



# FREDERICK COUNTY BOARD OF APPEALS

## JUNE 27, 2024

**CASE NUMBER:** **B-24-13 (B275938)**

**REQUEST:**

The Applicant is requesting a variance under Section 1-19-4.220 (C) of the Frederick County Code to reconstruct a residence that was destroyed by fire, using the original foundation. The residence is nonconforming due to the required setbacks. The residence size is 1,540 sf and the RC zoning district requires a minimum 50' setback from all property lines.

**PROJECT INFORMATION:**

ADDRESS/LOCATION: 3702 S. Mountain Road, Knoxville MD 21758  
TAX MAP/PARCEL: Tax Map 91, Parcel 0000  
ZONE: Resource Conservation (RC)  
REGION: Brunswick  
WATER/SEWER: NPS/NPS  
COMP. PLAN/LAND USE: Natural Resources

**APPLICANT/REPRESENTATIVES:**

APPLICANT: Jonathan Grossnickle  
OWNERS: Jonathan Grossnickle, Brittney Reaver  
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: Proposed Residence**

**Attachment #3: First and Second Floorplan**

**Attachment #4: Aerial of Subject Property and Surrounding Area**

**Attachment #5: Comprehensive Plan Map**

**Attachment #6: Zoning Map**

**Attachment #7: Environmental Features Map**

<sup>1</sup> 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 1 Acre in size.

The structure is non-conforming due to the required setbacks. The Applicant is requesting a variance under section 1-19-4.220 (C) of the Frederick County Code, to construct a new residence using the original foundation of the residence destroyed by fire. The residential structure is listed as being constructed in 1920, which predates the approval of the current zoning ordinance, adopted on January 24, 1977.

### **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. This application is for a vertical expansion in order to rebuild the structure, in-kind and over the existing foundation. The Applicant is requesting relief from the yard regulations because the structure was constructed in 1920 and 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 to construct a residence using the same foundation as the original residence, 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, June 27, 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 foundation was laid, and the home was constructed (1920).***

- (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. The residence was constructed at this location in 1920, years prior to the current zoning ordinance that was 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, they would not be able to rebuild the residence destroyed by fire in the original location, without expanding the footprint in accordance with Section 1-19-4.220(C), which is allowed by the Frederick County zoning ordinance.***

- (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. Variances to allow a nonconforming structure, destroyed by fire, to rebuild in the same location, without expanding the footprint in accordance with Section 1-19-4.220(C) are 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 and he intends to rebuild on the same location as the original residence that stood for about 100 years.***

- (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 and will comply.***

- (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 the requested use, construction of a single-family residence 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 allows applicants to rebuild a residence destroyed by fire, in the same location where the residence once stood.***

(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 Applicants state that they understand this requirement and will comply.***

## **§ 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. [Is this applicable? If not, you may want to say that.]
- (2) The nonconforming portion of a nonconforming structure may be modified in accordance with the requirements of Chapter 1-19 of the County Code 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 proposal will not expand 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 and will comply.***

- (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 but are not moving the structure.***

(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 but are not moving the structure.***

(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. This variance request does not expand the footprint or increase the nonconformity of the residence.***

(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, not to expand a nonconforming structure, but to rebuild a residence destroyed by fire in the same location.***

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

***The Applicant states that the expansion does not extend farther into the required setback than the previously destroyed residence did.***

(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.

