



FREDERICK COUNTY BOARD OF APPEALS

November 20, 2025

(Continuation – See Changes from 10/23/2025 Staff Report per 11/5/25 HPC letter, Attachment 12)

TITLE:

Bogia Engineering, Inc. (Applicant)
Dolores Fitzgerald (Owner)

FILE NUMBER: B-25-23 (B277868)

REQUEST:

Requesting a Special Exception Approval to allow for Non-governmental Utility In RC, A, R-1, R-3, R-5, R-8, R-12, R-16 and VC Zoning Districts, in accordance with Section 1-19-8.339 of the Frederick County Ordinance. The proposed project is comprised of constructing three (3) +/- 7,656 sq. ft. buildings for non-governmental utility use on 13.09 acres of land zoned (A) Agricultural.

PROJECT INFORMATION:

ADDRESS/LOCATION: Old Frederick Rd, adj to 12226 Old Frederick Rd, Thurmont, MD 21788
MAP/PARCEL: Tax Map 033, Parcel 0003, Tax ID 04589861
COMP. PLAN: Agricultural/Rural
ZONING: (A) Agricultural
PLANNING REGION: Thurmont
WATER/SEWER: NPS/NPS

APPLICANT/REPRESENTATIVES:

APPLICANT: Bogia Engineering, Inc.¹
OWNERS: Dolores Fitzgerald
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: N/A

STAFF:

Michael A. Paone, Zoning Planner

RECOMMENDATION: Staff has no objection to the approval of the requested Special Exception to allow for Non-governmental Utility In RC, A, R-1, R-3, R-5, R-8, R-12, R-16 and VC Zoning Districts, in accordance with Section 1-19-8.339 of the Frederick County Ordinance. The proposed project is comprised of constructing three (3) +/- 7,656 sq. ft. buildings for non-governmental utility use on 13.09 acres of land zoned (A) Agricultural.

ATTACHMENTS:

Attachment #1 – Site Plan
Attachment #2 – Addition Plat
Attachment #3 – Site Photo
Attachment #4 – Site Photo
Attachment #5 – Site Photo
Attachment #6 – Exterior Elevations East and North

Attachment #7 – Exterior Elevations West and South
Attachment #8 – Aerial Map
Attachment #9 – Zoning Map
Attachment #10 – Comprehensive Plan Map
Attachment #11 – Environmental Features Map
Attachment #12 – 11/5/25 HPC letter

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 Property is zoned (A) Agricultural, which allows for Non-governmental Utility as a Special Exception, subject to Board of Appeals (BOA) approval.

The Applicants are requesting Special Exception Approval to allow for Non-governmental Utility In RC, A, R-1, R-3, R-5, R-8, R-12, R-16 and VC Zoning Districts. The subject property is zoned (A) Agricultural. The proposed project is comprised of constructing three (3) +/- 7,656 sq. ft. buildings for non-governmental utility use on 13.09 acres of land zoned (A) Agricultural. (**Attachment #1**)

The proposed buildings are designed to only house computer equipment that will be utilized to refresh and regenerate the fiber optic signal for the 864-fiber cable. The structures have been intentionally designed to maintain a compact footprint and to operate with minimal noise, ensuring compliance with applicable ordinances.

§ 1-19-3.210 – GENERAL CRITERIA – SPECIAL EXCEPTION

A. An application for a special exception may be made only by persons with a financial, contractual, or proprietary interest in the property for which a special exception is requested.

The Applicant states that Bogia Engineering, Inc. is the contract purchaser. Dolores Fitzgerald is the current owner listed on the property SDAT.

B. A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

1. The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of Chapter 1-19 of the Frederick County Code; and

The Applicant states that based on Frederick County's GIS mapping and the Livable Frederick Master Plan (LFMP), the Property is situated within the area identified as "Agricultural Lands" which indicates the County's objective to preserve rural character while supporting essential services and infrastructure. Despite the Property's location not within a designated growth area, the proposed non-governmental utility use is in alignment with the LFMP and the County's Comprehensive Development Plan in several ways.

The proposed use is consistent with the County's desire to minimize impact on the rural and agricultural landscape as the proposed non-governmental utility buildings are designed to have minimal environmental disturbance and no public daily traffic.

The proposed use is compatible with surrounding Land Use and Zoning as the facility will not require significant grading or site disturbance, and operations are limited to periodic maintenance by 2-3 technicians monthly. This ensures compatibility with adjacent agricultural and residential uses while supporting County-wide infrastructure goals.

The use proposed in the Application represents a necessary and beneficial utility expansion that preserves the existing character and use of the land. It is consistent with the following LFMP Visions, Goals and Policies: EC 3.1.1 ("Attract, retain, and grow opportunities to create a business climate in Frederick County that is attractive to firms and supportive of the many diverse groups of people, with diverse expertise and experiences, who wish to live and work in Frederick County."); EC 3.1.3 ("Ensure that

infrastructure needed to support and maintain Frederick County as a great place to live and work is in place to meet the needs of residents and the business community by expanding, augmenting, or creating new infrastructure as opportunities expand to live and work in Frederick County."); EC 3.2.1 ("Work to expand opportunities in knowledge-based industries – those industries where production and services are based on a vast knowledge of technical and scientific skills, with workers highly skilled in those areas – such as information technology - and other new and emerging technical business opportunities."); EC 3.3.2 ("Identify and pursue opportunities to efficiently grow economic sectors in the county that blend the advantages provided by local assets with the possibilities offered by regional and global economic trends.").

