



# FREDERICK COUNTY BOARD OF APPEALS

## JANUARY 22, 2026

**TITLE:** Deck Tekton Construction, LLC (Applicant)  
Vicencio Perez Bartolo & Cecilia Carmona Pacheco (Owners)

**CASE NUMBER:** B-25-39 B277841

**REQUEST:** The Applicant is requesting a variance under Sections 1-19-4.220 (C) Nonconforming Structures and 1-19-6.100 Design Standards of the Frederick County Code to reconstruct the residence using the same footprint and not expanding outward due to the nonconformity of the structure. The Applicant intends to leave one existing wall and reconstruct the remainder of the residence using the same foundation. The residence is nonconforming due to the required 50' setbacks from all property lines on this .50-acre Resource Conservation (RC) zoned property.

### PROJECT INFORMATION:

ADDRESS/LOCATION: 4417 Fishers Hollow Road, Myersville, MD 21773  
TAX MAP/PARCEL/Tax ID: Tax Map 046, Parcel 0067, Tax ID #16349771  
ZONE: Resource Conservation (RC)  
REGION: Middletown  
WATER/SEWER: NPS/NPS  
COMP. PLAN/LAND USE: Natural Resources

### APPLICANT/REPRESENTATIVES:

APPLICANTS: Deck Tekton Construction, LLC<sup>1</sup>  
OWNERS: Vicencio Perez Bartolo & Cecilia Carmona Pacheco  
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 to reconstruct the residence using the same footprint and not expanding outward due to the nonconformity of the structure. The Application meets the standards and requirements contained in Sections 1-19-4.220(C) Nonconforming Structures and 1-19-6.100 Design Standards of the Frederick County Code. The residence is nonconforming due to the required 50' setbacks from all property lines on this .50-acre Resource Conservation (RC) zoned property.

### Attachments:

Attachment #1: Property Plot Plan  
Attachment #2: Property Soils Letter  
Attachment #3: Aerial Map  
Attachment #4: Zoning Map  
Attachment #5: Comprehensive Plan Map  
Attachment #6: Environmental Features Map

<sup>1</sup> The term Applicant refers to both the Applicant 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 location of the residence is nonconforming due to the required 50' setbacks from all property lines on this .50-acre Resource Conservation (RC) zoned property.

The Applicant is requesting a variance to build up, under Section 1-19-4.220(C) of the Frederick County Code. The Applicant intends to leave one existing wall and reconstruct the remainder of the residence using the same foundation. The residential structure is listed as being constructed around 1900, which predates the approval of the current zoning ordinance, which was adopted on January 24, 1977. (Attachment #1)

## **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 this application is for a variance to reconstruct the residence by building up from, but not expanding, the existing foundation. The Applicant also will not enclose any porches.**

- 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 Frederick County Zoning staff could not approve permits without BOA Approval of a variance.**

- 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, January 22, 2026.**

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 the entire property is encumbered by Flooding Soils. A Flooding Soils report for the property was required. In accordance with 1-19-9.110.B.7 of the County Zoning Ordinance the Applicant contracted with a licensed soil scientist to test the soil. The results of that study are that there is no evidence of surface flooding on the property. (Attachment #2) Therefore, due to the Flooding Soils Report the Flooding Soils do not exist where the structure is located and the Applicant has satisfied the mitigation path in accordance with 1-19-9.110.B.7 and may reconstruct the existing structure.**

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 did not cause the nonconforming conditions. This is a**

**result of the home being constructed prior to the adoption of a Zoning Ordinance in Frederick County. The Applicant states that they were not aware the structure was nonconforming when they purchased it. The home was constructed many years prior to the adoption of a Zoning Ordinance in Frederick County, and the setbacks are what caused the house to become nonconforming.**

- 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 because of the lot size and setback requirements they cannot expand the residence outward and are attempting to build upward due to the low ceiling. Not granting the owners a special exception to raise the ceilings to a standard height would cause hardship to the Owners.**

