



FREDERICK COUNTY BOARD OF APPEALS

December 19, 2024

TITLE: Steven Miss and Patricia Addington (Owner)
John Mazelon (Owner Representative)

CASE NUMBER: B-24-25 (B277012)

REQUEST: Requesting approval for a variance from the front yard Building Restriction Line (BRL), to reduce the required BRL from 40' to 10', along Roy Shafer Road, in order to construct a single-family residence, in accordance with Sections 1-19-3.220 Variances and 1-19-6.100 Design Standards. The address of this property is 7202 Old Middletown Road, Frederick, MD 21769.

PROJECT INFORMATION:

ADDRESS/LOCATION: 7202 Old Middletown Road, Frederick, MD 21769
TAX MAP/PARCEL: Tax Map 65, Parcel 0109
ZONE: (A) Agricultural
REGION: Middletown
WATER/SEWER: NPS/NPS
COMP. PLAN/LAND USE: Agricultural/Rural

APPLICANT/REPRESENTATIVES:

APPLICANT: John Mazelon (Owner Representative)¹
OWNER: Steven Miss and Patricia Addington
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 objections to the approval of a variance from the front yard Building Restriction Line (BRL), to reduce the required BRL from 40' to 10', along Roy Shafer Road, in order to construct a single-family residence, in accordance with Sections 1-19-3.220 Variances and 1-19-6.100 Design Standards. The address of this property is 7202 Old Middletown Road, Frederick, MD 21769.

Attachments:

Attachment #1: Property Site Plan Showing Variance Request
Attachment #2: Aerial Map
Attachment #3: Zoning Map
Attachment #4: Environmental Features Map
Attachment #5: Comprehensive Plan 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 Agricultural (A) zoned Property are front 40', side 10', and rear 30'. The Property is 1.02 acres in size. The Applicant is requesting approval for a variance from the front yard building restriction line along the Roy Shafer Road frontage from 40' to 10', in order to construct a new 3,400 Sq. Ft. single-family home to replace the existing dwelling that will be raised and removed from the property.

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 the following criteria are met:

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

The Applicants state that they are seeking a 30' variance to the front yard setback requirement along Roy Shafer Road from 40' to 10' to accommodate a proposed single-family home.

(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 Applicants state that Frederick County zoning staff could not approve plans for the addition to the home and directed the Applicant to apply for a variance request.

(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 BOA Hearing is scheduled for Thursday, December 19, 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 Applicants state that the lot is unique in several ways, most notably this is a corner lot with two 40' front BRLs along Old Middletown Road and Roy Shafer Road. The lot is narrow in depth and is encumbered by FEMA 100-year floodplain along the north side from Hollow Creek a tributary to Cone Branch, which per the Frederick County Zoning Ordinance §1- 19-9.110(B)(3) requires a 25' floodplain buffer. The combination of the 40' front BRL along Roy Shafer Road and the 100-year floodplain and associated buffer results in a very narrow buildable envelope ranging from 25'-34' in width which significantly limits the buildable envelope needed to construct a house without disturbing the floodplain buffer.

(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 Applicants state that the special conditions are not a result of action taken by the property owner. The FEMA 100-year floodplain was established prior to the owner acquiring the property.

- (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 Applicants state that the hardship is that the lot is encumbered by FEMA 100-year floodplain along the north side from Hollow Creek a tributary to Cone Branch, which per the Frederick County Zoning Ordinance §1-19-9.110(B)(3) requires a 25' floodplain buffer. The combination of the 40' front BRL along Roy Shafer Road and the 100-year floodplain and associated buffer results in a very narrow buildable envelope ranging from 25'-34' in width which significantly limits the buildable envelope needed to construct a house without disturbing the floodplain buffer.

- (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 Applicants state that the variance if approved will not confer any special privilege on the Applicant. The Applicant has minimized the proposed house architecture to limit the requested amount of variance and minimize any impact on neighboring properties.

- (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 Applicants state that granting of this variance will not change the nature of the neighborhood, will not impact the 100-year floodplain or floodplain buffer and will not be injurious to others or detrimental to the neighborhood. The removal of the existing dwelling will improve sight distance at the intersection of Old Middletown Road and Roy Shafer Road and will remove two existing driveway entrances that are located at this intersection.