2. The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The Applicant states that the proposed non-governmental utility use consists of three single-story, approximately +/- 7,656-square-foot utility buildings situated on a parcel comprised of +/- 13.09 acres. The Property is an adequate size to accommodate all required setbacks, buffering, and stormwater management in accordance with Frederick County Code. The facility will not be staffed on a daily basis, with only 2-3 personnel conducting routine maintenance onsite approximately 3-4 times per month. No customer access or public traffic is generated by the use. The non-descript passive use proposed will maintain the mostly agricultural character of the area. It is across from the Old Frederick Road 60-acre Baker Point commercial solar facility.

3. Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration, or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The Applicant states that the proposed utility buildings are passive fiberoptic support structures that generate no ongoing mechanical activity, industrial processing, or emissions. Operational activity is limited to periodic maintenance visits by 2-3 technicians, occurring only 3-4 times per month, with no public access or continuous on-site staffing. All equipment will be housed within a fully enclosed structure, designed to meet all applicable building and mechanical code requirements, including sound attenuation and ventilation standards. Auxiliary systems will be appropriately shielded to eliminate off-site impacts.

The site layout will be in compliance with all County development standards—including setbacks, buffering, and screening—further mitigate any potential for off-site effects.

STAFF NOTE: THIS PROJECT WILL BE SUBJECT TO SITE DEVELOPMENT PLAN REVIEW AND APPROVAL BY THE FCPC.

4. Parking areas will comply with the off-street parking regulations of Chapter 1-19 of the County Code and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out to achieve maximum safety.

The Applicant states they will ensure full compliance with all access road requirements as required by Frederick County.

5. The road system providing access to the proposed use is adequate to serve the site for the intended use.

Access to the proposed non-governmental utility facility will be provided via Old Frederick Road, a publicly maintained roadway with sufficient capacity and structural design to accommodate the low-volume vehicular traffic generated by the proposed use. The intended operations involve no daily traffic and limited monthly site visits by 2-3 maintenance personnel, resulting in negligible traffic generation. Given the minimal traffic demand and infrequent access needs, the road system serving the site is fully adequate to support the intended use under the proposed special exception.

STAFF NOTE: THIS PROJECT WILL BE SUBJECT TO SITE DEVELOPMENT PLAN REVIEW AND APPROVAL BY THE FCPC.

- C. In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in Sections 1-19-8.320 through 1-19-8.355 of the County Code.

The Applicant understands and agrees to this requirement.

- D. A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under Chapter 1-19 and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of Chapter 1-19 and may be grounds for termination of the special exception.

The Applicant understands and agrees to comply with any additional conditions imposed by the BOA.

- E. The Board of Appeals shall not grant a special exception unless and until:

1. A written application for a special exception is submitted indicating the section of Chapter 1-19 of the County Code under which the special exception is sought and stating the grounds on which it is requested; and

The Applicant has complied with this requirement.

2. A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

The Applicant has made a written application stating the grounds upon which the special exception is requested and is complying with the process. A public hearing is scheduled for October 23, 2025.

- F. The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

The Applicant states that they understand and agree to this requirement.

- G. No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.

The Applicant states that the Special Exception will not be expanded beyond what is approved by the BOA.

- H. If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

The Applicant states that they understand and agree to this requirement.

- I. A decision of the Board of Appeals granting a special exception will be void 5 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 and agree to this requirement.

§ 1-19-8.339. NON-GOVERNMENTAL UTILITY IN RC, A, R-1, R-3, R-5, R-8, R-12, R16 AND VC DISTRICTS

The following provisions shall apply to a non-governmental utility in RC, A, R-1, R-3, R-5, R-8, R-12, R-16 and VC Districts.

- A. Minimum setback from all property lines is 50 feet. Structures, fencing or parking are not permitted within the setback area.

The Applicant states that all required setbacks will be maintained, and no structures, fencing or parking areas will not be located within the designated setback areas.

- B. Screening and landscaping is required as approved by the Board of Appeals.

The Applicant states that all screening and landscaping will be provided as required by the BOA.

STAFF NOTE: THIS PROJECT WILL BE SUBJECT TO SITE DEVELOPMENT PLAN REVIEW AND APPROVAL BY THE FCPC.

- C. Within the RC District, the requirements of § 1-19-7.200 of this Code will be met.

The Applicant states that this project is not located within the (RC) zoning district.

- D. When permitted in any residential district, a nongovernmental utility shall have the exterior appearance of residential buildings and shall have suitable landscaping, screen planting and fencing, deemed necessary by the Board of Appeals.

The Applicant states that this project is not located within a residential zone.

- E. Provide information to indicate the general conditions of use and existing improvements on adjoining properties within a 1,000-foot radius surrounding the subject property.

The Applicant states that the area within a 1,000-foot radius of the subject property is predominantly rural and agricultural in character, consistent with the surrounding zoning designations. Adjoining properties primarily consist of active farmland, wooded parcels, and low-density residential uses, including single-family dwellings located on large lots.

Existing improvements in the surrounding area are limited and generally include single-family homes with associated outbuildings (e.g., barns, garages, sheds) and occasional farm structures.

F. When approving a nongovernmental utility use, the Board of Appeals may authorize future changes not requiring further Board of Appeals approval within a 10 year period of the initial special exception approval. Such changes shall be limited to the addition, relocation, or modification of foundations or equipment, or additions to existing buildings, within a fence line approved by the Board of Appeals. The site plan must show initially proposed and future buildings and structures as reasonably expected within 20 years or the foreseeable future.

