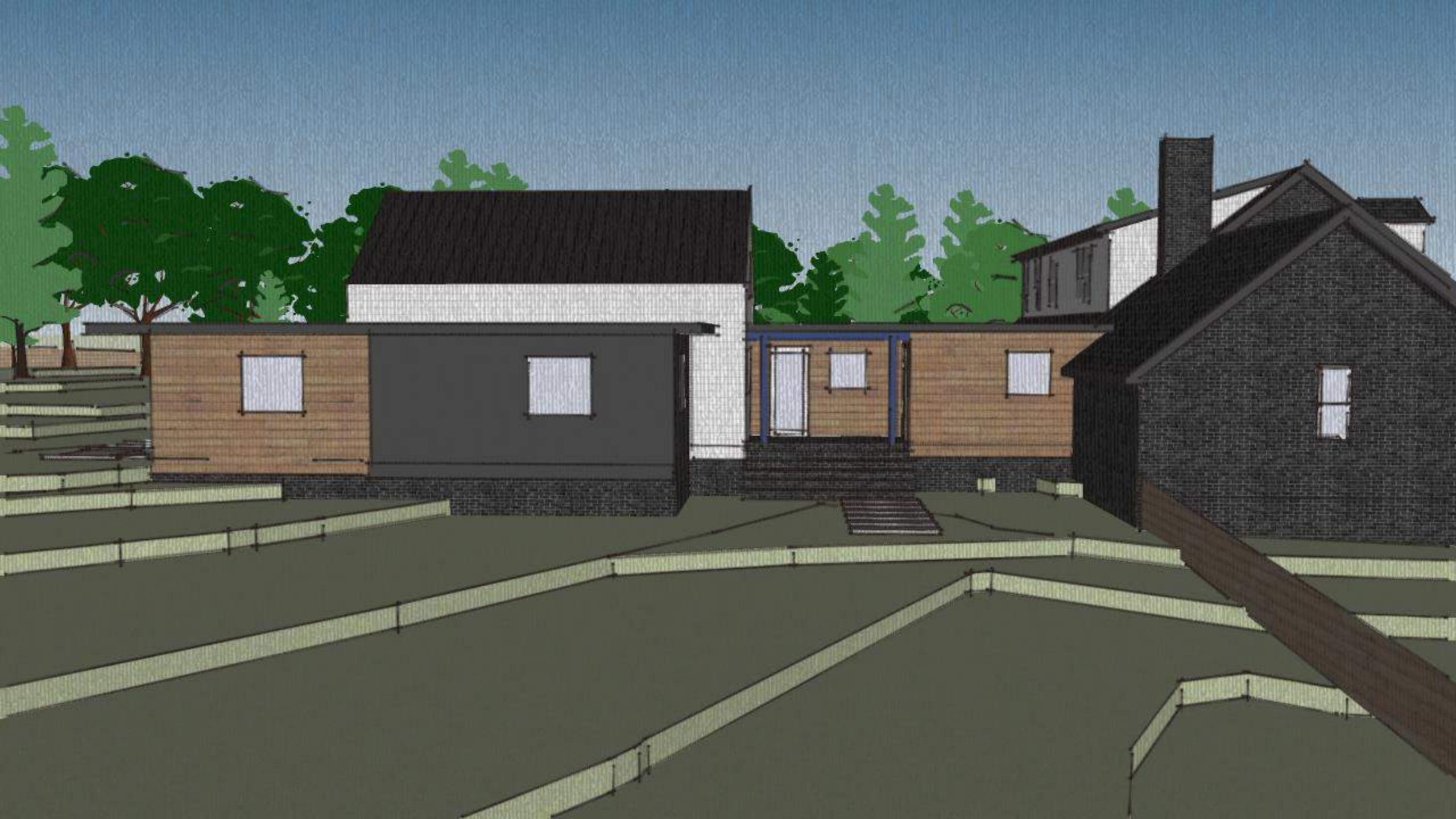
Attachment 5.Comprehensive Plan Map



B 24-10 KIRSCHNER/HYDE - ADU 10

Attachment 6. Environmental Features Map











F.F. E6



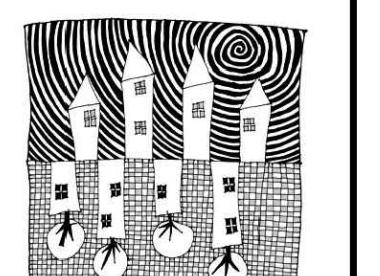


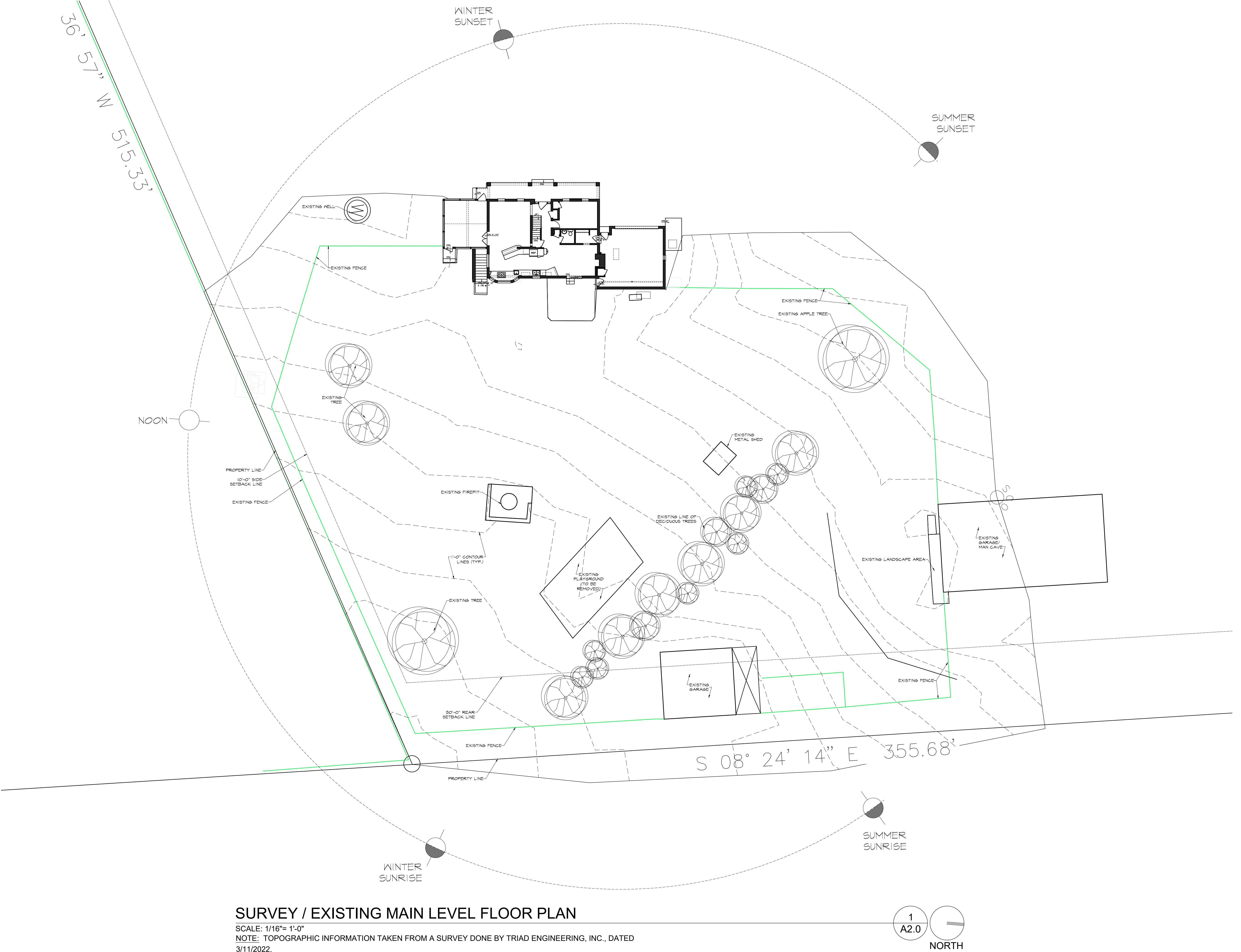


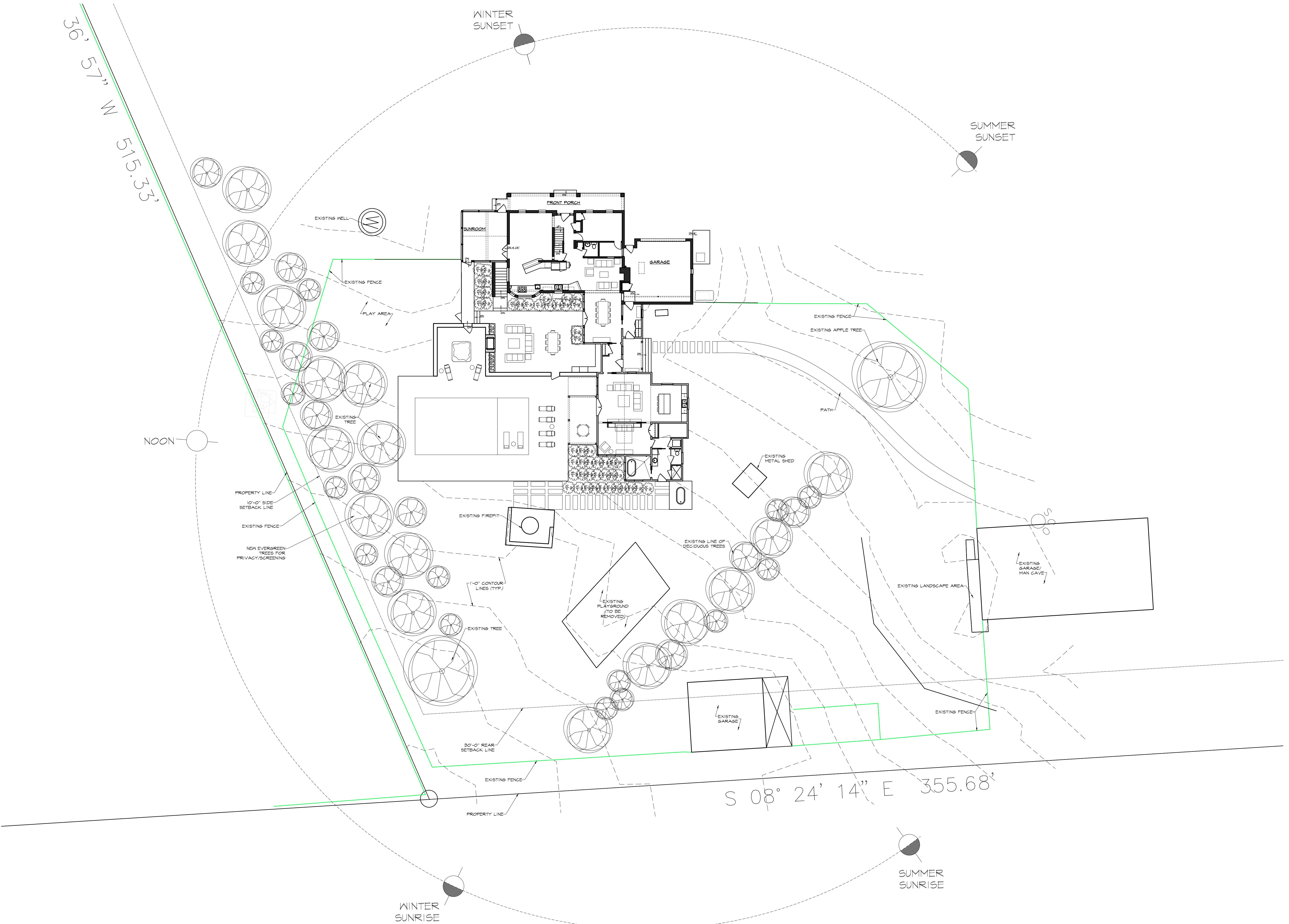


F.F. Elevation

PRELIMINARY: NOT FOR CONSTRUCTION

	DATE: APRIL 15, 2022
REVISIONS:	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
