



FREDERICK COUNTY BOARD OF APPEALS

February 27, 2025

TITLE:

**Janet Larkin (Owner)
Valerie Frank (Owner Representative)**

CASE NUMBER:

B-25-01 (B277013)

REQUEST:

The Applicant is requesting a variance under Section 1-19-4.220 (C) of the Frederick County Code in order to repair an existing nonconforming accessory structure. The structure cannot be expanded outward but can be increased in height without expanding a nonconforming accessory structure. The Applicant needs to raise the roof as part of the repair effort and needs the variance approval to accomplish this.

PROJECT INFORMATION:

ADDRESS/LOCATION: 4023 Araby Church Road, Frederick, MD 21704
TAX MAP/PARCEL: Tax Map 96, Parcel 0018
ZONE: Low Density Residential (R1)
REGION: Urbana
WATER/SEWER: NPS/NPS
COMP. PLAN/LAND USE: Rural Residential

APPLICANT/REPRESENTATIVES:

APPLICANT: Valerie Frank (Owner Representative)¹
OWNERS: Janet K. Larkin
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 meet 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: Accessory Structure Proposed Floor Plan and Elevation Drawings
Attachment #2: Accessory Structure Existing Floor Plan and Elevation Drawings
Attachment #3: Existing and Proposed Roof Height
Attachment #4: Plot Plan
Attachment #5: Aerial Map
Attachment #6: Comprehensive Plan Map
Attachment #7: Zoning Map
Attachment #8: 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 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, in order to repair an existing nonconforming accessory structure and replace the roof. The current roof is 10.8 ft. measured from the average finished grade to the midpoint of the roof. The roof, once repaired, will be 14 ft. as measured from the grade to the midpoint of the roof.

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 are requesting a variance in height that applies to the accessory structure, which was built by the prior owner of the subject property.

(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 repair and increase the height of an existing accessory structure 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 BOA Hearing is scheduled for Thursday, February 27, 2025.

(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 structure in the same district.

The Applicant states that special conditions and circumstances exist due to the accessory structure being constructed, without proper permits, by the previous owners. The structure was placed on the lot in an area that does not meet the required setbacks for an accessory structure in the (R1) zoning district.

(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 special conditions and circumstances exist due to the accessory structure being constructed without proper permits, by the previous owners, and placed in a location that does not meet the required setbacks. The Applicant purchased the property in 2004, and the structure was already on the property in their current locations.

(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 increase the height of the structure and repair the roof and use the accessory structure. The variance request will allow the Applicant to increase the existing height needed to repair the structure without expanding the footprint in accordance with Section 1-19-4.220.(C) of the Frederick County Code. The Applicant needs to raise the roof as part of the repair effort and needs the variance approval to accomplish this.

(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. They are only repairing the accessory structure in accordance with Section 1-19-4.220(C) of the Frederick County Code. The structure is not being expanded to increase the size, only the height to allow for the roof to be repaired.

(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 properties, and the intent is only to repair the existing structure.

(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 is as an accessory structure, for personal use. There has been no reference for using for any business but for personal hobbies, and storage. 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 that section 1-19-4.220 (C) applies to this case and that the Board of Appeals can grant the requested variance. Section 1-19-4.220. (C) of the Frederick County Zoning Ordinance allows the Applicant to expand a nonconforming structure upwards as long as the footprint is not expanded.

(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 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 in accordance with Section 1-19-4.220, of the Frederick County Code.
- (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 except in accordance with 1-19-4.220 (c). The Applicant needs to raise the roof as part of the repair effort and needs the variance approval to accomplish this.

- (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 accessory structure. The Applicant needs to raise the roof as part of the repair effort and needs the variance approval to accomplish this.

(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 repair it. The Applicant needs to raise the roof as part of the repair effort and needs the variance approval to accomplish this.

(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 setbacks and only allows for the repair of the existing roof.

(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.