The Applicant understands and agrees to this requirement. The Applicant is not requesting that the Board authorize any future changes at this time.

G. A reasonable effort shall be made by the applicant to contact and inform area homeowner associations and community associations of the proposed use together with an informational meeting.

The Applicant held a community meeting at the Thurmont Regional Library regarding the special exception request on Wednesday October 15, 2025. The meeting was attended by approximately 15 people.

H. Tests to determine mitigation requirements. In the event the Board determines to grant the special exception, the Board shall consider the following areas to determine the extent that impact mitigation measures will be required.

1. The Board shall make findings that the proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

The Applicant understands and agrees to this requirement.

2. The Board shall make findings regarding adverse effects of the project on the character of the surrounding area including impacts from sound, light, visual appearance, impervious surfaces, traffic impacts, and on forest and wildlife impacts.

The Applicant understands and agrees to this requirement.

3. All applications for non-governmental utilities before the Board shall be forwarded to the Historic Preservation Commission for review and comment. The Board shall consider comments from the Historic Preservation Commission and shall make findings regarding the project's impacts on any historic district, registered historic property, parks, designated heritage area, and other historic or cultural resource. When there is a finding of negative impact based upon evaluation of the above, the Board shall to the maximum extent practicable require mitigation. Required mitigation may include the construction of fences, barriers, mandatory setbacks, the surfacing of access drives, shielding of lighting, or the establishment of buffers, vegetative screening, or landscaping.

The Applicant understands and agrees to this requirement. The County Historic Preservation staff reviewed this application please see 11/5/25 HPC letter, Attachment 12.

I. All applications shall include information as to how the applicant has addressed the visual impact of the nongovernmental utility on neighboring county designated preservation areas, such as rural legacy areas, agricultural preservation areas, critical farms, Monocacy scenic river, Appalachian Trail, designated heritage areas, historic sites and sites eligible for designation.

The Applicant understands and agrees to this requirement.

- J. Provide photographs of the existing conditions of the site and area.

The Applicant has provided this documentation. (Attachments 3-5)

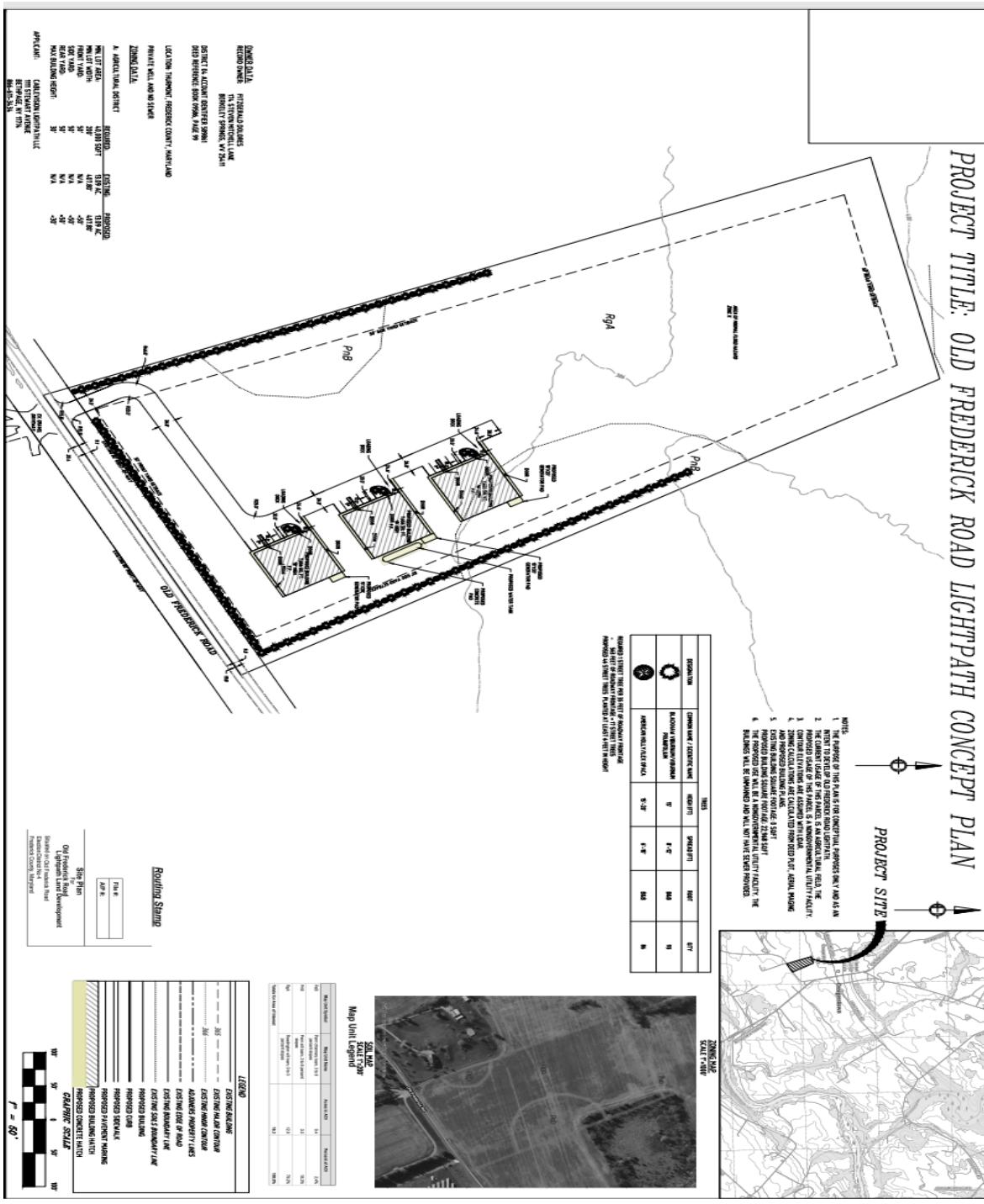
- K. Provide photo-documentation that a balloon test has taken place at the proposed site location (for substations only).