SHEET:	A2.0





SCHEMATIC SITE PLAN / MAIN LEVEL FLOOR PLAN

SCALE: 1/16" = 1'-0"

NOTE: SHADED AREAS INDICATE EXISTING TO REMAIN. TOPOGRAPHIC INFORMATION TAKEN FROM SURVEY DONE BY TRIAD ENGINEERING, INC., DATED 3/11/2022.

NOTE: NEW FENCING TO ENCLOSE POOL NOT YET DRAWN

A compass rose with two circles. The left circle contains the text 'A2.0' above the number '1'. The right circle contains three parallel lines. Below the circles is the word 'NORTH'.

PRELIMINARY: NOT FOR CONSTRUCTION

DATE: APRIL 15, 2022

11. **What is the primary purpose of the following statement?**

—
—

THE INFLUENCE OF CULTURE ON LANGUAGE

—

Page 1 of 1

SHEET:

A20

12.0

COPYRIGHT: APRIL 15, 2022

R TZ

SWA & CO. LTD.

READER

A R C H I T E C T U R E

213 N. CAMERON ST. • WINCHESTER, VA

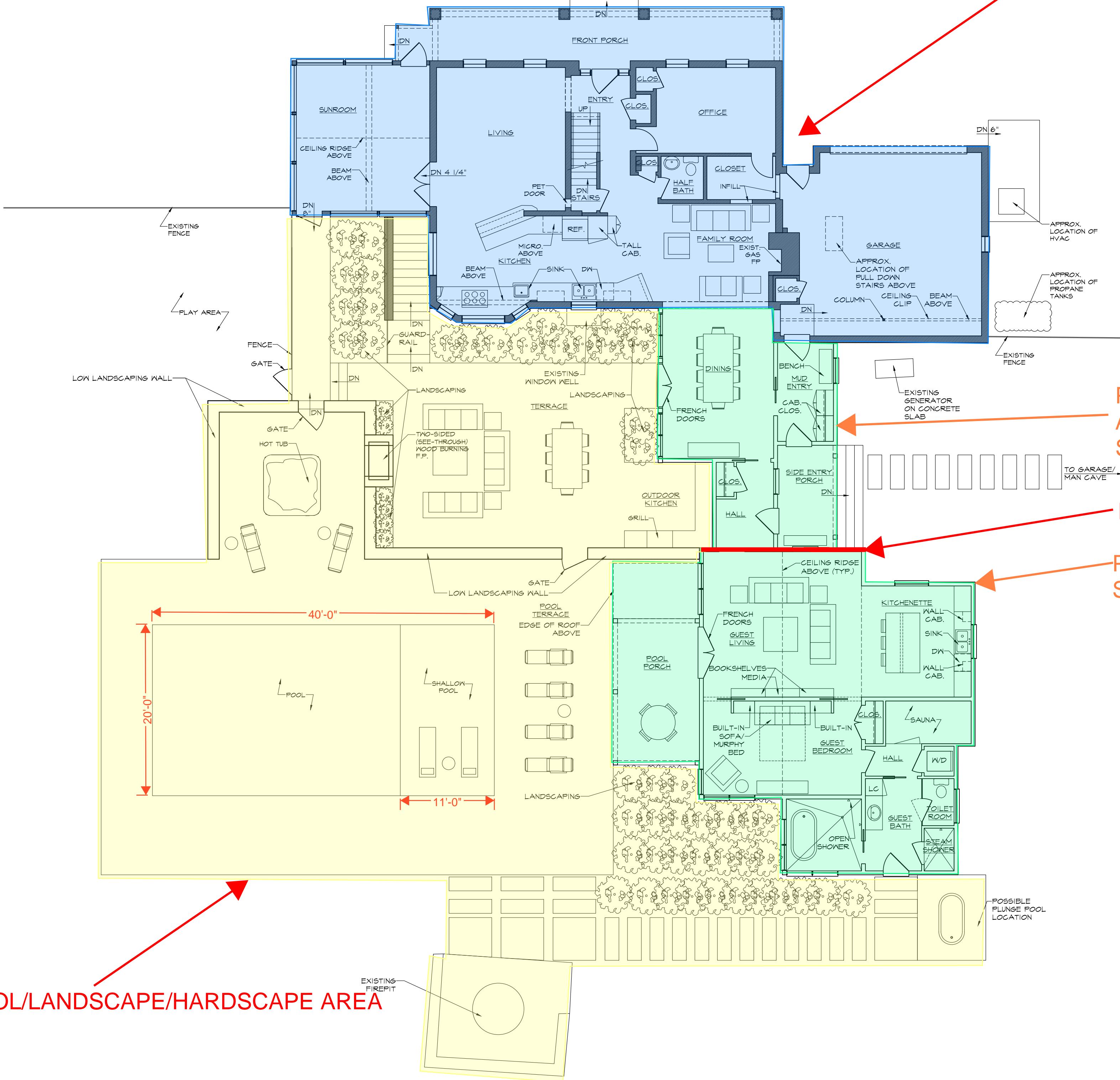
**KIRSCHNER / HYDE
ADDITION**
MIDDLETOWN, MD

