



FREDERICK COUNTY BOARD OF APPEALS

April 24, 2025

TITLE: John V. Robie and Marcia E. Robie

CASE NUMBER: B-25-08 B277407

REQUEST: Requesting approval for a variance to reduce the required rear yard building restriction line (BRL) from 20' to 18', in order to enclose the existing rear deck, in accordance with Sections 1-19-3.220 Variances and 1-19-6.100 Design Standards, of the Frederick County Code, on a property located at 3002 Herb Garden Mews, S. Frederick, MD 21704 (the "Property").

PROJECT INFORMATION:

ADDRESS/LOCATION: 3002 Herb Garden Mews, S. Frederick, MD 21704
TAX MAP/PARCEL: Tax Map 096, Parcel 0162
ZONE: (MXD) Mixed Use Development
REGION: Urbana
WATER/SEWER: S-1/W-1
COMP. PLAN/LAND USE: Office/ Research/ Industrial

APPLICANT/REPRESENTATIVES:

APPLICANT: John Robie
OWNER: John Robie
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 approval of a variance to reduce the required rear yard building restriction line (BRL) from 20' to 18', in order to enclose the existing rear deck, in accordance with Sections 1-19-3.220 Variances and 1-19-6.100 Design Standards of the Frederick County Code.

Attachments:

Attachment #1: Property Plan Showing Variance Request

Attachment #2: Picture of Existing Deck to be Enclosed

Attachment #3: Aerial Map

Attachment #4: Zoning Map

Attachment #5: Comprehensive Plan Map

Attachment #6: 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 required setbacks for this Mixed Use District (MXD) zoned Property are front 20', side 4', and rear 20'. The Property is 3,220 sf. in size. Open decks may project into the rear yard up to one-half the distance of the rear yard requirement in accordance with Section 1-19.6.150. Projection Of Architectural Features. The enclosure of the rear deck is considered an addition to the residence and must meet the required 20' rear yard setback in accordance with Sections 1-19-3.220 Variances and 1-19-6.100 Design Standards, of the Frederick County Code.

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 is requesting relief from the rear yard building restriction line in order to enclose the rear deck and reduce the rear BRL from 20' to 18'.

- (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 noted the necessity of a variance per email dated February 7, 2025.

- (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, 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 Applicant states that when they had the deck constructed, they did not plan to enclose it and allowed it to extend 2' into the rear yard setback, in accordance with Section 1-19.6.150. Projection Of Architectural Features. Now that they would like to enclose it, due to excessive heat on the deck, they need a variance due to County zoning rules that require the enclosed deck to meet the setbacks of the residence.

- (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 they have done nothing to create this issue regarding the back deck and no one could have known the issues they are having when the deck was constructed.

- (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 literal interpretation of the provisions of the Zoning Ordinance would not allow the Applicant to use outdoor living space in a reasonably constructive manner. The deck gets too hot, especially in the summer time, to use it. Current conditions create a severe safety risk to any person or pet accessing the existing deck during daytime hours.

- (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 allows the Applicant to construct a roof over an existing deck without changing the footprint of the existing structure. The Applicant further states that they are asking for a very minor adjustment to the rear yard building restriction line of 2' in order to construct the proposed addition that they believe will improve their quality of life

- (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 proposed project is in keeping with the character of the neighborhood, recognizes the pre-existing orderly development of the neighborhood, is not in conflict with the neighborhood, and is in harmony with the general purpose and intent of the Zoning Ordinance.

- (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 understands 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 this house addition is a permissible use subject to BOA approval and building permit approval.

- (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 the proposed house addition will not be nonconforming, and will be allowed, subject to BOA approval.

- (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 understands this requirement and will comply.