- (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 Applicants 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 Applicants state that the proposed use is allowed under the terms of Chapter 1-19 of the Frederick County Code in the (A) Agricultural zone.

- (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 Applicants state that the proposed structure will not be nonconforming. The Applicants will be removing the existing non-conforming structure on site.

- (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.

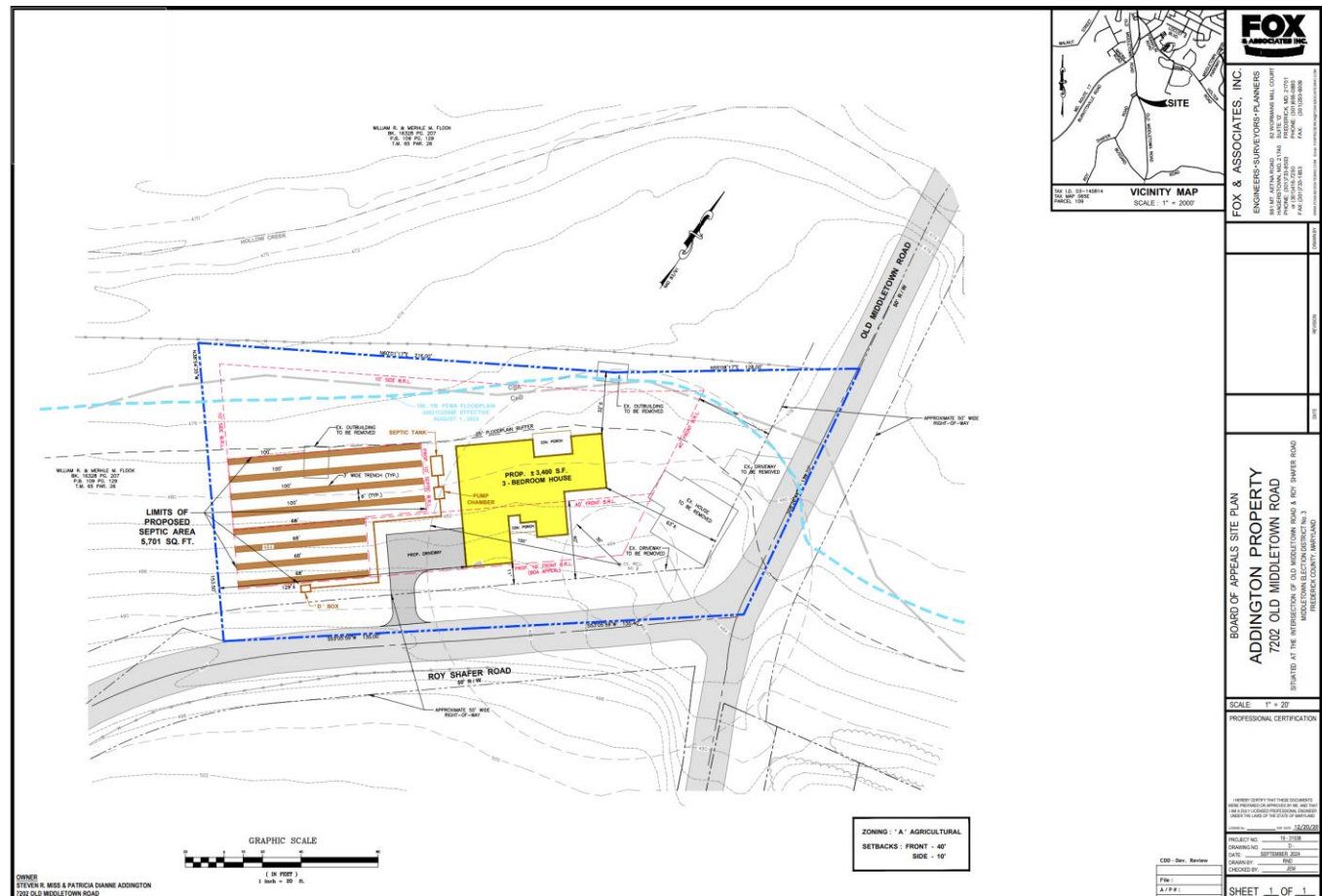
The Applicants understand this requirement and will comply.

