



FREDERICK COUNTY BOARD OF APPEALS

April 24, 2025

TITLE: Olman and Kellie Venegas (Owners)

CASE NUMBER: B-25-04 (B277277)

REQUEST: The Applicants are requesting a variance under Section 1-19-4.220 (A)(5) & (C) of the Frederick County Code to reconstruct a residence using the original foundation. The residence is nonconforming due to the required setbacks on this .86-acre lot. The residence size is 2856 sf, and the RC zoning district requires a minimum 50' setback from all property lines.

PROJECT INFORMATION:

ADDRESS/LOCATION: 3706 S. Mountain Road, Knoxville, MD 21758
TAX MAP/PARCEL/Tax ID: Tax Map 066, Parcel 0000, Tax ID#12295200,
ZONE: Resource Conservation (RC)
REGION: Brunswick
WATER/SEWER: NPS/NPS
COMP. PLAN/LAND USE: Natural Resources

APPLICANT/REPRESENTATIVES:

APPLICANTS: Olman Venegas and Kellie Venegas
OWNERS: Olman Venegas and Kellie Venegas
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 Application meets the standards and requirements contained in Sections 1-19-4.220(A)(5) & (C). (Non-Conforming Structures) and 1-19-6.100 (Design Standards) of the Frederick County Code.

Attachments:

Attachment #1: Property Plot Plan
Attachment #2: Front and Rear Elevation
Attachment #3: Basement Floor Plan
Attachment #4: First and Second Floor Plans
Attachment #5: Aerial Map
Attachment #6: Comprehensive Plan Map
Attachment #7: Zoning Map
Attachment #8: Environmental Features Map

¹ The term Applicants 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 .86 Acre in size.

The structure is non-conforming due to the required setbacks. The Applicants are requesting a variance under section 1-19-4.220 (A)(5) & (C) of the Frederick County Code, to construct a new residence using the original foundation. The residential structure is listed as being constructed in 1944, 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.

This Application is for a variance in yard regulations.

(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 the Zoning Administrator directed them 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 Applicants state that the BOA Hearing is scheduled for Thursday, April 24, 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 structures in the same district.

The Applicants state that special conditions and circumstances exist in that RC zoning and the associated required setbacks did not exist when this foundation was laid, since the home was constructed in 1944. Therefore, this lot size is not consistent with the property's current zoning requirements. The required setbacks are 50' from all property lines for a lot only .86 acres in size.

(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 the result of any action taken by the Applicants. The residence was constructed at this location in 1944, prior to the adoption date of the County's original zoning ordinance on January 24, 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 Applicants state that the required setbacks combined with a lot size of less than one acre, make any expansion of the existing residence, in any form, extremely difficult without expanding the footprint in accordance with Section 1-19-4.220(C). This is why their Application is to build within the existing footprint only. The Applicants further state that they have considered moving the septic field but cannot confirm that would allow construction within the required setbacks and is very costly.

(c) 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; and

The Applicants state that granting the variance will not confer on the Applicants any special privilege. Variances to allow a nonconforming structure, to be rebuilt in the same location, without expanding the footprint, are allowed in accordance with Section 1-19-4.220(C) of the Frederick County zoning ordinance, and other people 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 Applicants state that the variance will be in harmony with the neighborhood and with the purpose and intent of Chapter 1-19. This Application 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, as the Applicants intend to rebuild on the same footprint/foundation as the original residence that has stood since 1944.

(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 state that they will comply with any appropriate conditions and safeguards prescribed by the BOA.

(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 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 Frederick County Zoning Ordinance allows the Applicants to rebuild a residence, in the same location where the residence used to stand, in accordance with §1-19-4.220(A)(5) and approval under Section 1-19-4.220. (C). This variance request does not expand the footprint, or increase the nonconformity, of the residence.

(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.

The Applicants are not proposing to expand or increase the nonconforming portion of the structure.

(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 Applicants state that they are proposing to rebuild the structure as allowed under subsection (C) below.

(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 Applicants state that they understand this requirement and have submitted this variance Application.

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

The Applicants are not proposing to move the structure.

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

The Applicants state that they understand this statement.

(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 Applicants state that they understand this requirement and are seeking variance relief in accordance with §1-19-4.220(A)(5)&(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 Applicants state that they are seeking a variance, to rebuild a nonconforming structure, in the same location.

(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 residence and may slightly reduce the size of the existing footprint and therefore reduce the nonconformity of the proposed residence.

(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.