Recommendation

Based on the Application, and on the findings and conclusions in the staff report, Staff has no objection to approval of a variance to reduce the required rear yard building restriction line (BRL) from 20' to 18', in order to enclose the existing rear deck, in accordance with Sections 1-19-3.220 Variances and 1-19-6.100 Design Standards, of the Frederick County Code,

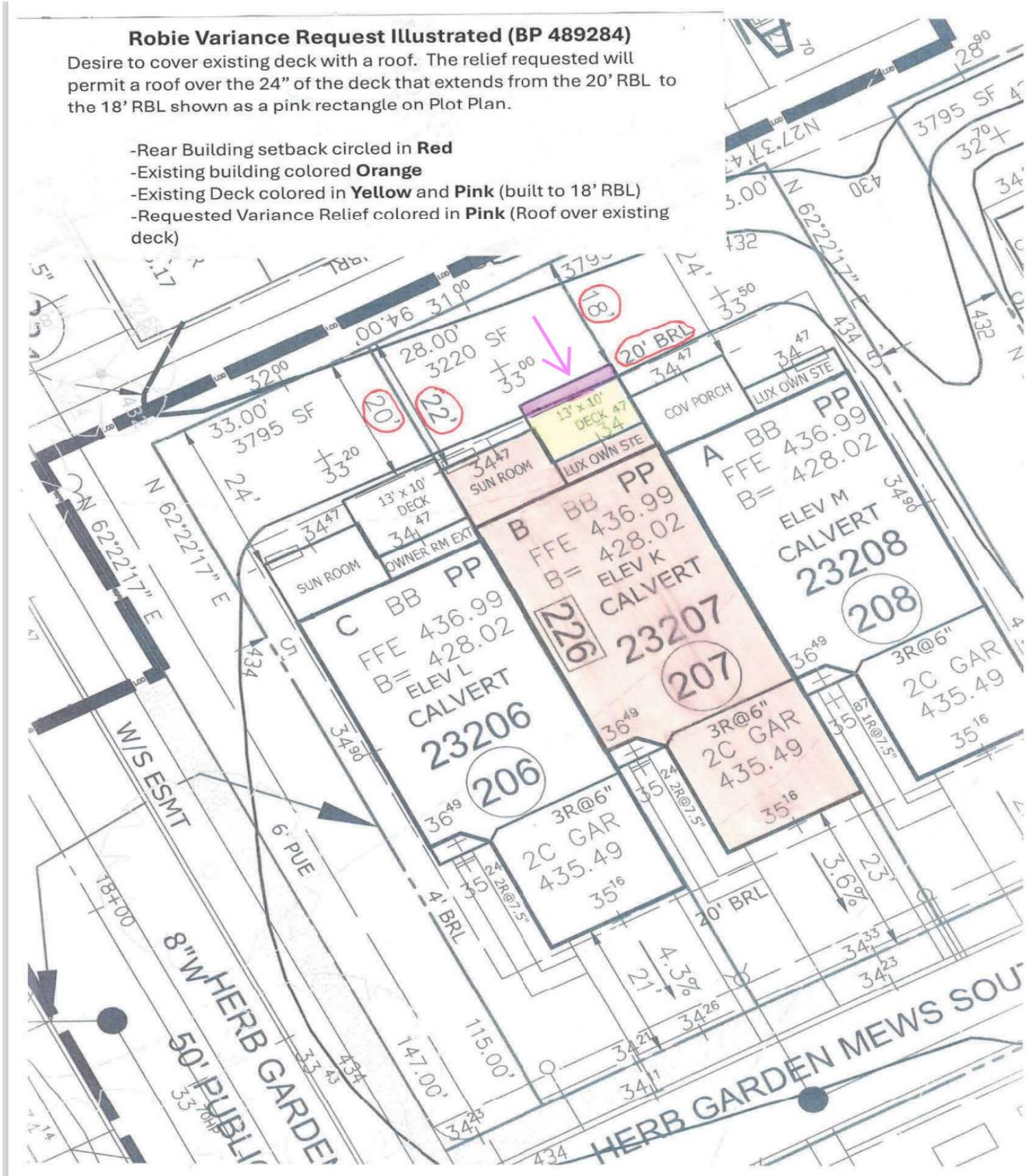
1-19-3. 220.G: A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the 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 Showing Variance Request