- 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 Applicant states that having a property with a standard height ceiling is not unique to the neighborhood and therefore granting the variance would not confer any special privileges on the Owners. The home will be consistent in appearance with other homes in the community.**

- 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 nothing special or unique is being done to the property that would create an eyesore or make the house stand out from the rest of the neighborhood. The changes will not impact other properties.**

- 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 they understand and will comply with this requirement.**

- 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 they understand and will comply with this requirement.**

- 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 approval of this application will address the nonconforming property issues by complying with §1-19-4.220(C).**

- 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 they understand and will comply with this requirement.**

**§ 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 Applicant states they understand this and are requesting to expand upward, to avoid increasing the nonconformity.**

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 they understand and will comply with this requirement.**

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 they understand and will comply with this requirement.**

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

**The Applicant states they understand and will comply with this requirement.**

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

**The Applicant states they understand and will comply with this requirement.**

- 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 is applying for a variance to build up and not out from the existing foundation. If approved, this action will not cause any further or additional nonconformity of the structure.**

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 they are requesting to expand upward and not outward. The structure's footprint is not changing.**

2. Extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure; or.

**The Applicant states they are requesting to expand upward and not outward.**

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 they are not proposing to construct a nonconforming porch. The Applicant will be removing a non-permitted enclosed porch to comply with this Code section.**