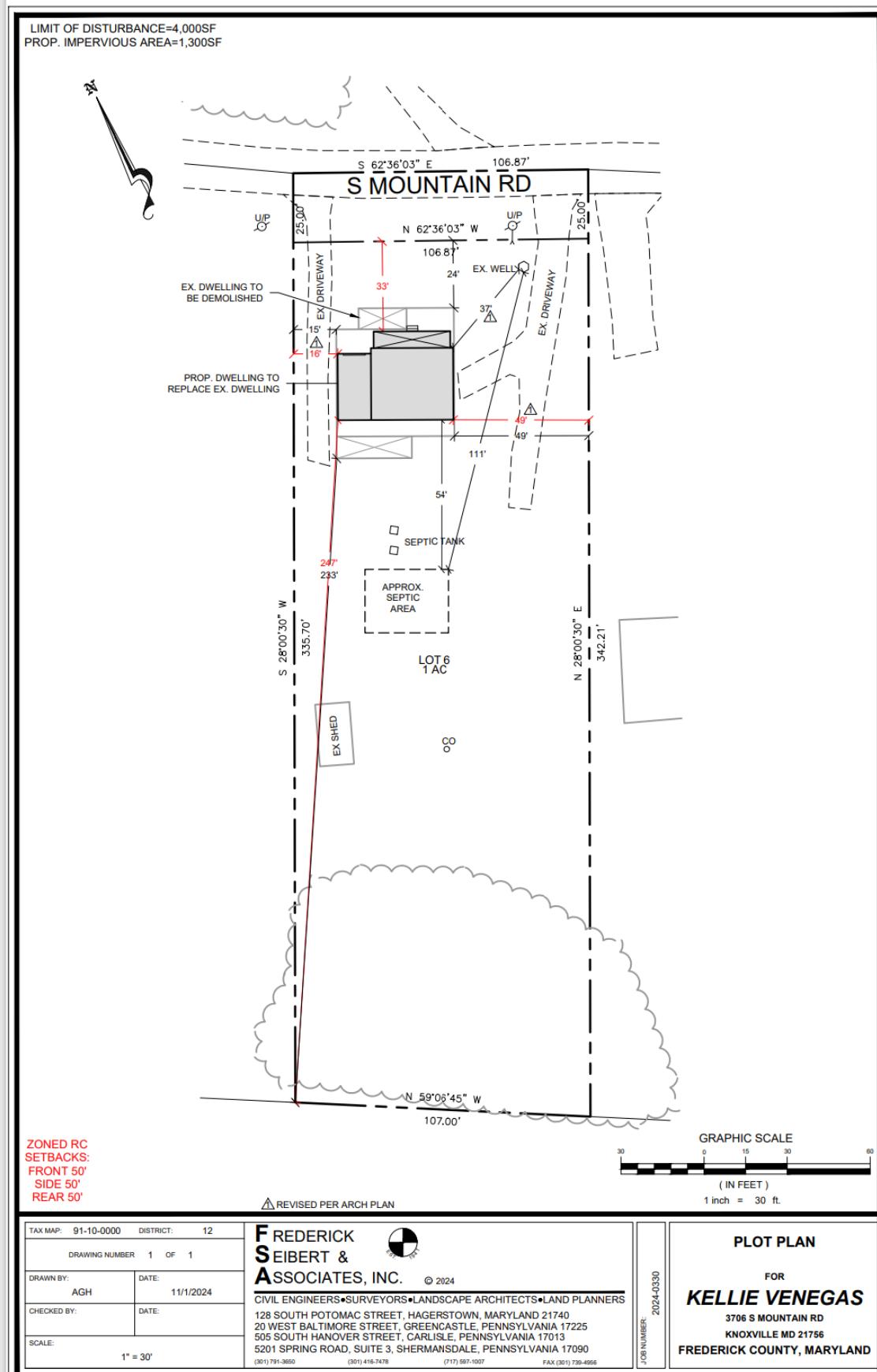
The Applicants state that the proposal does not include the construction of a nonconforming porch, or the addition of stories on top of a non-conforming porch. The porch will be rebuilt further from the existing front Building Restriction Line (BRL) than the existing porch and therefore slightly reducing the existing nonconformity of the proposed residence.