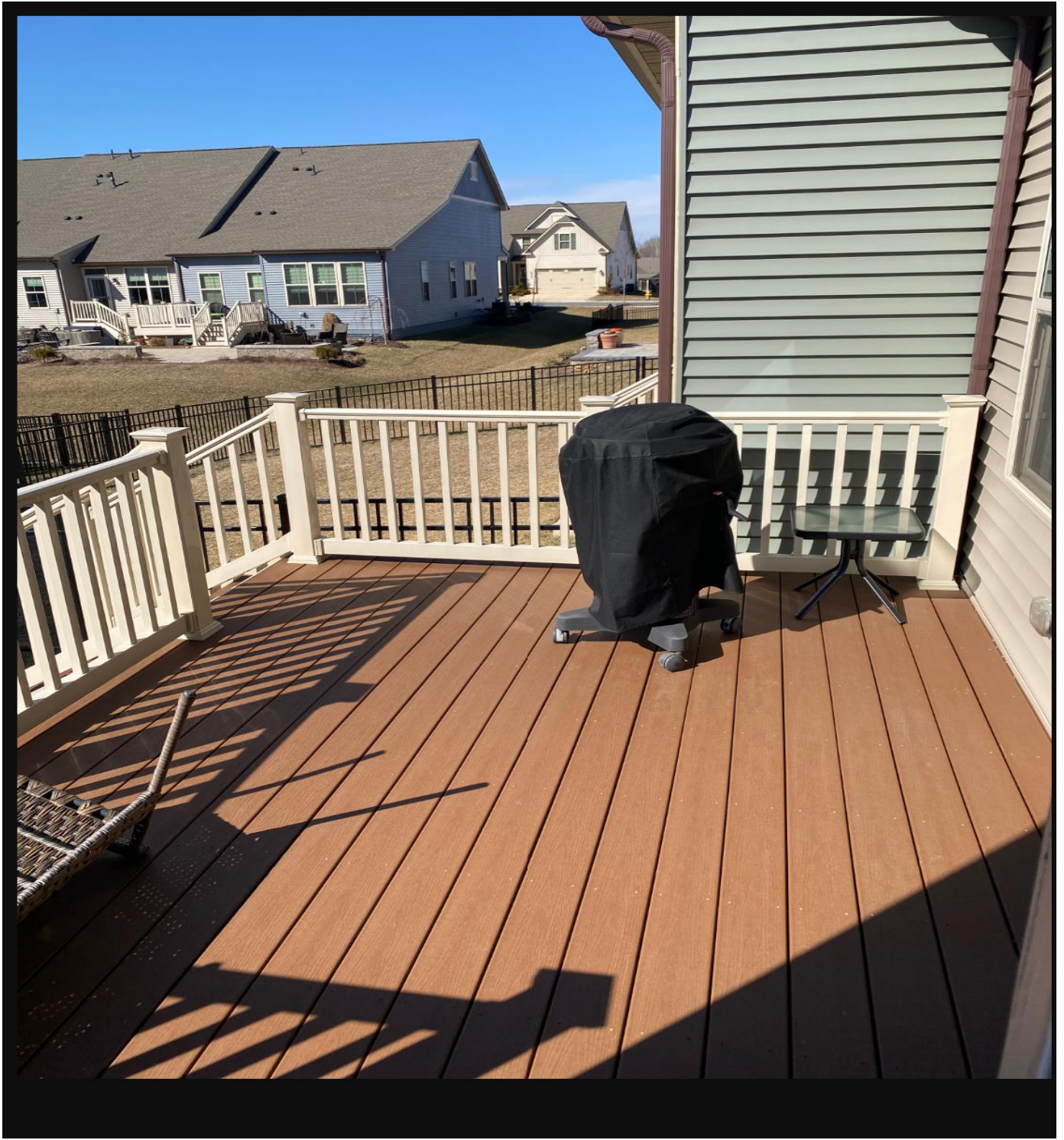
Robie Variance Request Illustrated (BP 489284)

Desire to cover existing deck with a roof. The relief requested will permit a roof over the 24' of the deck that extends from the 20' RBL to the 18' RBL shown as a pink rectangle on Plot Plan.