The Applicant states that this requirement is not applicable to this project.

Based on the findings and conclusions set forth herein, Staff does not object to the approval of the requested Special Exception to allow a Non-Governmental Utility In RC, A, R-1, R-3, R-5, R-8, R-12, R-16 and VC Zoning Districts, in accordance with Section 1-19-8.339 of the Frederick County Ordinance. The proposed project is comprised of constructing three (3) +/- 7,656 sq. ft. buildings for non-governmental utility use on 13.09 acres of land zoned (A) Agricultural.

§ 1-19-3.210. SPECIAL EXCEPTIONS. A decision of the Board of Appeals granting a special exception will be void 5 years from the 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 the 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 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

Attachment #1: Site Plan



Attachment #2: Addition Plat



Attachment #3: Site Photo



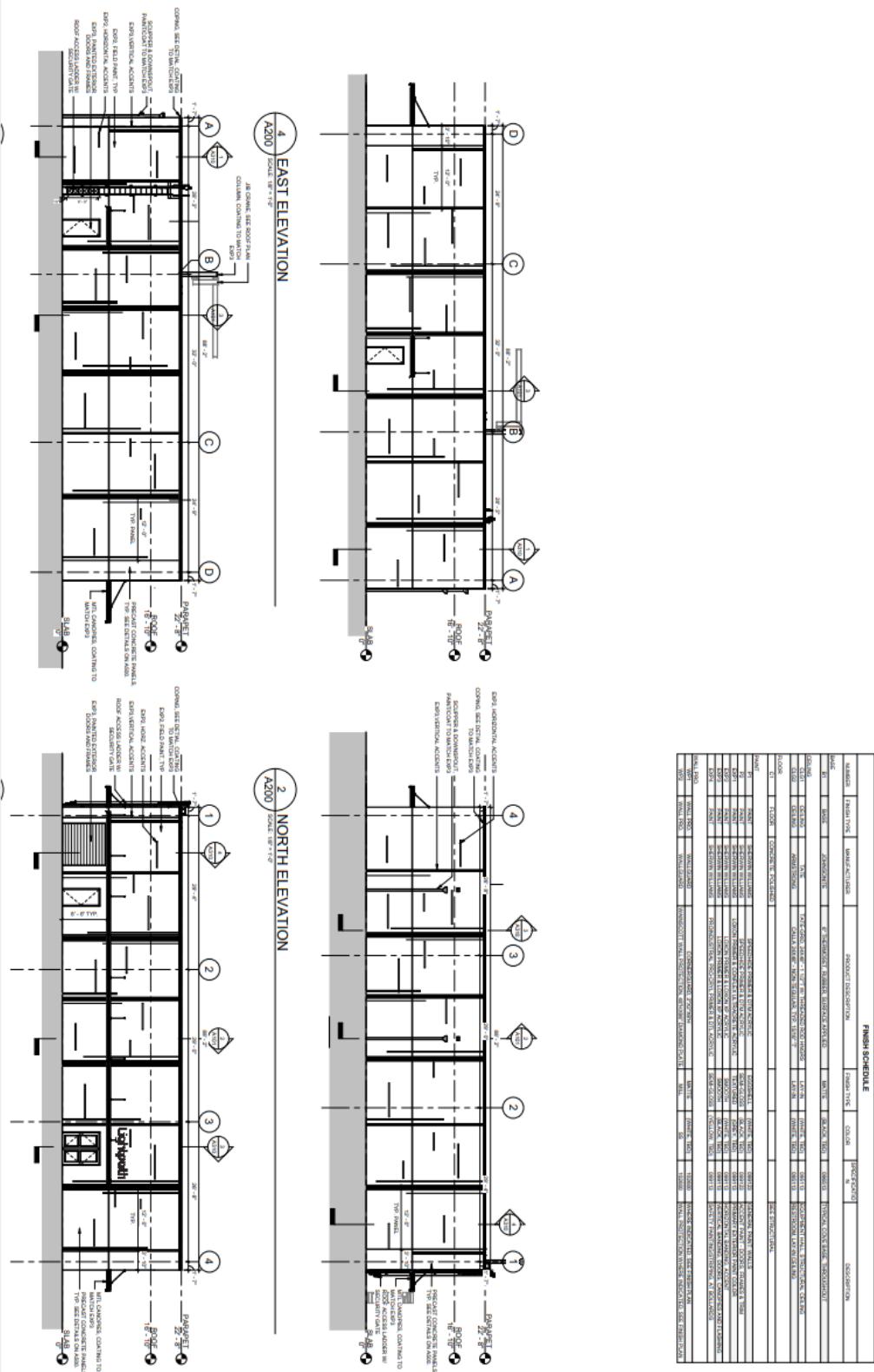
Attachment #4: Site Photo



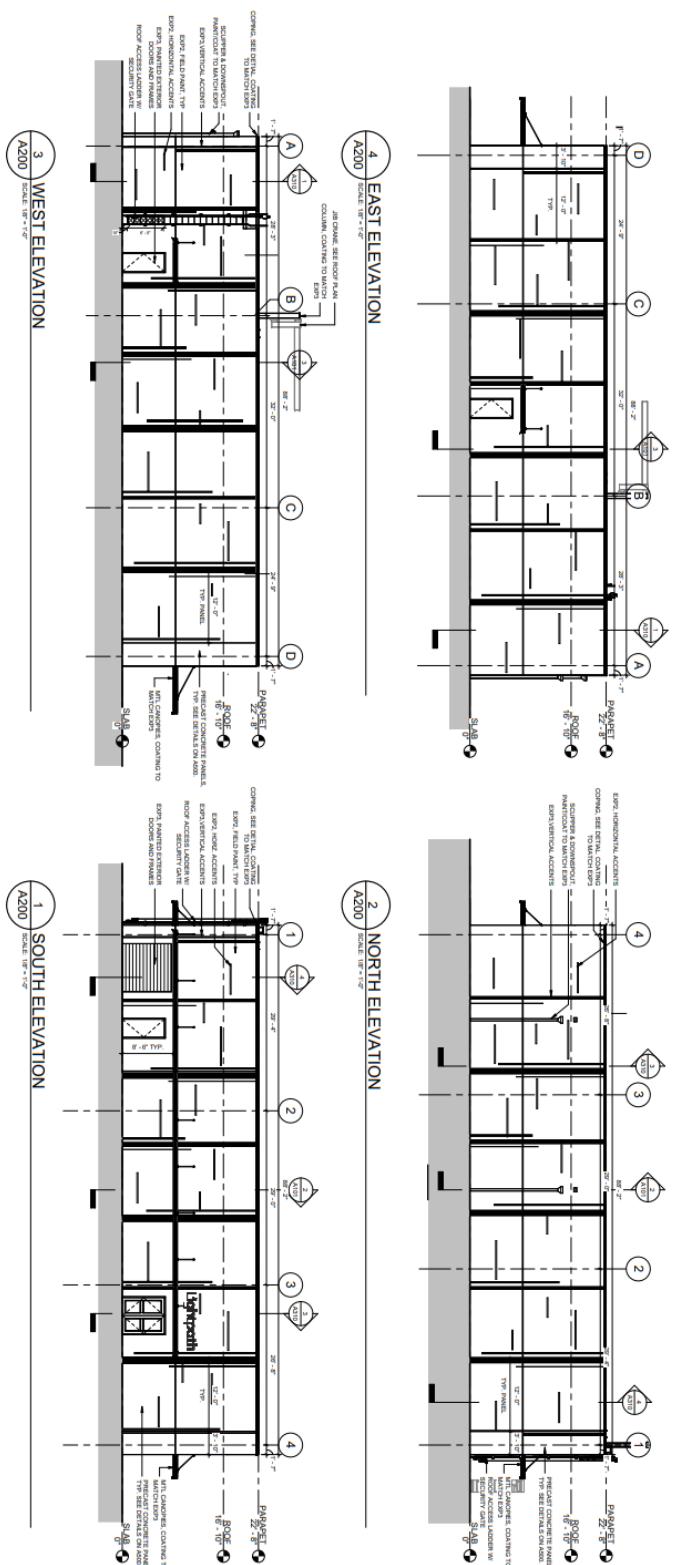
Attachment #5: Site Photo



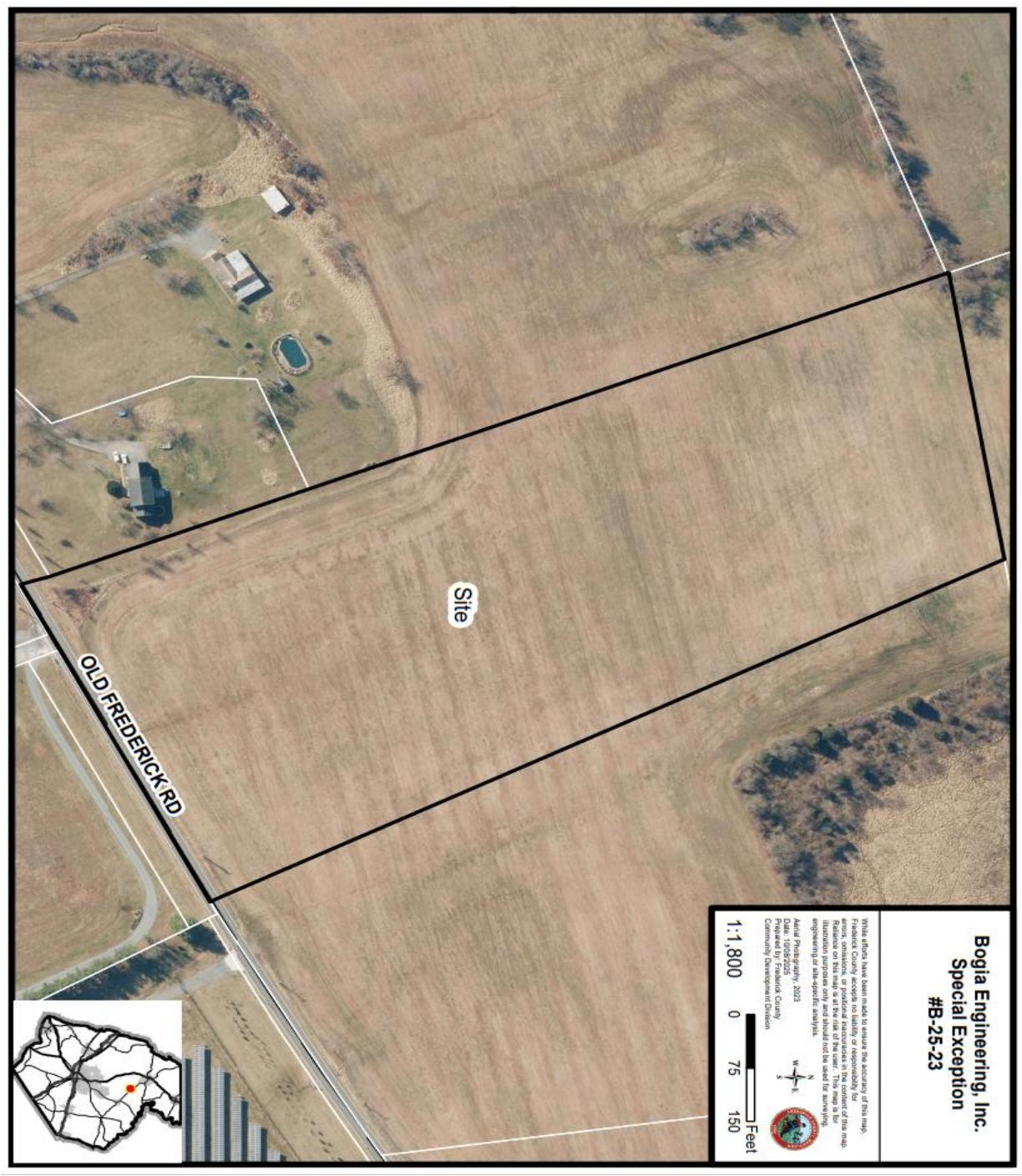
Attachment #6: Exterior Elevations East and North