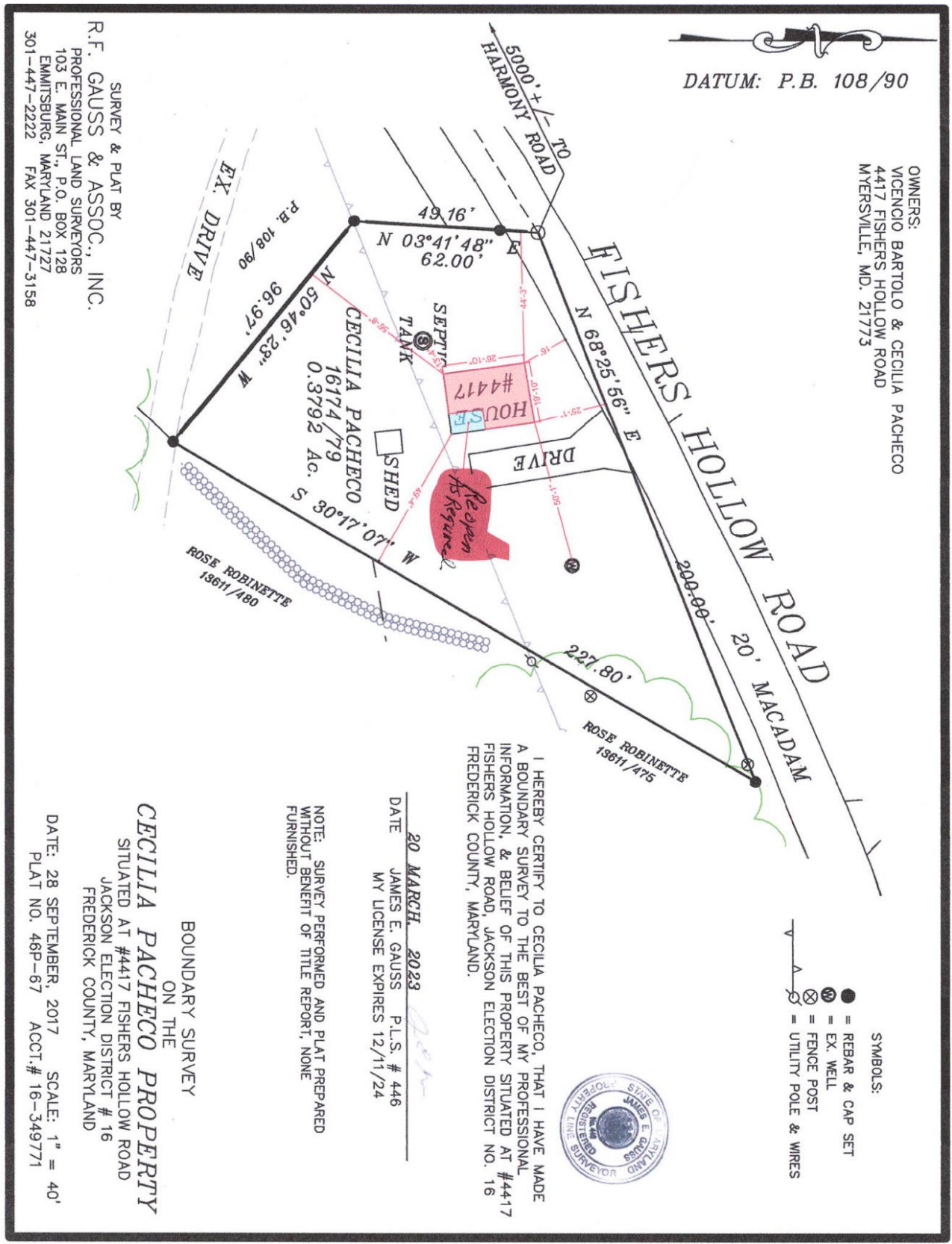
### **Recommendation**

Based on the findings and conclusions in the staff report, Staff has no objection to the approval of this Application granting a variance under Section 1-19-4.220(C) Non-Conforming Structures, and Section 1-19-6.100 Design Standards of the Frederick County Code to reconstruct the residence using the same footprint, remove the existing non-permitted enclosed porch, and not to expand outward due to the nonconformity of the structure.

**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: Property Soils Letter**

**ACORN  
ENVIRONMENTAL INC.**

September 27, 2025

Vicencio Perez Bartolo  
Cecilia Carmona Pacheco  
4417 Fishers Hollow Road  
Myersville, MD 21773-9429

Re: Flooding Soils Evaluation

Dear Mr. Bartolo and Ms. Pacheco:

A field investigation was completed on September 24, 2025 to verify the location of possible “flooding soils” on the subject property. The Frederick County Soils Atlas indicates that the property is within “flooding soils”, as defined in Chapter 1-19-9 of the County Code. Based on this investigation, flooding soil is not present on the property.

### **Background**

The Frederick County Soil Survey (Exhibit 1) identifies potential flooding soils on the property within the LaB mapping unit (Lantz-Rohrersville silt loams, 0-8% slope). Soils in the LaB mapping unit are poorly drained to somewhat poorly drained and formed in colluvium or local alluvium in swales, drainageways and depressions. The Natural Resources Conservation Service (NRCS) does not assign a flooding duration or frequency to Rohrersville soils or Lantz soils. However, the official series description for the Rohrersville series indicates that they can be subject to frequent, extremely brief flash flooding events with little or no deposition or erosion when they occur in drainageways.

Information provided in the Soil Survey is intended for general land planning, and inclusions of other soil types may be present within individual Soil Survey mapping units due limitations with mapping scale. In many cases, adjusting soil boundaries to fit proper landscape positions using accurate topographic information may be all that is required. Where complex landscapes exist, additional soil descriptions are needed to accurately characterize site specific conditions.