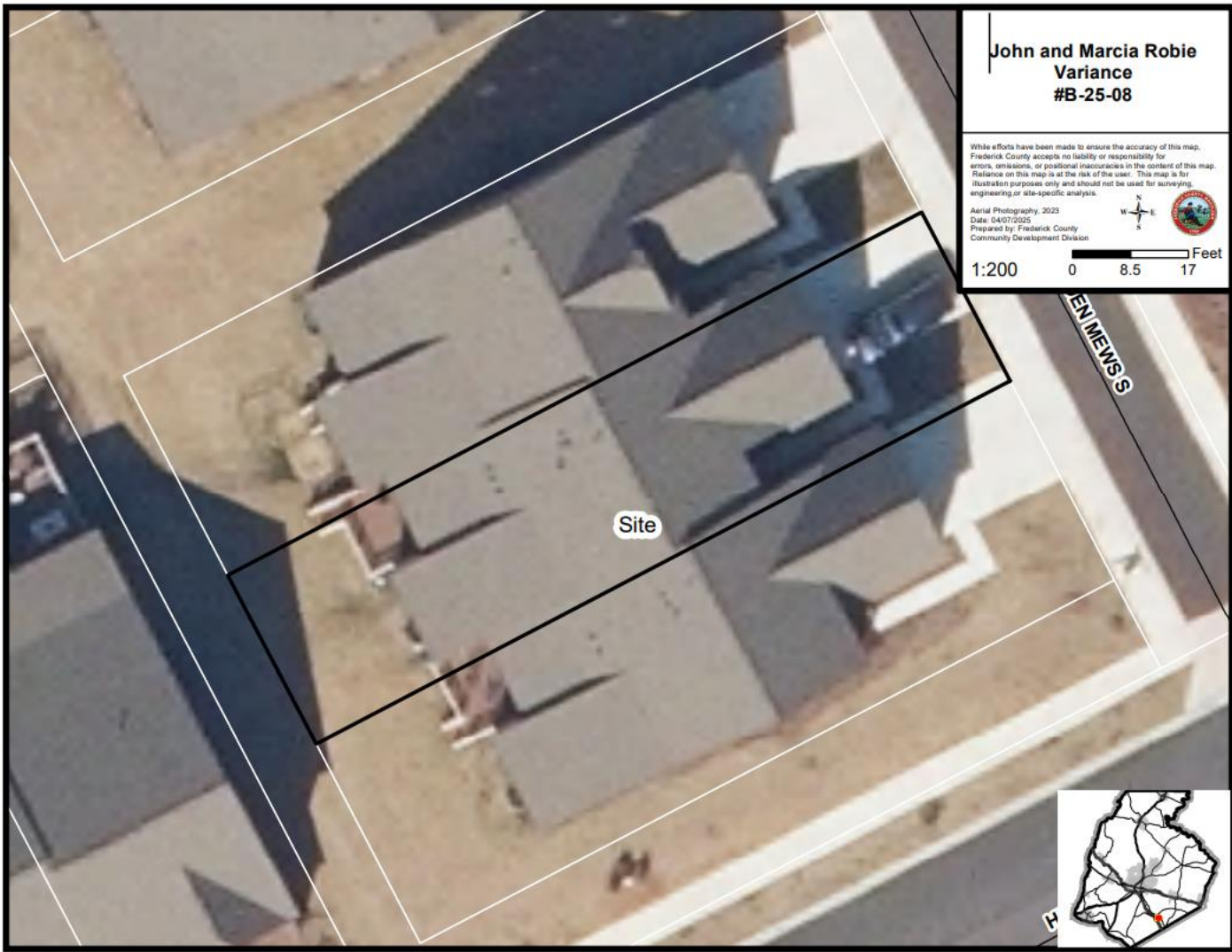
- Rear Building setback circled in **Red**
- Existing building colored **Orange**
- Existing Deck colored in **Yellow** and **Pink** (built to 18' RBL)
- Requested Variance Relief colored in **Pink** (Roof over existing deck)