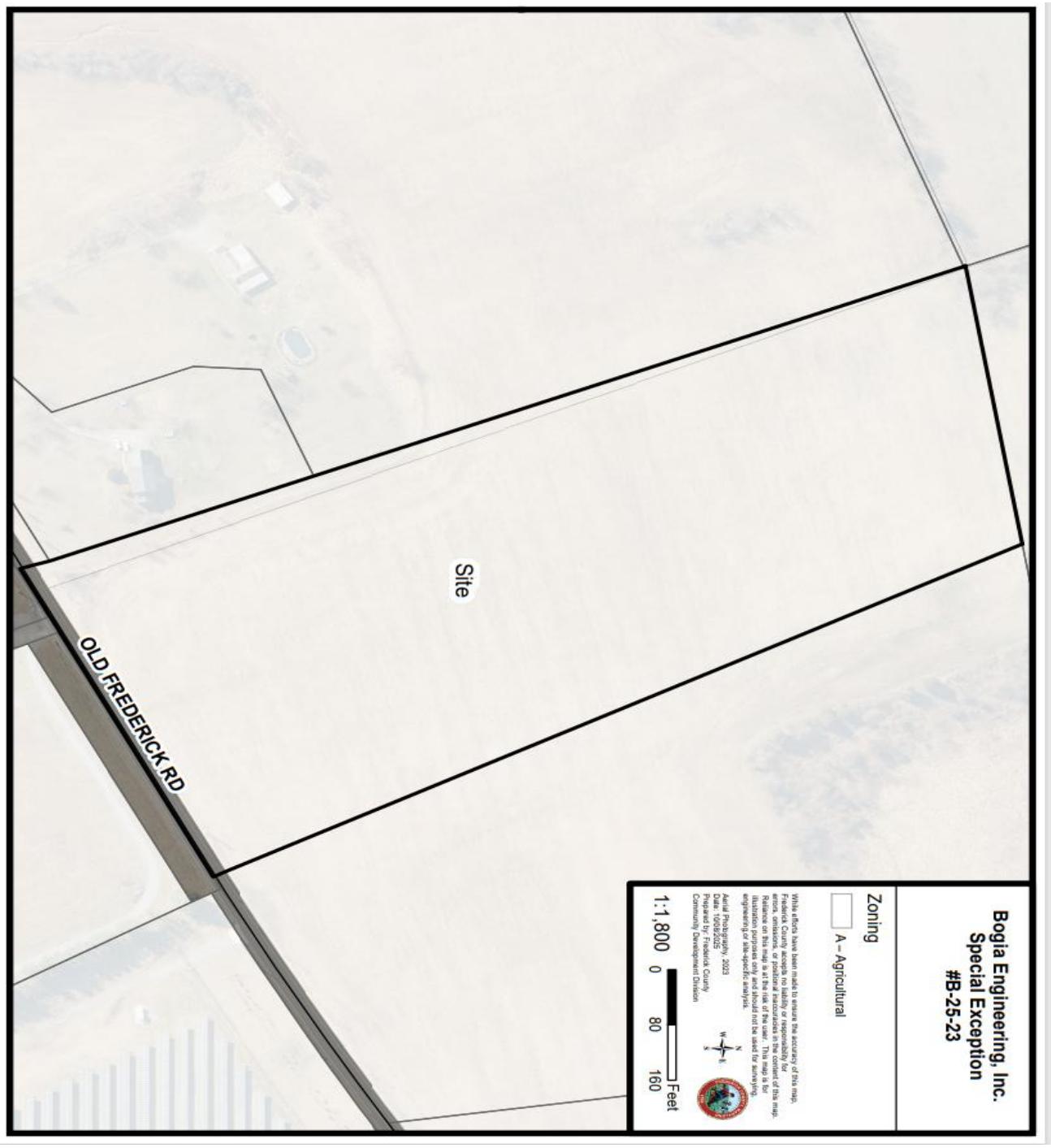
Attachment #7: Exterior Elevations West and South