Recommendation

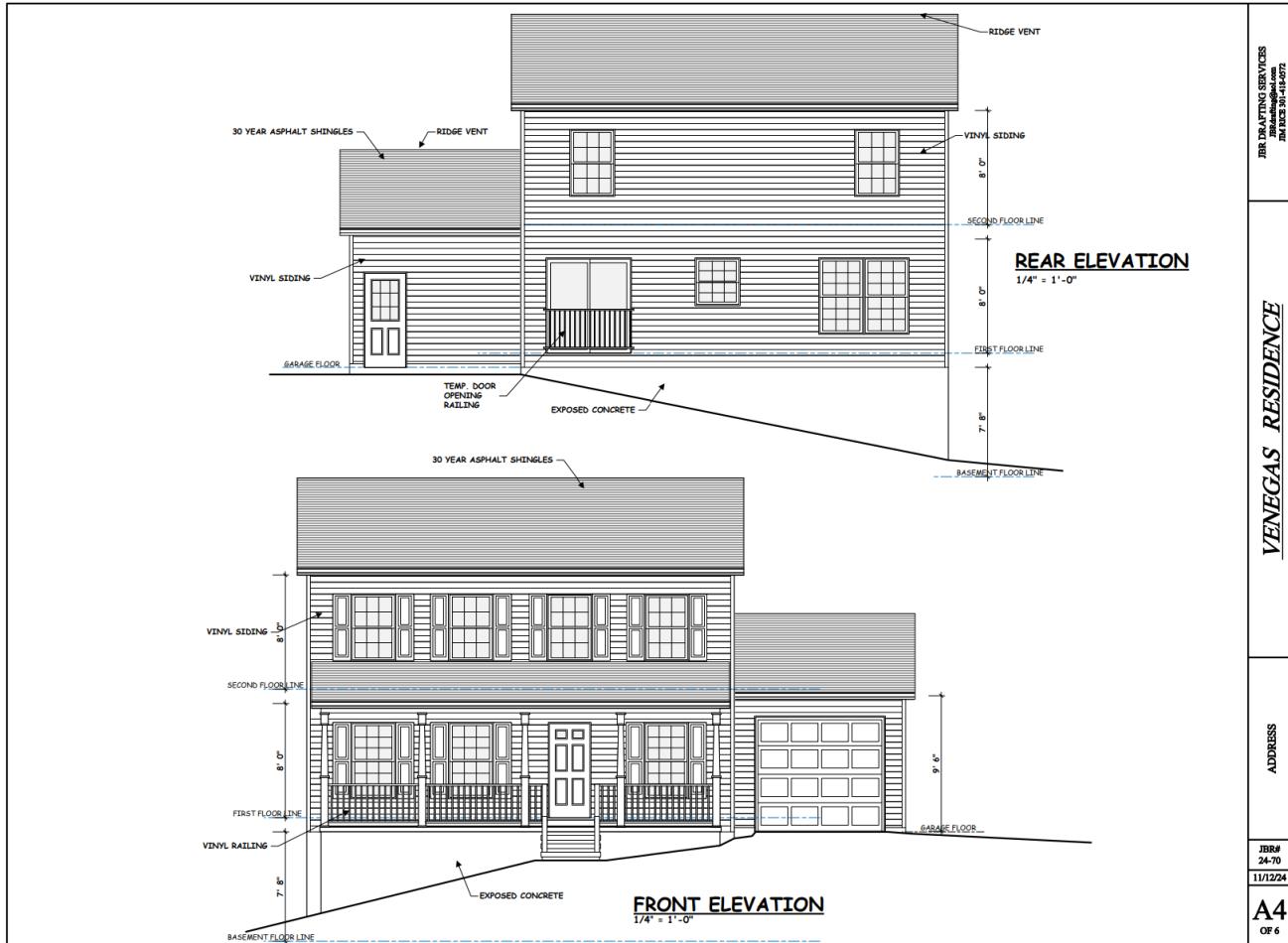
Based on the findings and conclusions in the staff report, Staff has no objection to the approval of this Application. The Application meets the standards and requirements contained in Sections 1-19-220(A)(5), 1-19-4.220(C) (Non-Conforming Structures) and 1-19-6.100 (Design Standards), of the Frederick County Code.

Section 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.