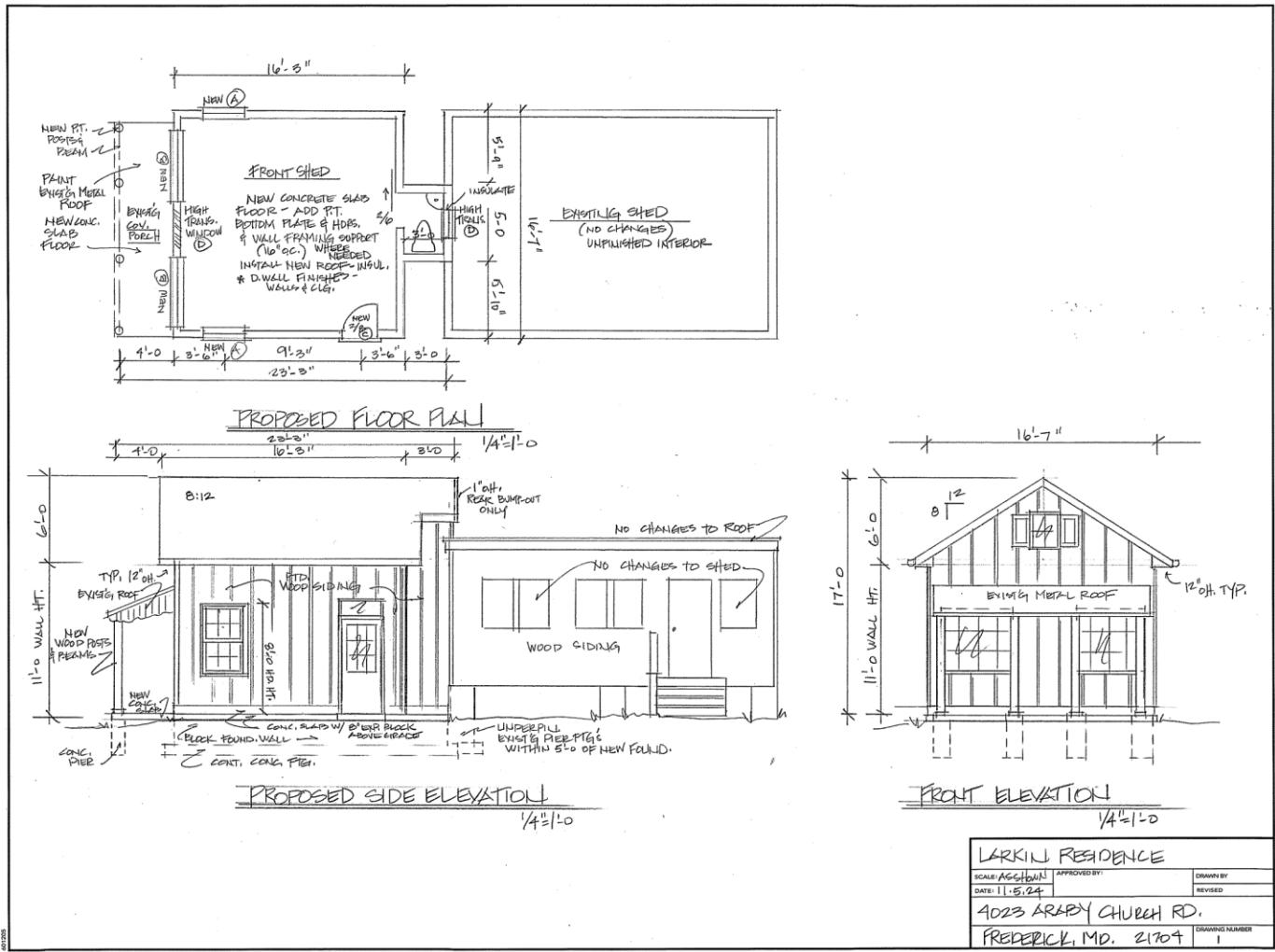
The Applicant states that the proposal does not include the construction of a nonconforming porch, or the addition of stories on top of a non-conforming porch. The application if approved will not expand the non-conforming accessory structure. The Applicant needs to raise the roof as part of the repair effort and needs the variance approval to accomplish this.