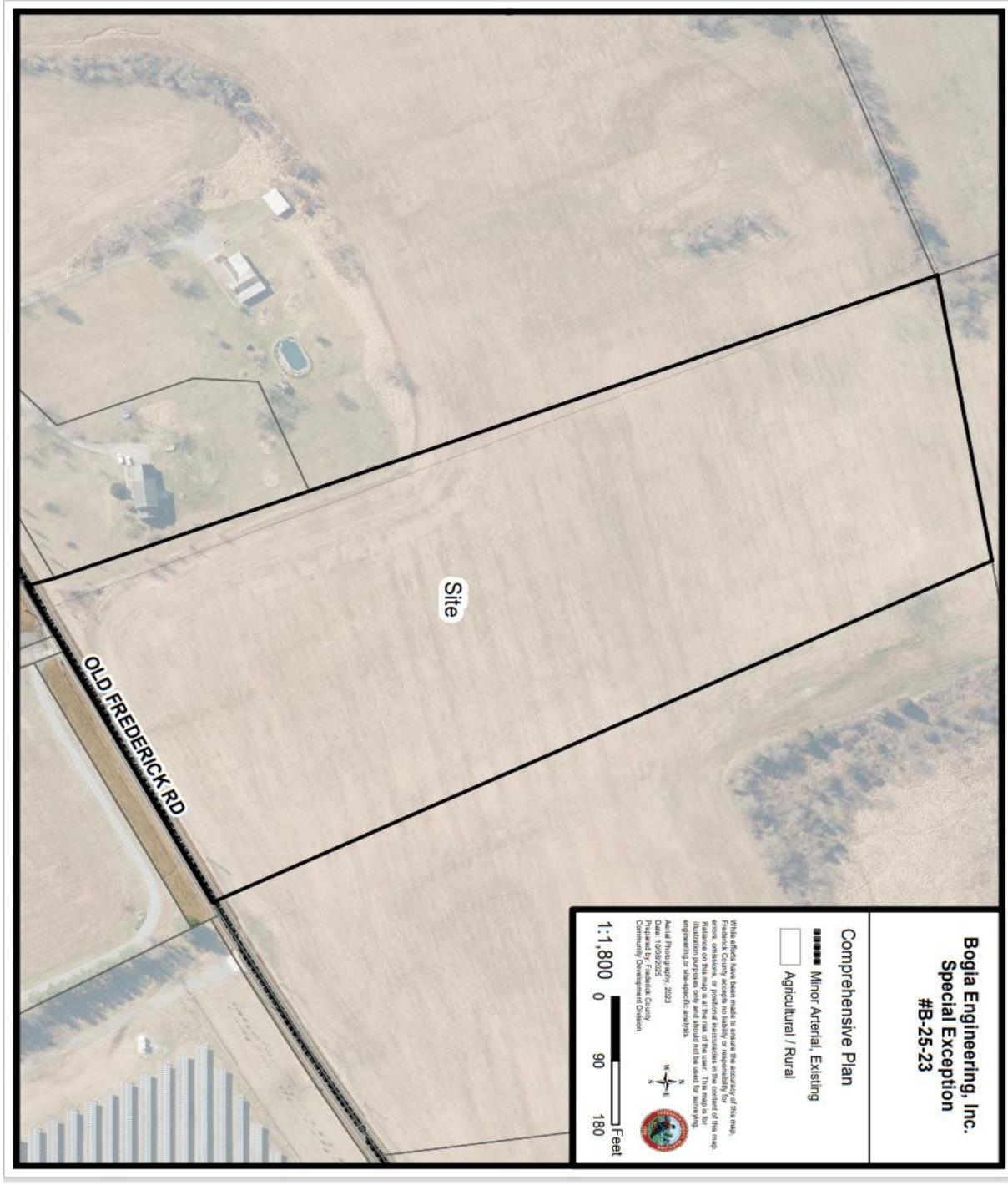
Attachment #8: Aerial Map



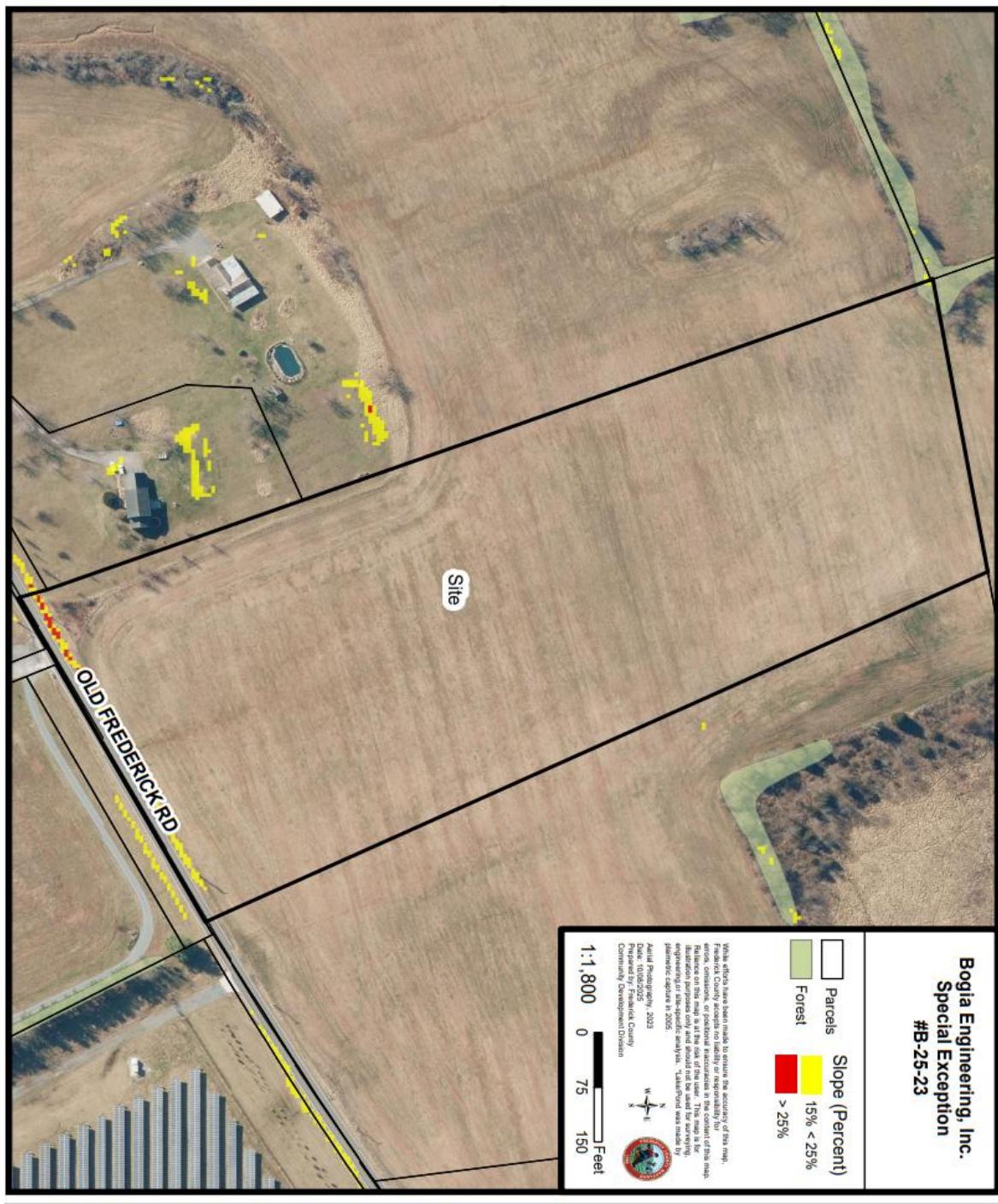
Attachment #9: Zoning Map



Attachment #10: Comprehensive Plan Map



Attachment #11: Environmental Features Map



Attachment #12: 11/5/25 Historic Preservation Commission review and comments



FREDERICK COUNTY GOVERNMENT

DIVISION OF PLANNING & PERMITTING *Deborah A. Carpenter, AICP, Division Director*
Livable Frederick Planning & Design Office *Kimberly Gaines, Director*

Jessica Fitzwater
County Executive

November 5, 2025

Shannon Bohrer, Chair
Frederick County Board of Appeals
30 N. Market Street, 1st Floor
Frederick, MD 21701

Re: **Proposed nongovernmental utility** (BOA Case #B-25-23)
12234 Old Frederick Road, Thurmont, Maryland
Historic Preservation Commission's review and comments on the proposed utility

Dear Shannon Bohrer:

This letter confirms the affirmative vote of the majority of the Frederick County Historic Preservation Commission (HPC), at its public meeting on November 5, 2025, that the nongovernmental utility proposed at 12234 Old Frederick Road, Thurmont, Maryland (BOA Case #B-25-23), would have negative impacts to historic and cultural resources within the vicinity. The motion passed 5-0-0-2.

The HPC recommends as mitigation measures:

1. A denser, four-season vegetative screen surrounding the property with a more natural edge, i.e. not straight lines, as well as more variation in the species and height of trees and vegetation, including trees with a maximum height taller than the proposed buildings. These measures would replicate historic agricultural field boundaries that are common in the County.
2. Reforestation of the green space and vegetative screening of the northern boundary of the property, where there currently is none, since the National Register property St. John's Church and associated cemetery is the most impacted historic resource.
3. The green space should be designed as meadow space and not sod lawn to help with the sound and environmental impacts.
4. Architectural designs that match the rural, agricultural character of this region of Frederick County.
5. A red balloon test study on the high points of the structures to more fully understand viewshed impact.
6. A sound study to more fully understand the noise pollution impact of the proposed use on the surrounding historic structures.

If you have any questions regarding the decision of the Historic Preservation Commission, you may contact me by phone at 301-600-1149 or via email at CLockard@FrederickCountyMD.gov.

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FREDERICK COUNTY GOVERNMENT

DIVISION OF PLANNING & PERMITTING *Deborah A. Carpenter, AICP, Division Director*
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Jessica Fitzwater
County Executive

Sincerely,

A handwritten signature in black ink, appearing to read "C. Beau Lockard".

C. Beau Lockard
Historic Preservation Planner

cc: Mary Thompson, Chair, Frederick County Historic Preservation Commission
Tolson DeSa, Zoning Administrator