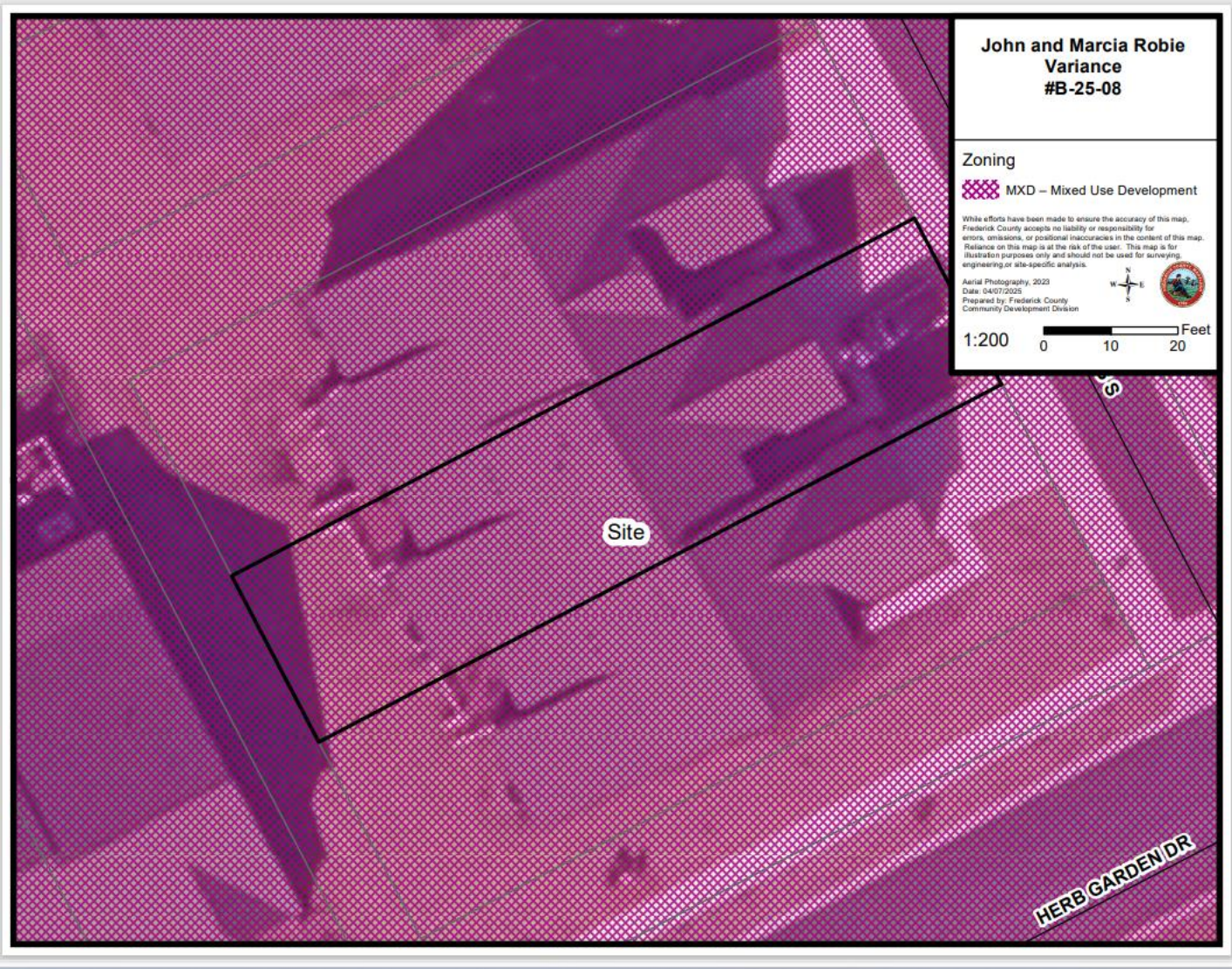
Attachment 2: Picture of Existing Deck to be Enclosed