Recommendation

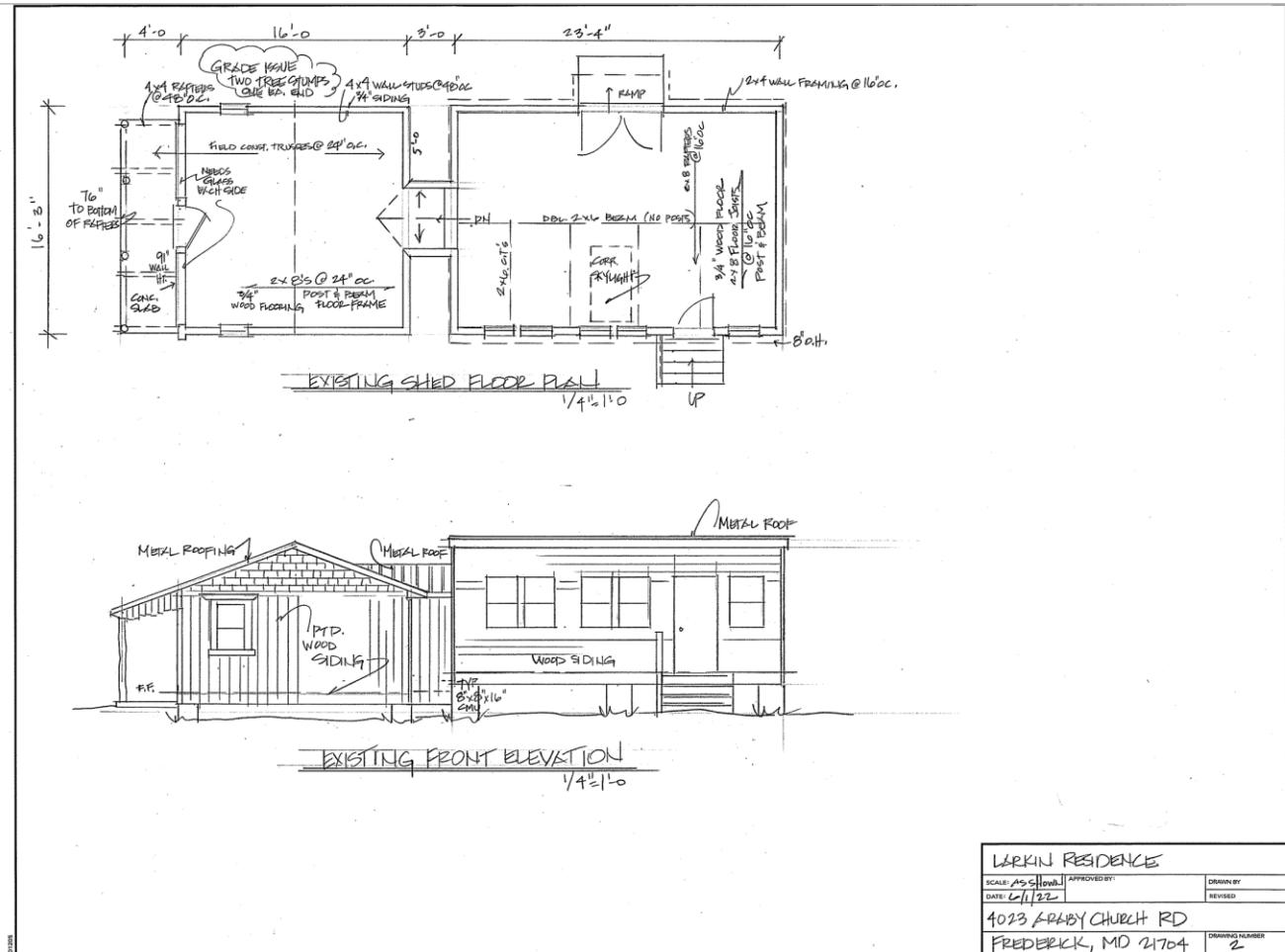
Based on the findings and conclusions in the staff report, Staff has no objection to the approval of this Application. The Applicant meets the standards and requirements contained in Sections 1-19-4.220(C). (Non-Conforming Structures) and 1-19-6.100 (Design Standards), of the Frederick County Code. The roof once repaired will be 14 ft. as measured from the grade to the midpoint of the roof.