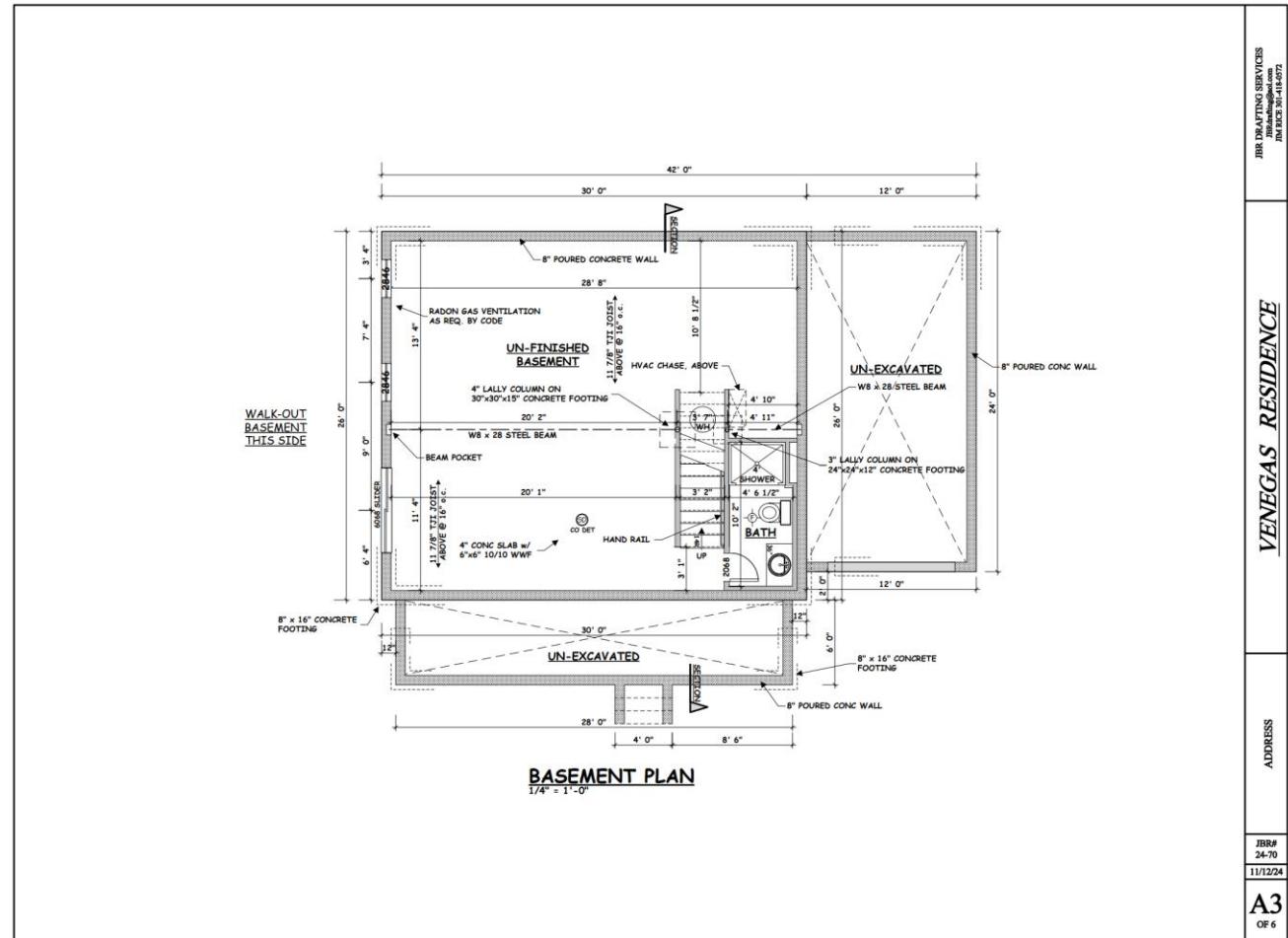
Attachment #1: Property Plot Plan



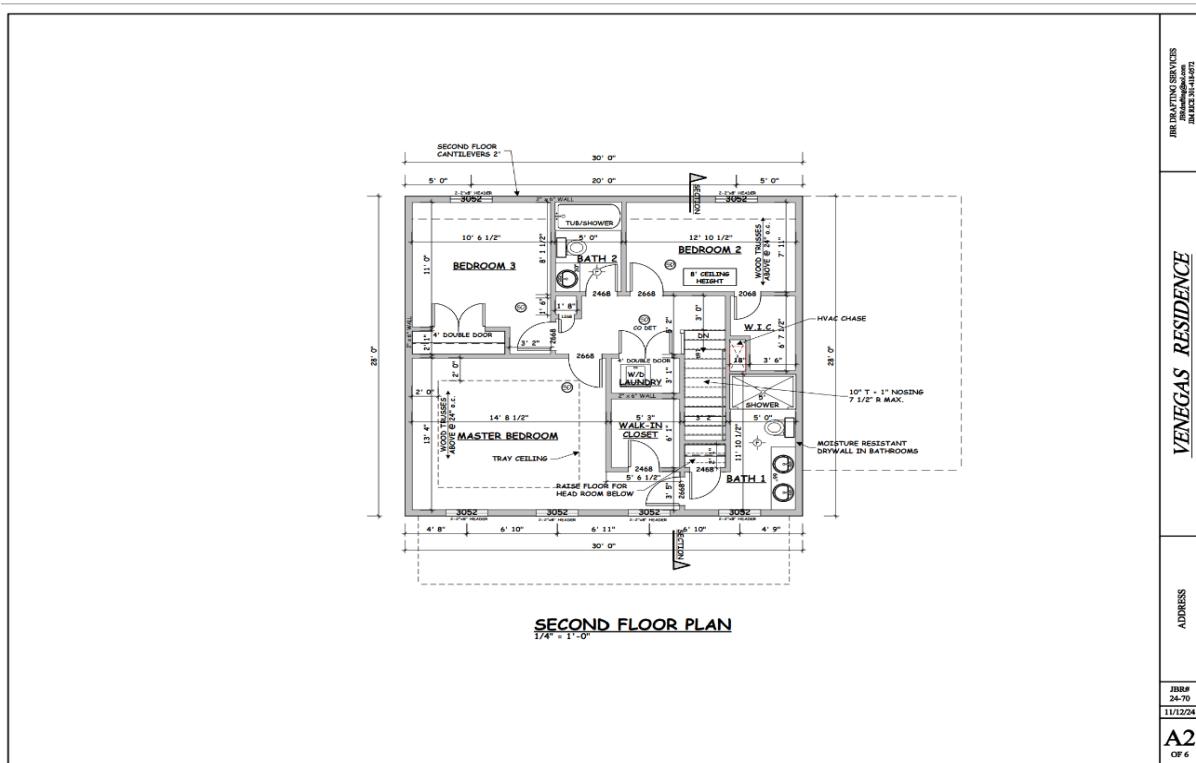
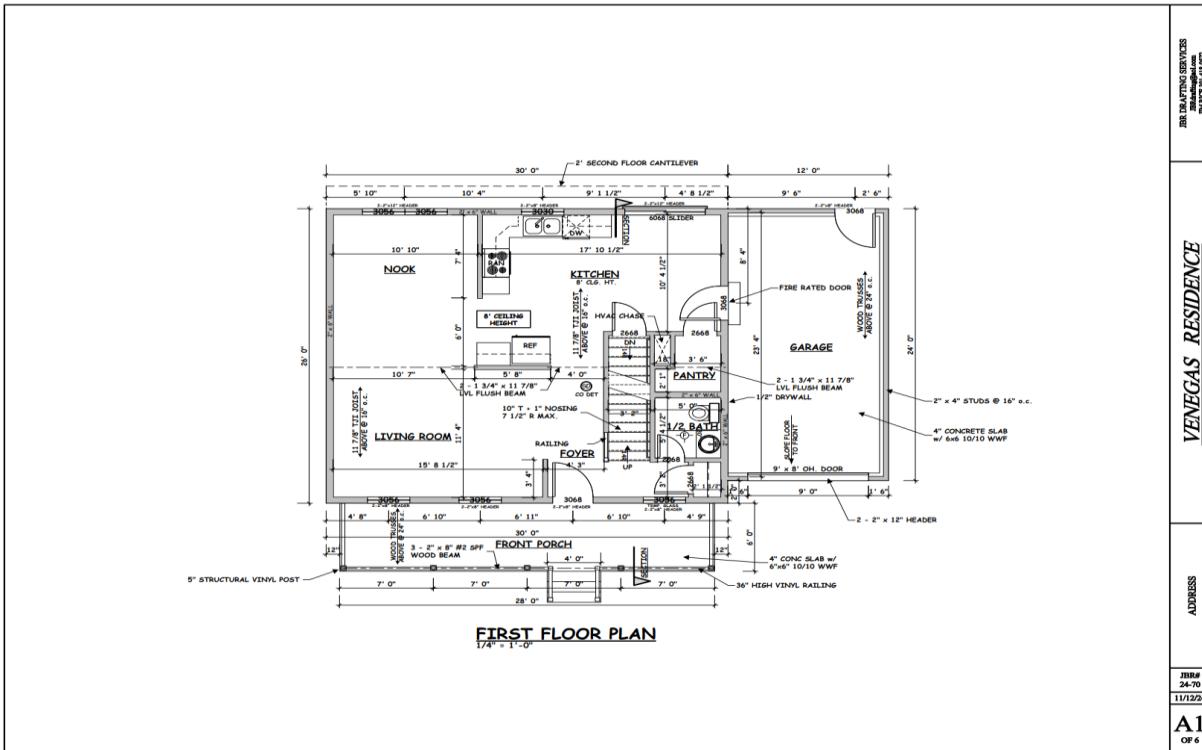
Attachment #2: Front and Rear Elevation



Attachment #3 – Basement Floor Plan



Attachment #4: First and Second Floor Plan



Attachment #5: Aerial Map



Attachment #6: Comprehensive Plan Map



Exhibit #7: Zoning Map



Attachment #8: Environmental Features Map