READER & SWARTZ
A R C H I T E C T S., P.C.
213 N. CAMERON ST. • WINCHESTER VA 22601 • TEL. 540-665-0212 • FAX 540-665-2486

PRELIMINARY: NOT FOR CONSTRUCTION

SHEET: **A2.1**

EXISTING 2400 SF NON SPRINKLERED HOUSE



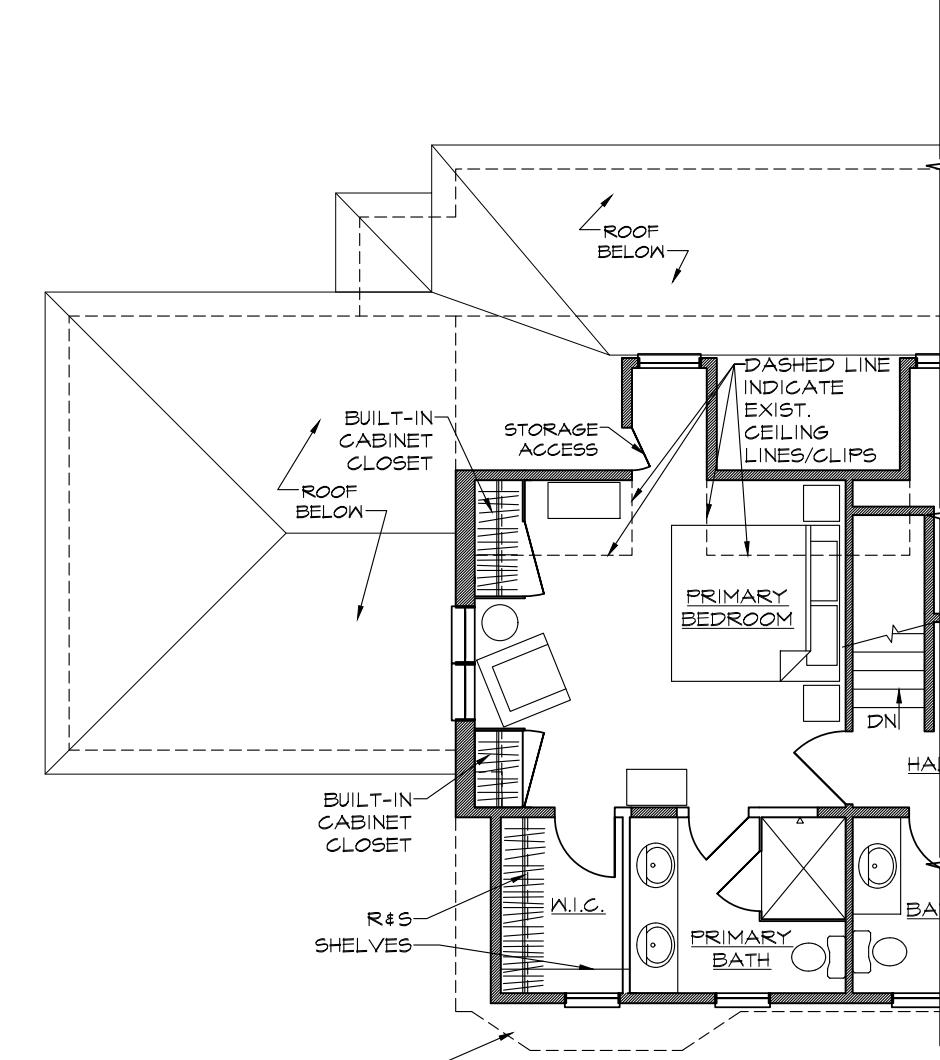
1
A2.1
NORTH

**PROPOSED 407 SF
ADDITION - NON
SPRINKLERED**
SCHEMATIC PRIMARY BATH / BEDROOM RENOVATIONS

SCALE: 1/8" = 1'-0"
NOTE: SHADED AREAS INDICATE EXISTING TO REMAIN.