Recommendation

Based on the Application, and on the findings and conclusions in the staff report, Staff has no objections to the approval of a variance from the front yard Building Restriction Line (BRL), to reduce the required BRL from 40' to 10', along Roy Shafer Road, in order to construct a single-family residence, in accordance with Sections 1-19-3.220 Variances and 1-19-6.100 Design Standards. The address of this property is 7202 Old Middletown Road, Frederick, MD 21769

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.

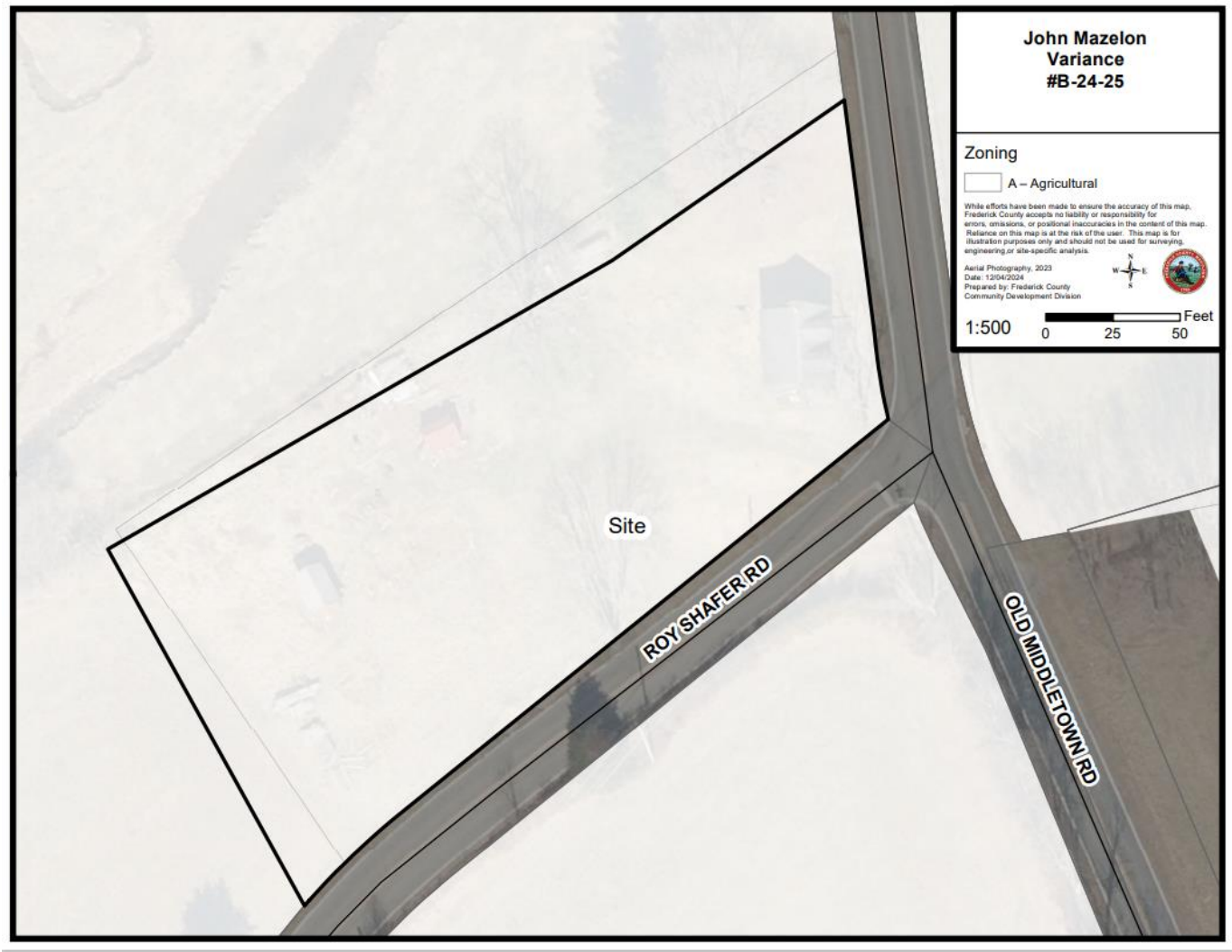
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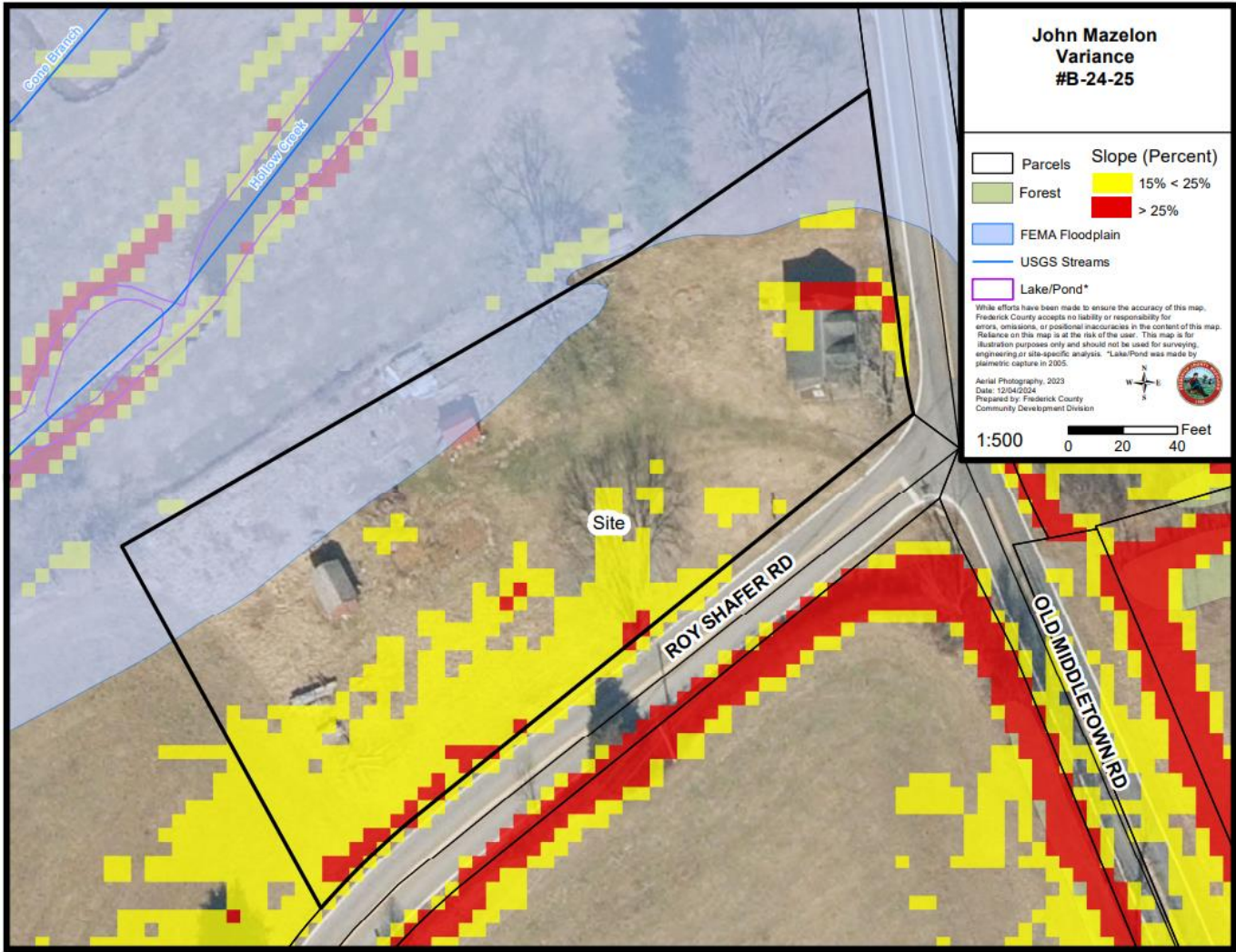
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