### **Results**

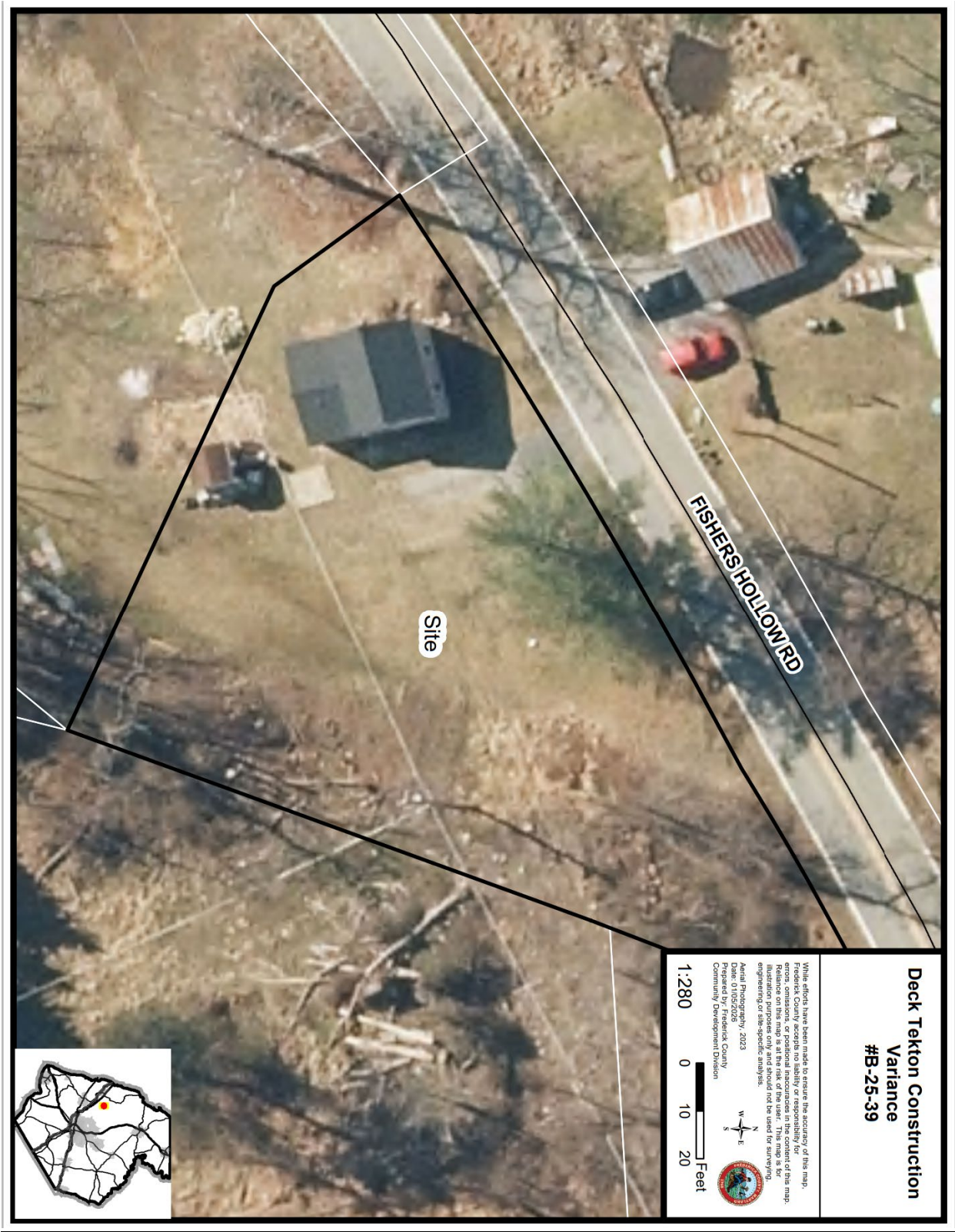
The property is located on a uniform 8 percent footslope. Three shovel test pits were excavated on the property to evaluate soil profiles for evidence of flooding (Exhibit 2). All locations exposed somewhat poorly drained soils that would be representative of Rohrersville soils. The soil consists of brown (10YR 4/3) silt loam to a depth of 5 inches, underlain by light olive brown (2.5YR 5/4) silt loam to a depth of 14 inches with few reddish brown iron concentrations. The subsoil to a depth of 20 inches consists of light olive brown (2.5YR 5/3) heavy silt loam with subangular gravel and stones. Many distinct iron concentrations are present in the subsoil. Seasonal saturation is expected to occur within 14 inches of the surface during the spring. No evidence of surface flooding is apparent on the property.

If you have any questions or require additional information concerning soil mapping on the property, please call me at 410-274-0622.