PROPOSED FIRE WALL

**PROPOSED 1500 SF ADU -
SPRINKLERED**



2
A2.1
NORTH

GROSS SQUARE FOOTAGE (GSF) SUMMARY:	
NEW HEATED & COOLED SPACES	
DINING, MUD ENTRY, HALL	409 GSF
GUEST WING/POOL & SPA WING	1066 GSF
TOTAL:	1475 GSF
NEW OUTDOOR SPACES	
TERRACE, OUTDOOR FIREPLACE, LOW LANDSCAPING WALLS, OUTDOOR KITCHEN	906 GSF
SIDE ENTRY PORCH	84 GSF
POOL PORCH	173 GSF
POOL & HOT TUB TERRACE	2546 GSF
TOTAL:	3709 GSF
RENOVATED SPACES	
SECOND FLOOR PRIMARY BATH & CLOSETS	123 GSF

DATE: APRIL 15, 2022

REVISIONS:

SHEET:

A2.1



Public Health
Prevent. Promote. Protect.

Frederick County Health Department

Barbara A. Brookmyer, M.D., M.P.H. • Health Officer

March 24, 2023

Handwritten note: "Inside bigger issue" with a checkmark.

Andras Kirschner
Grace Hyde
8611B Baltimore National Pike
Middletown, MD 21769

RE: ADU perk on 8611B Old National Pike
Gambril South, Lot 17B
Tax Map 55, Parcel 24
File: S-733

Dear Owner:

Health Department staff conducted soil evaluation and percolation tests on February 2, 2023, on the above-mentioned property to evaluate the property for an Accessory Dwelling Unit (ADU). Acceptable perk rates were observed at a depth of 20" (inches). Based on this test, the site appears to be acceptable for individual, underground sewage disposal; however, before the Health Department can approve the plan, the following items must be completed or noted:

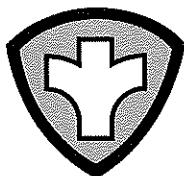
1. A site plan completed by a Maryland licensed surveyor must be submitted to the Health Department with the following information and review fee of \$150.00.
2. Need to locate and show the two dry pits for the existing house.
3. The following note must be placed on the plan, "The septic area for the ADU can accommodate a house of no more than two (2) bedrooms."
4. The septic area perked for an at-grade type septic system and will need the following note put on the site plan, "Septic area is approved for an at grade mound type septic system. Any disturbance of the ground within the septic area may negate Health Department approval. At grade mounds can only be installed during dry weather (May 1 to October 31)".
5. The following note must be place on the plan, "Treatment units and pump chambers for septic systems must be 100' away from the well and placed outside of the septic area."
6. At grades require a 25' buffer at the bottom of the septic area. The buffer needs to be shown and labeled on the plan. The buffer does not need to be on contour.

Barry Glotfelty • Director



Environmental Health Services • 350 Montevue Lane • Frederick, MD 21702
Phone: 301-600-1715 • Fax: 301-600-3180 • MD TTY: 1-800-735-2258





Public Health
Prevent. Promote. Protect.

Frederick County Health Department

Barbara A. Brookmyer, M.D., M.P.H. • Health Officer

March 24, 2023

Andras Kirschner
Grace Hyde
8611B Baltimore National Pike
Middletown, MD 21769

RE: ADU perk on 8611B Old National Pike
Gambril South, Lot 17B
Tax Map 55, Parcel 24
File: S-733

Dear Owner:

Health Department staff conducted soil evaluation and percolation tests on February 2, 2023, on the above-mentioned property to evaluate the property for an Accessory Dwelling Unit (ADU). Acceptable perk rates were observed at a depth of 20" (inches). Based on this test, the site appears to be acceptable for individual, underground sewage disposal; however, before the Health Department can approve the plan, the following items must be completed or noted:

1. A site plan completed by a Maryland licensed surveyor must be submitted to the Health Department with the following information and review fee of \$150.00.
2. Need to locate and show the two dry pits for the existing house.
3. The following note must be placed on the plan, "The septic area for the ADU can accommodate a house of no more than two (2) bedrooms."
4. The septic area perked for an at-grade type septic system and will need the following note put on the site plan, "Septic area is approved for an at grade mound type septic system. Any disturbance of the ground within the septic area may negate Health Department approval. At grade mounds can only be installed during dry weather (May 1 to October 31)".
5. The following note must be place on the plan, "Treatment units and pump chambers for septic systems must be 100' away from the well and placed outside of the septic area."
6. At grades require a 25' buffer at the bottom of the septic area. The buffer needs to be shown and labeled on the plan. The buffer does not need to be on contour.

Barry Glotfelty • Director



7. An engineer or septic designer will need to submit at grade mound designs and calculations to the Health Department. All plans should be submitted to Brittany Farrish at 350 Montevue Lane, Frederick, MD 21702
8. The mounds and buffer will need to be staked in the field and labeled. The mound staking must match what is shown on the plan.
9. At grade cell corners must have top elevations within 1" of each other and lower corners within 1" of each other. The elevations need to be field shot not CAD estimates.
10. The septic for the existing house cannot support additional square footage unless further percolation testing is completed.
11. The existing well must be shown on the plan with the well tag number.
12. The surveyor's seal and signature must be included on the final plat.

If you have any questions, you may contact me at 301-600-1717 or AEvangelista@FrederickCountyMD.gov.

Sincerely,

Alicia Evangelista, LEHS

Alicia Evangelista, LEHS
Program Manager
Community Services and Development Review
Environmental Health Services

ADU - Attached ADU
- ADU - 2 bedroom
- At grade
- 0 add sq ft
- pertains completed out of ADU
- need to base off design
- need a design
- Need Plat
- Medical

* Slow parts
limited to 2
beds

Lane 5 is

pile of

need to 1 check w/
Lane repair &
todo?