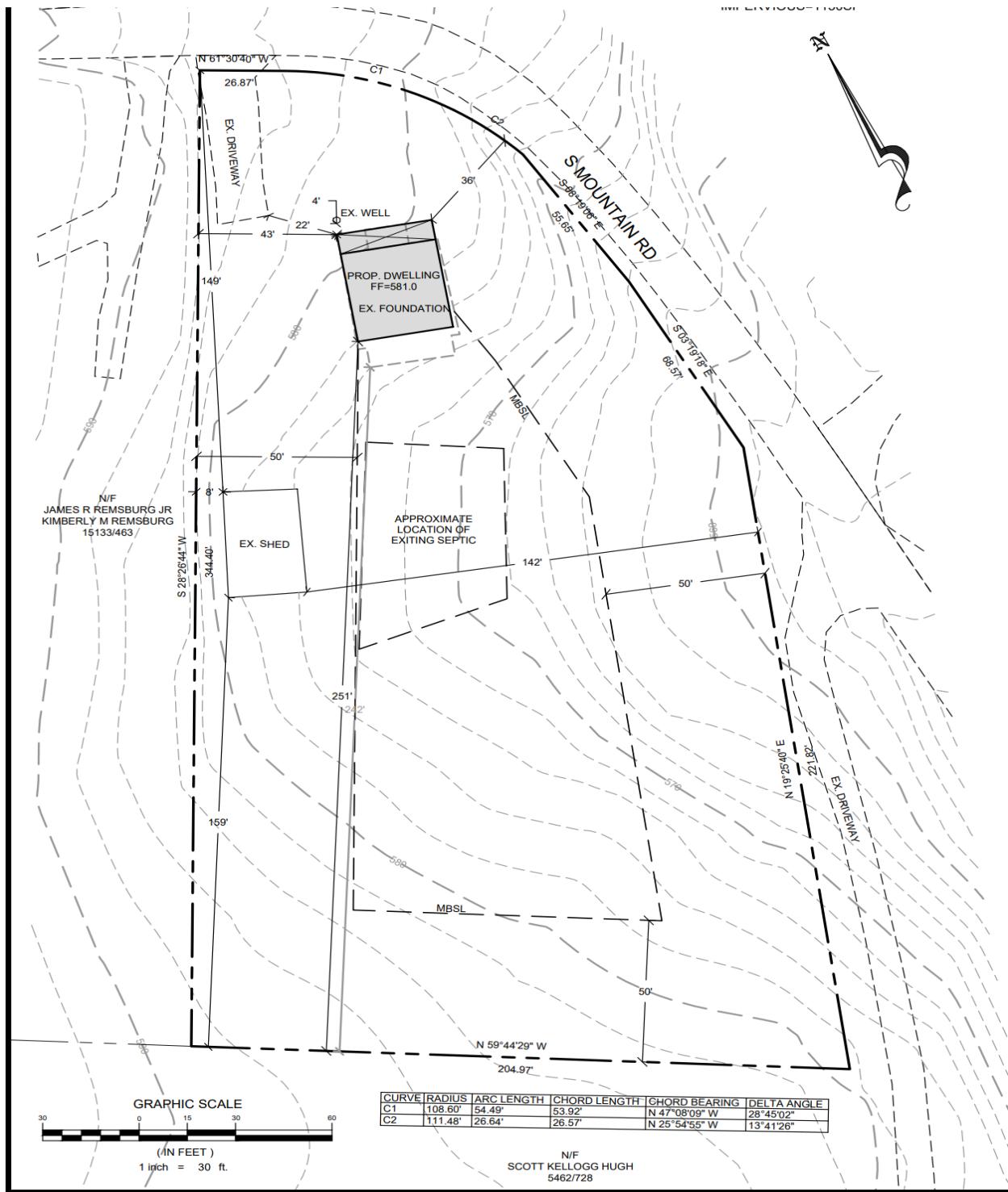
***The Applicant states that the proposal does not include the construction of a nonconforming porch, or the addition of stories on top of a non-conforming porch. The porch will be rebuilt as it existed prior to the fire that destroyed the residence.***

### **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.

**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.**

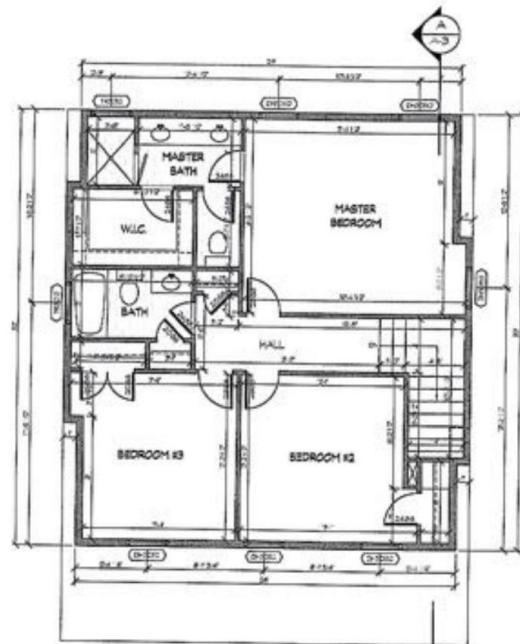
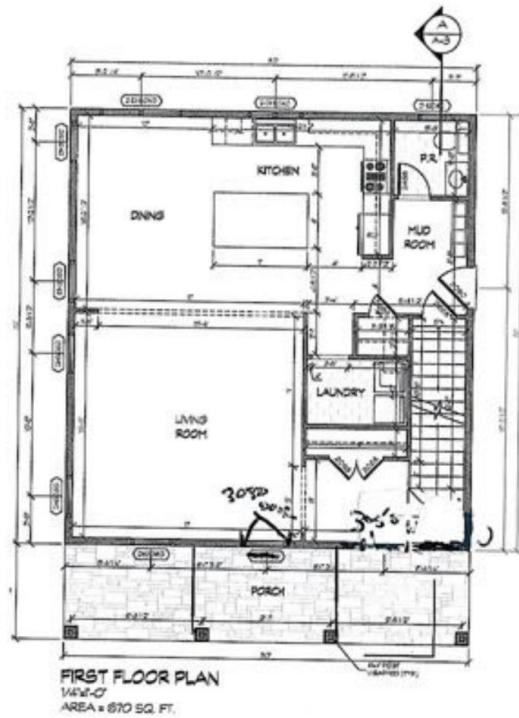
**Attachment #1: Property Site Plan**