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.

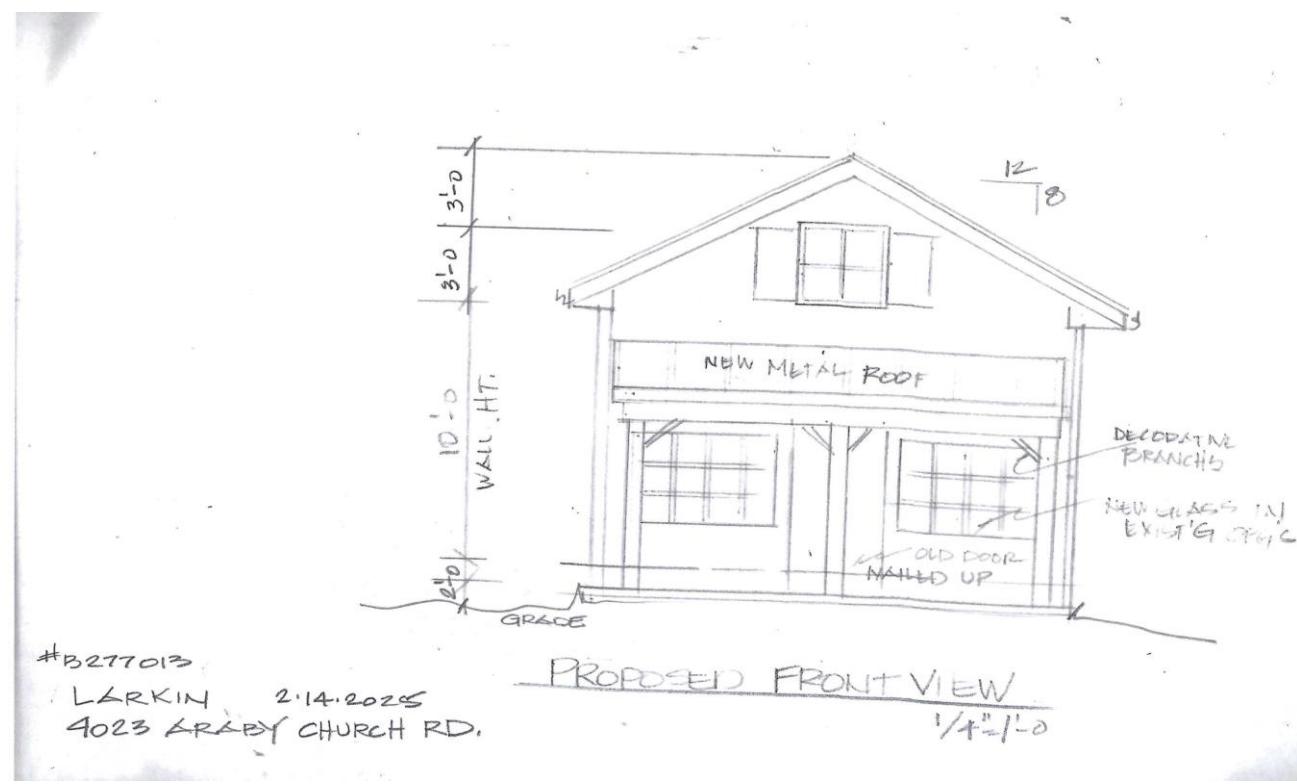
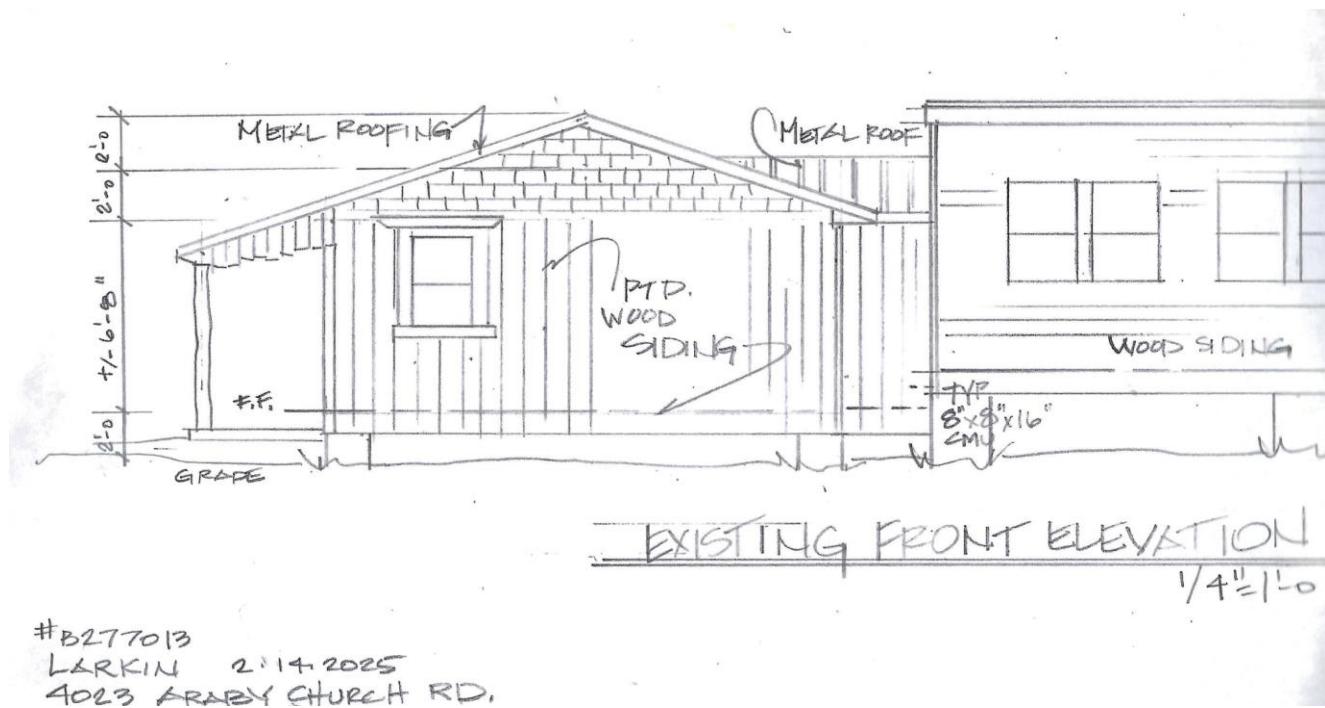
Attachment #1: Accessory Structure Proposed Floor Plan and Elevation Drawings



Attachment #2: Accessory Structure Existing Floor Plan and Elevation Drawings



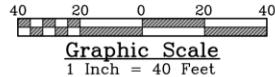
Attachment #3 – Existing and Proposed Roof Height