Sincerely,  
Acorn Environmental, Inc.  
Gary J. Jellick, President

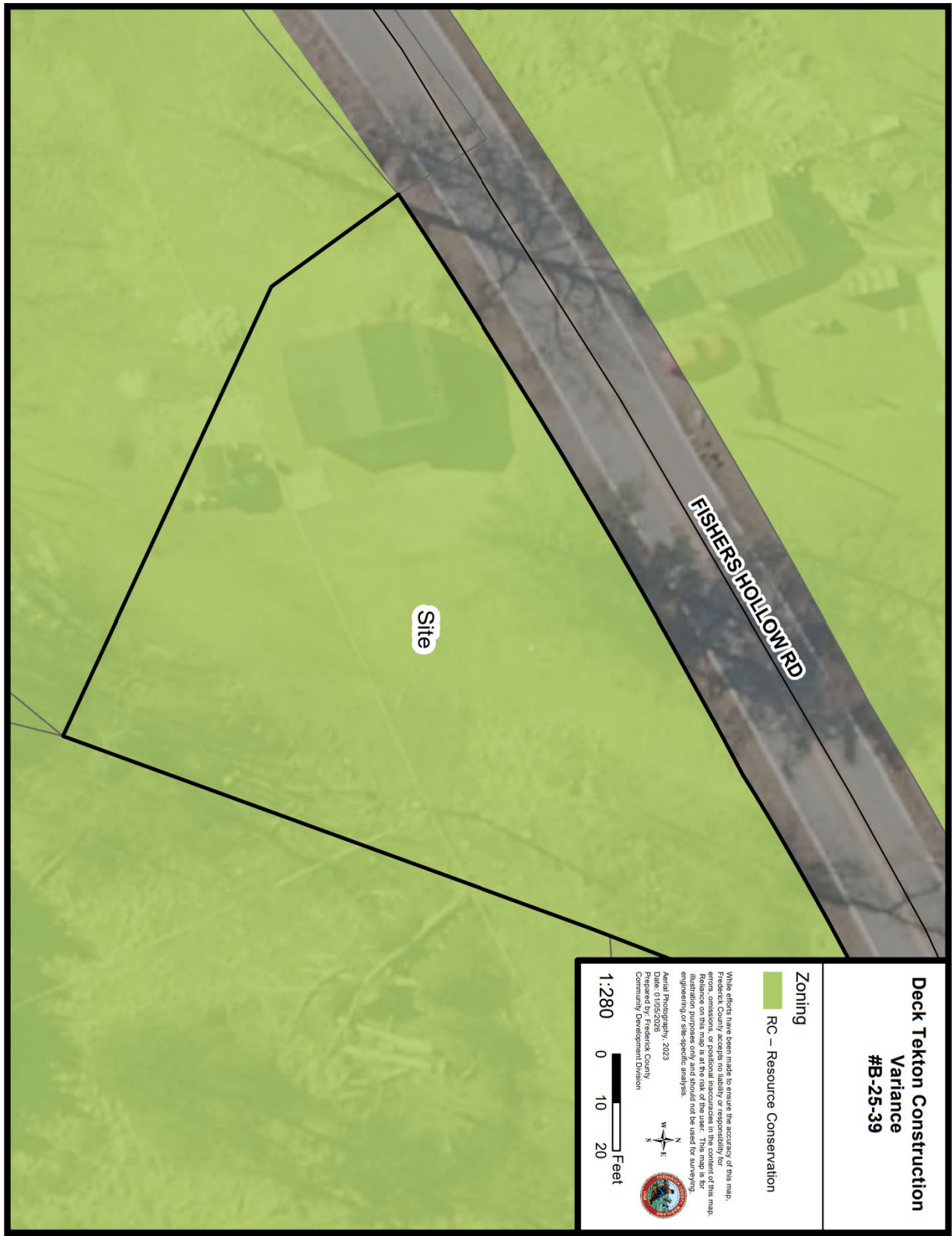
Certified Professional Soil Scientist, SSSA #171