Contractor: WRB Construction
Sanitarian: Lane Stoner

Soil Description Form

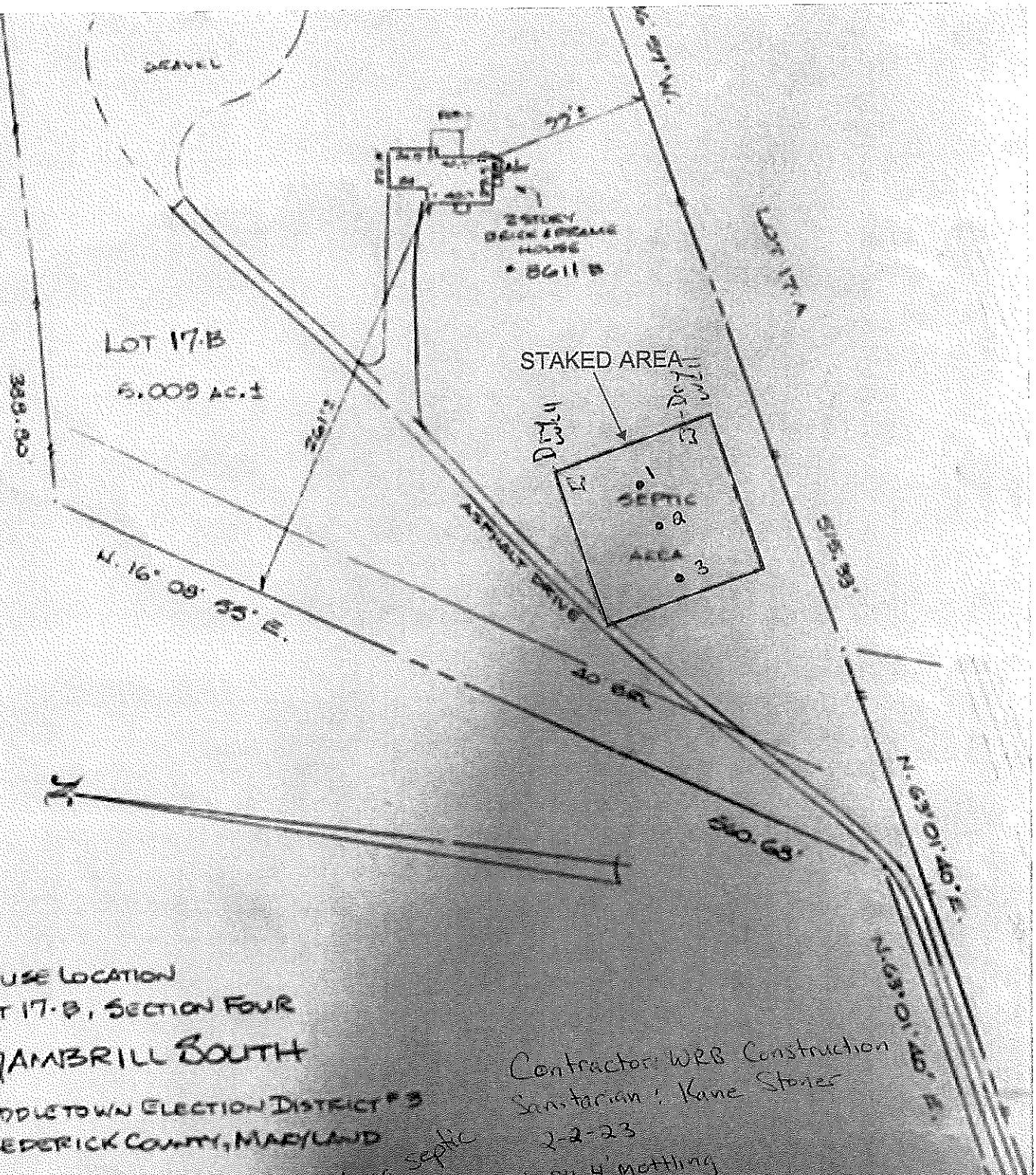
Owner: Gell B
Baltimore National Park
Subdivision:

Date: 2-2-23 Lot: Parce

Subdivision:

Landscape position:

Slope:



Contractor: W.R.B. Construction
Sanitarian: Kane Stone
2-2-23

1. OH 4 notching
2. Infil 20" 55 min
3. Infil 20" 55 min

acceptable for A-Grade
septic system 2 bedrooms
unless designer can approve
more bedrooms



N. 30' 68 20' W
200.00'

200.00' 200.00' 200.00'