Attachment #4 – Plot Plan

GENERAL NOTES

1) BOUNDARY BASED ON A SURVEY CONDUCTED BY JNM ENGINEERING IN JUNE, 2024.
2) TOTAL LOT AREA, 35,283+/- SQ. FT.
3) PROPERTY SHOWN ON TAX MAP #6, PARCEL 18.
4) FLOOD ZONE "X" PER CURRENT F.E.M.A. FIRM MAP PANEL.
5) THIS BOUNDARY WAS CONDUCTED WITHOUT THE BENEFIT OF A TITLE REPORT.
6) COORDINATES SHOWN ARE BASED ON NAD83, MD GRID.
7) THE PURPOSE OF THIS PLAT IS TO IDENTIFY THE LOCATION OF THE EXISTING
STRUCTURES IN RELATION TO THE EXISTING PROPERTY LINES.
8) DIMENSIONS SHOWN ARE PLUS OR MINUS 0.10'. Edge of B-1



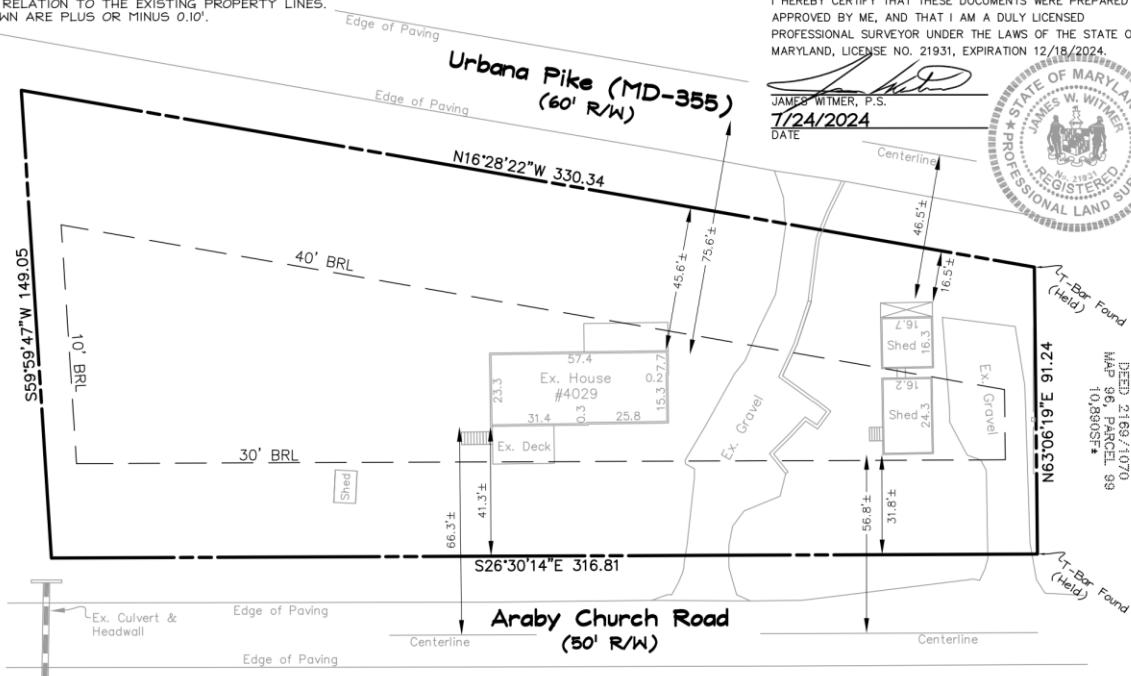
PROFESSIONAL CERTIFICATION:

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL SURVEYOR UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21931, EXPIRATION 12/18/2024.