**Attachment #3: Aerial Map**

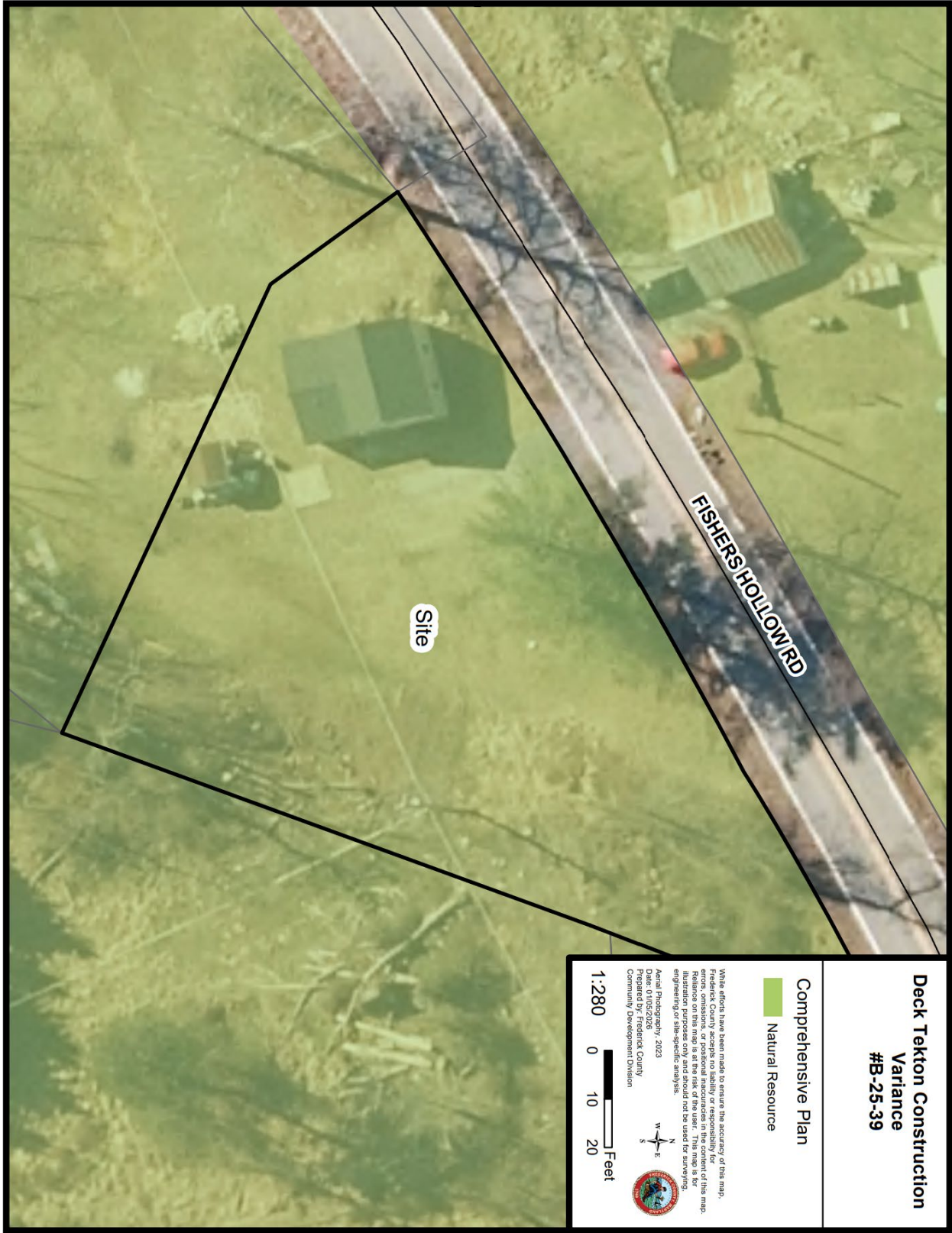




Attachment #4: Zoning Map



**Attachment #5: Comprehensive Plan Map**





Attachment #6: Environmental Features Map