S-133

Well and Septic Percolation application

Owner/Applicants Name Andras Kirschner + Grace Hyde

Percolation Application
Form 133

Contact # 301-922-1528

JAN 3 2023

Email andras@dcminc.us or grace@dcminc.us

Percolation Application
Form 133

JM \$225 ck#444

Address of property 8611B Baltimore National Pike, Middletown, MD 21769

Subdivision/plat name if applicable

Gimbrill South, District 3, Lot 17B, Section 4, Tax Map 0055, Parcel 0024

Reason for percolation

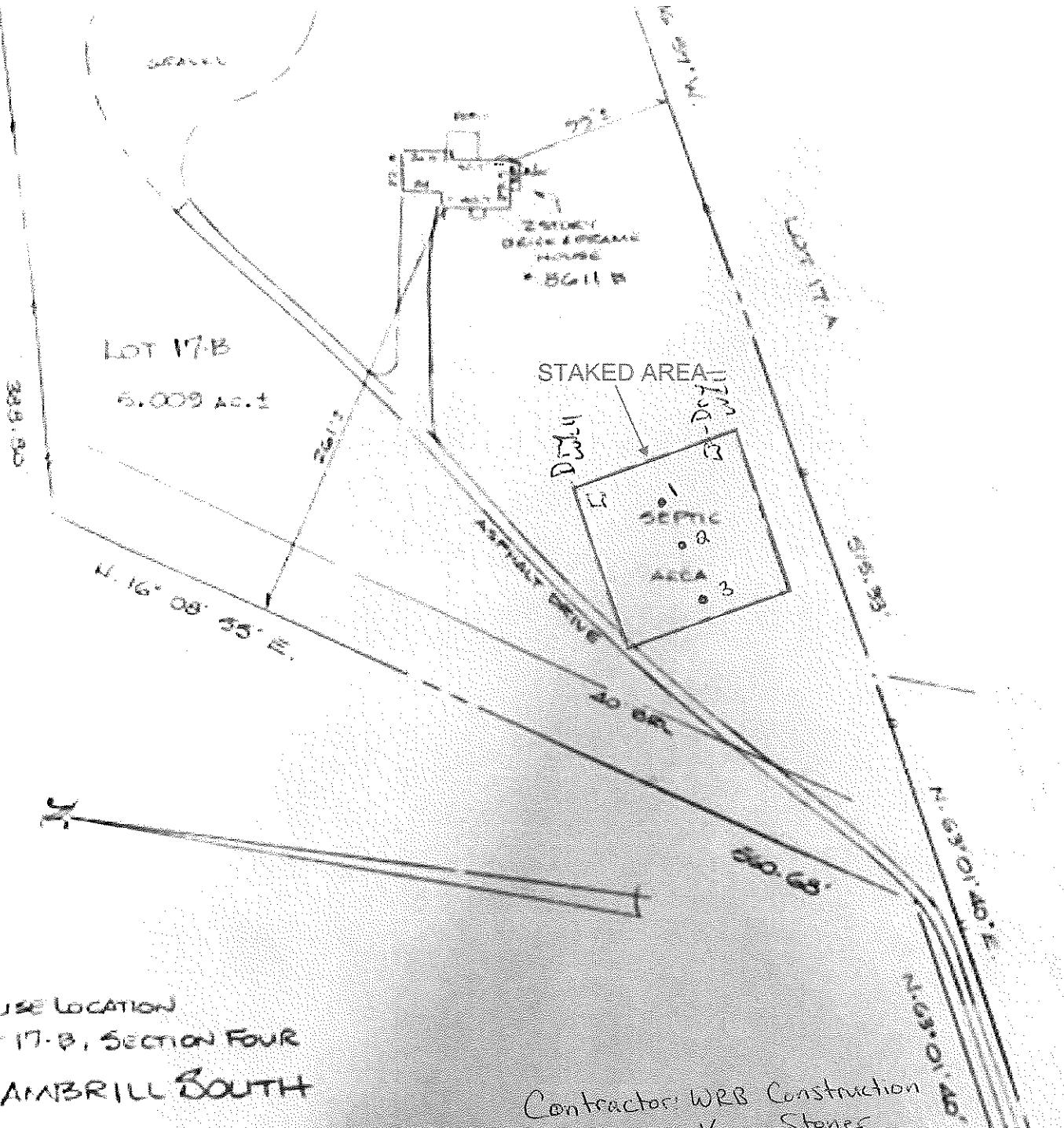
Construction of an ADU

Fees to be paid \$225.00

Please bring this completed form to 350 Montevue Lane when you come to pay your perc fees. Fees will not be accepted without this completed form.