JAMES WITMER, P.S.
7/24/2024
DATE



DEED 2169/1070
MAP 96, PARCEL 99
10,890SF*



Prepared For:
Janet Larkin
4023 Araby Church Road
Frederick, MD 21704

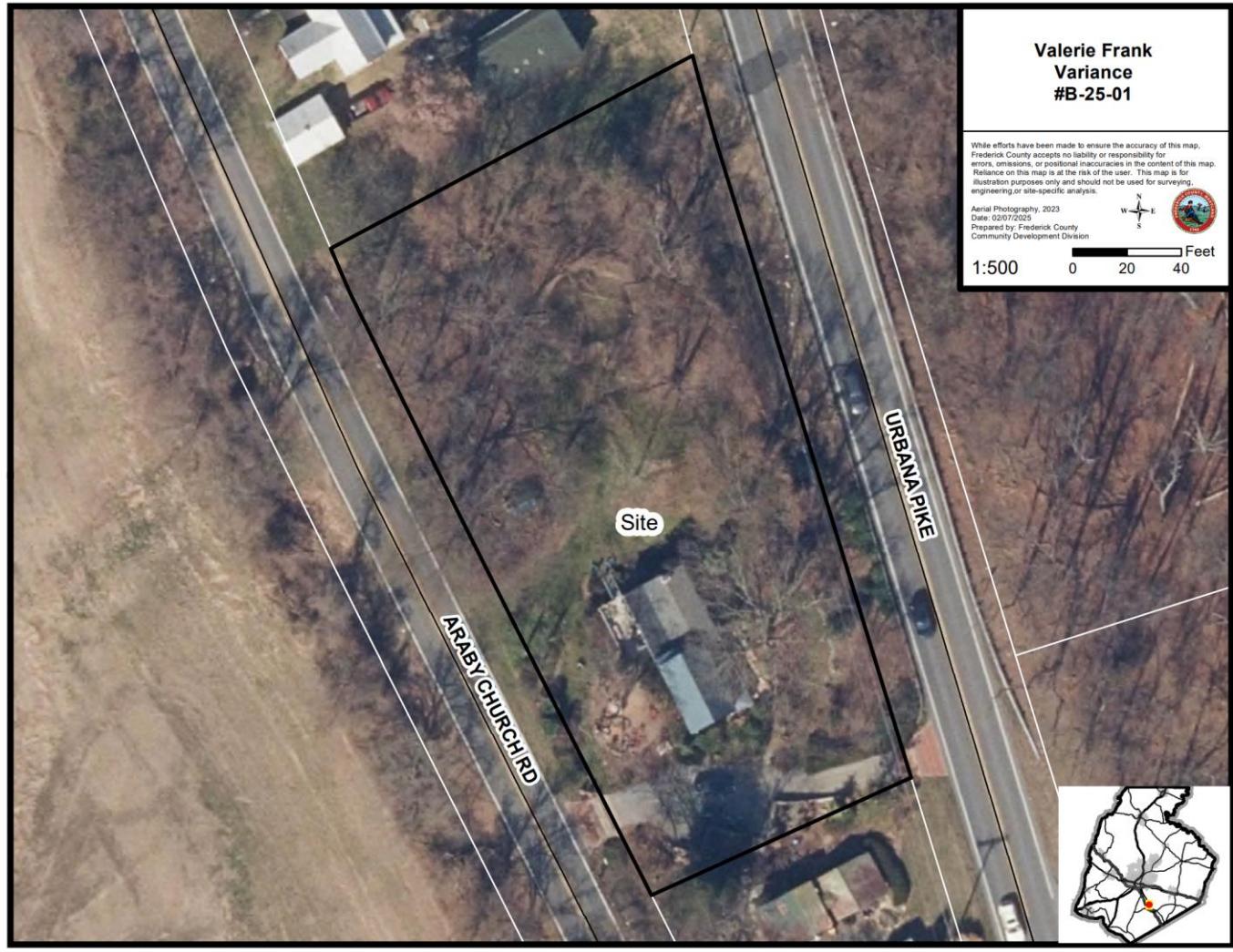


JNM ENGINEERING, LLC

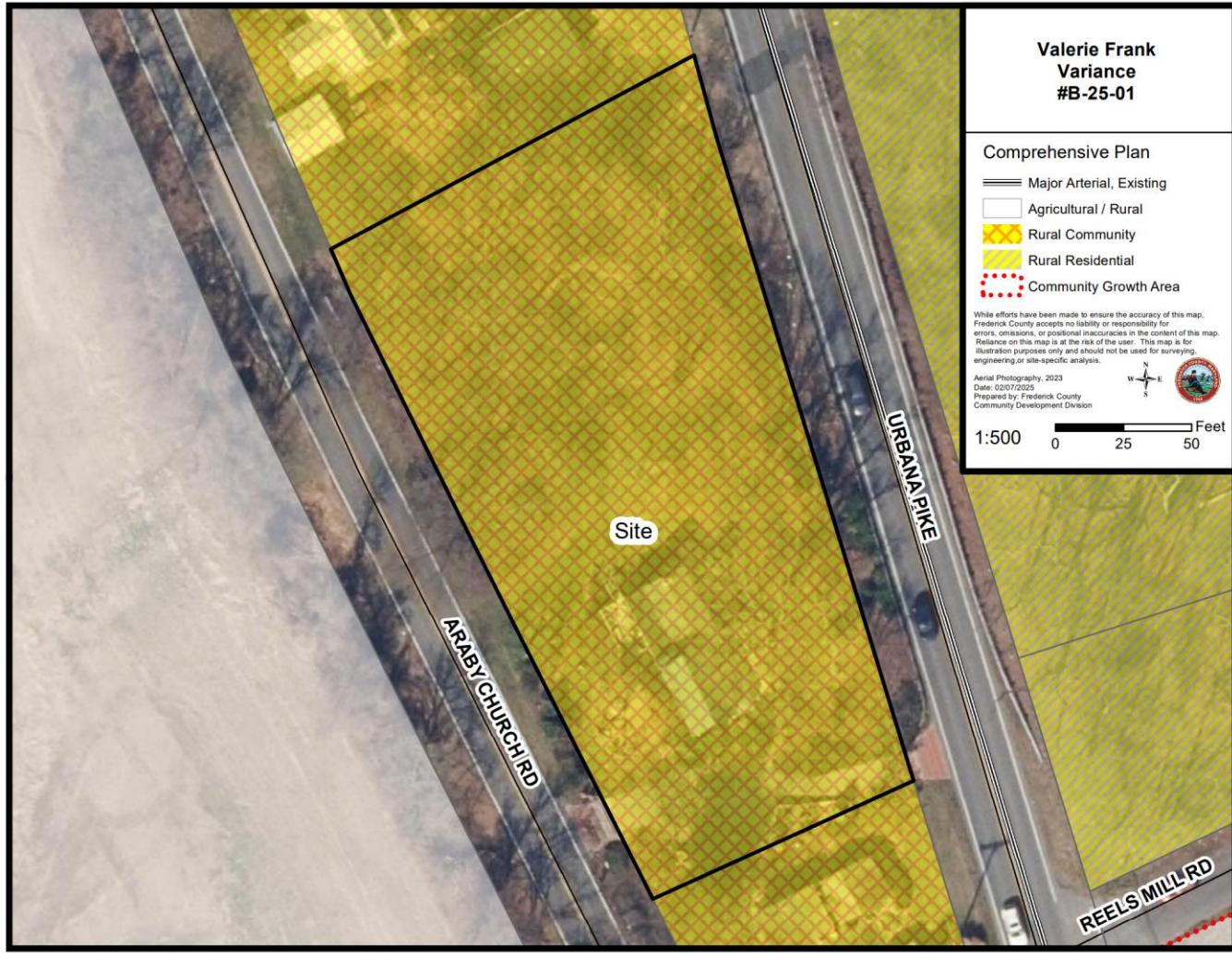
BOUNDARY SURVEY FOR:
4023 Araby Church Rd

UNDARY SURVEY FOR:
23 Araby Church Rd
Liban, 4600, Falls, 1, Pennal, 18
Scale: 1" = 40'
Date: 7/13/24
Field By: JWW
Drawn By: JWW

Attachment #5: Aerial Map



Attachment #6: Comprehensive Plan Map



Attachment #7: Zoning Map



Attachment #8: Environmental Features Map