## Attachment #2: Proposed Residence

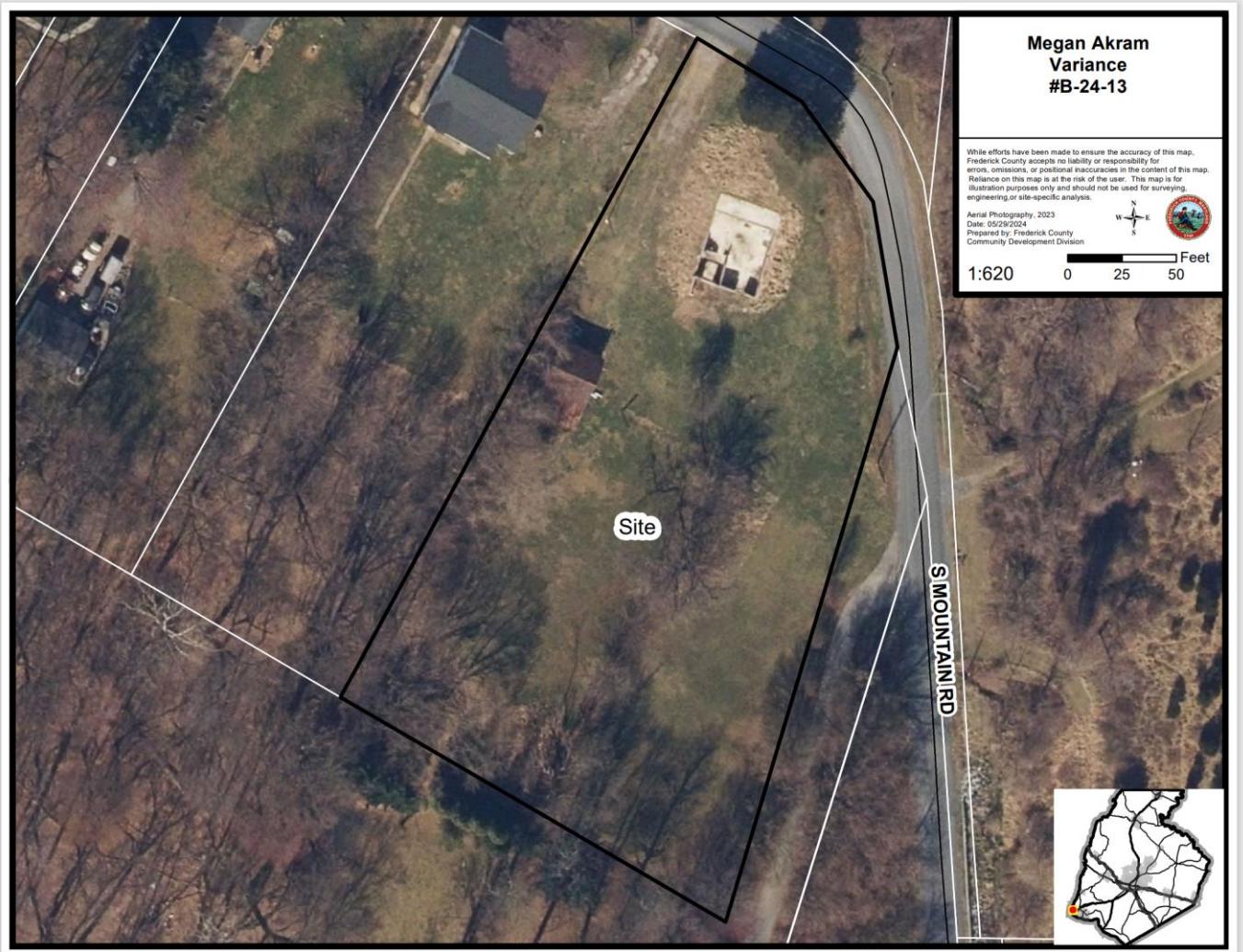


## Attachment 3 – First and Second Floor Plans



 GROSSNICKLE CONSTRUCTION PO. BOX 23 MARYSVILLE, MARYLAND 21773 PHONE: 301-732-6074	
PROJECT TITLE: <b>MOUNTAIN RD.</b> Schematic Design Architectural	
DRAWING TITLE: <b>FLOOR PLANS</b>	
Status: <input type="checkbox"/> This plan may be used as submitted or later modified by the architect. Date: <b>01.01.2003</b> Drawn By: <b>EMOC MONTILLA</b> Checked By:	
Revision: <b>0</b> Date: <b>01/01/2003</b> Description:	
DRAWING NUMBER <b>A-1</b>	

**Exhibit 4: Aerial Map of Subject Site and Surrounding Area**



## Exhibit 5: Land Use Map



## Exhibit 6: Zoning Map



## Exhibit 7: Environmental Features Map