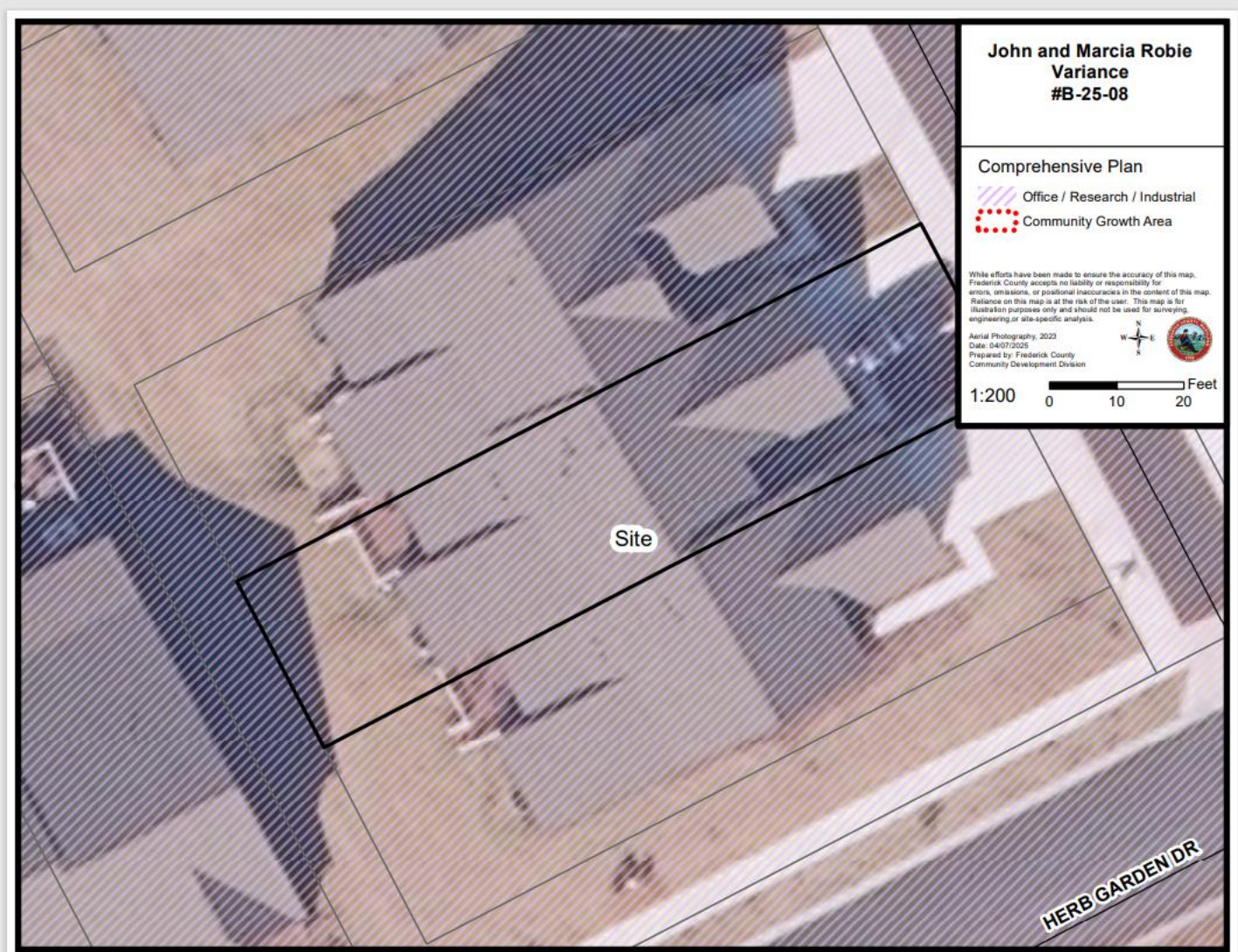
Attachment 3: Aerial Map



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Attachment 5: Comprehensive Plan Map



Attachment 6: Environmental Features Map