Sanitarian _____

8-29-03



House Location
LOT 17-B, SECTION FOUR

GAMBRILL SOUTH

MIDDLETOWN ELECTION DISTRICT #3
FREDERICK COUNTY, MARYLAND

existing ^{soil}
acceptable
Kane
8-25-03
8-25-03

Contractor: WRB Construction
Sanitarian: Kane Stoner
2-2-23

1. OH 4' netting
2. Infil 20" 58 min
3. Infil 20" 55 min

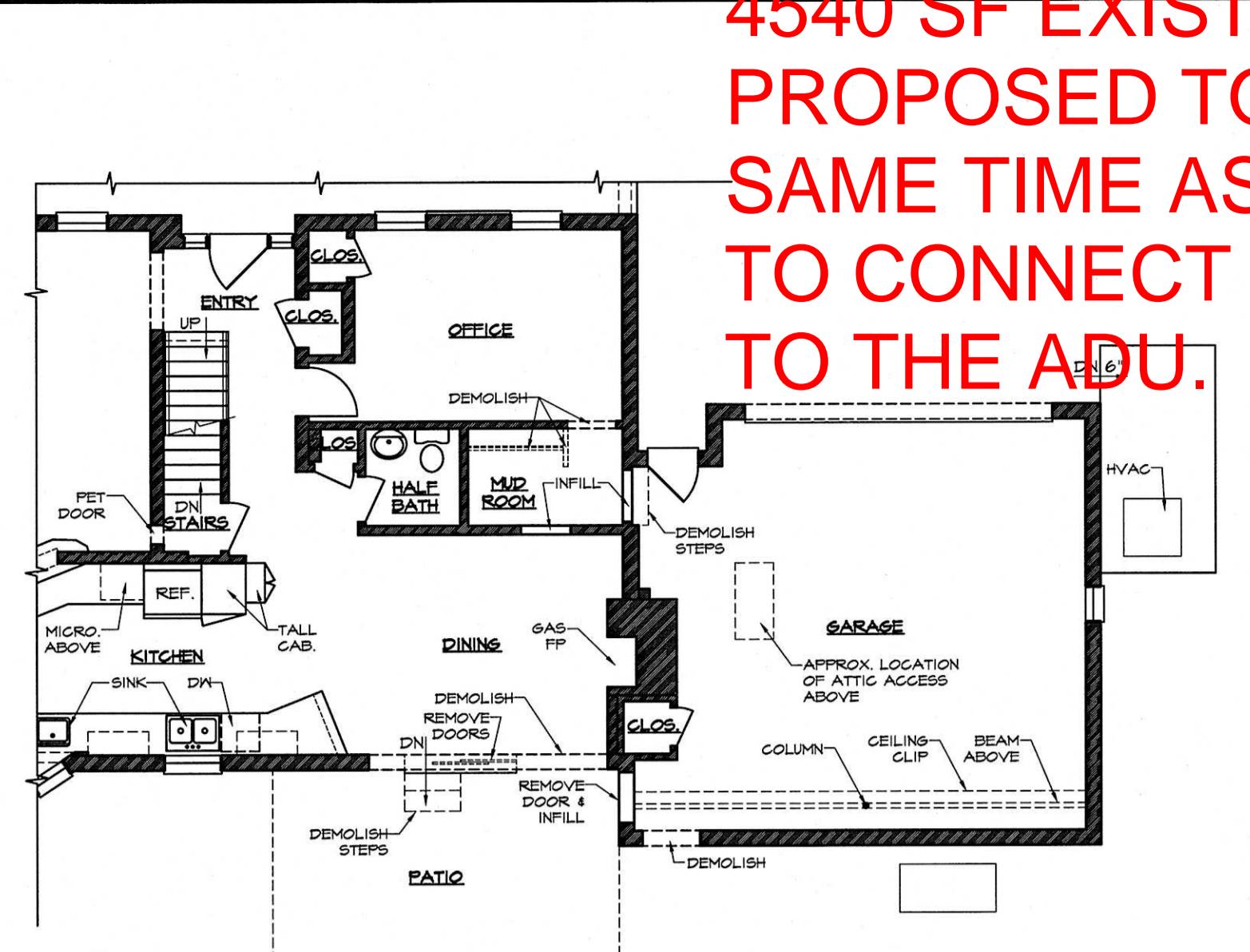
acceptable for At-grade
septic system 2 bedroom
unless designer can approve
more bedrooms



N. 36° 58' 20" W
20.00'

NOTES: 398.99 SF ADDITION TO THE
4540 SF EXISTING HOME IS
PROPOSED TO BE BUILT AT THE
SAME TIME AS THE 1351.89 SF ADU
TO CONNECT THE EXISTING HOME
TO THE ADU.

COPYRIGHT: JUNE 22, 2023



MAIN LEVEL DEMO PLAN


SCALE: 1/8"= 1'-0"
NOTE: SHADED AREAS INDICATE EXISTING TO REMAIN.

1 A2.2
NORTH

TOTAL SF OF EXISTING HOME INCLUDING
MAIN LEVEL FOOTPRINT, FULL BASEMENT,
AND UPPER LEVEL = 4540 sf

MAIN LEVEL FOOTPRINT = 2,339.59 sf

FOOTPRINT OF EXISTING HOME



April 21, 2022

Frederick County, Maryland
Board of Zoning Appeals
12 E. Church St.
Frederick, MD 21701

RE: 8611B Baltimore National Pike, Middletown, MD 21769 _ Authorization for ADU Appeal Variance

To Whom it May Concern,

I hereby authorize William Bowmaster, WRB Construction LLC, to file an appeal for a variance related to the construction of an ADU at 8611B Baltimore National Pike, Middletown, MD 21769.

Regards,

Andras Kirschner, Owner
8611B Baltimore National Pike

Andras Kirschner 4/22/22

Signed and sworn to before me this 22 day of April, 2022.

My Commission Expires: May 13, 2025

Notary Public

Michael L Smith Jr

MICHAEL L SMITH JR
Notary Public-Maryland
Washington County
My Commission Expires
May 13, 2025



March 21, 2024

Frederick County, Maryland
Board of Zoning Appeals
12 E. Church St.
Frederick, MD 21701

RE: 8611B Baltimore National Pike, Middletown, MD 21769 _ ADU Appeal for Variance

To Whom it May Concern,

I hereby request an Appeal for a Variance to Frederick County Code chapter 1-19 sections 5.310, 8.212, 8.321, and 11.100 limiting the size of an ADU to 800 SF. I am requesting a variance to allow the construction of a 1,351.89 SF ADU as part of a 1,750.88 SF expansion to an existing 4,540 SF existing residential unit. This property located in District 3, Lot 17B, Section 4 is 5 acres and is zoned R-1. This proposed ADU is needed to expand the existing 3 bedroom house to a 4 bedroom house as a result of a growing family, and the need for a special care provider. The property is at the end of the lane, slightly slopes east to west, has established and mature landscaping, the properties to the north, east, and west consists of established hardwood forests with no residential units in sight, and the property to the south contains an existing residential unit within sight. Accompanying this letter are renderings and schematic drawings for the proposed ADU. Thank you for your consideration.

Regards,

W Bowmaster

William Bowmaster, President
WRB Construction LLC