



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department

One East Franklin Street • Hagerstown, MD 21740

E-mail: planning@hagerstownmd.org

Telephone: 301-739-8577, ext. 138 • Website: www.hagerstownmd.org

JANUARY 11, 2024

HAGERSTOWN BOARD OF ZONING APPEALS

AGENDA

DATE: Thursday January 11, 2024

7:00 p.m. LOCATION: Council Chambers, City Hall

Please visit the City's website at www.hagerstownplanning.org for information about this meeting. The properties involved have been posted with hearing posters and two legal advertisements appeared in the *Herald-Mail*. Documents regarding cases and topics to be reviewed can be found at this link beginning at 9:00 a.m. on Monday, January 8, 2024. If you plan to attend the meeting, please arrive between 6:45 p.m. and 7:00 p.m. City Hall is closed to the public after 4:00 p.m. and staff is present at the front door from 6:45 until 7:05 to admit participants. After 7:05, the lobby is not staffed and those arriving late may not be able to gain access to the building.

Call to Order-

Preliminary Matters –

Applications Filed for May Hearing -

Case No. Z-2023-9 - To hear an application filed by the Hagerstown First Church of God for a special exception for the expansion of an existing religious facility and variances to 1) reduce the required front setback from 25 feet to 0 feet and 2) reduce the required 50 foot rear setback to 38 feet for the construction of a fellowship hall and offices on property located at 1015 Rose Hill Avenue and located in the R-MOD Zoning District, per Sections D.5.a and Section U.7.b and c of the Zoning Ordinance (Article 4 of the Land Management Code).

Case No. Z-2023-10 – To hear an administrative appeal filed by Nsabar Neru regarding the issuance of a notice of zoning violation addressing construction of facilities in violation of setback requirements on property located at 309 South Potomac Street and located in the RO Zoning District, per Section U.7.a of the Zoning Ordinance (Article 4 of the Land Management Code). Parties aggrieved by a decision of the zoning administrator or someone acting on his behalf may appeal that decision to the Board of Zoning Appeals. For more information, please contact the Board's staff @ 301-739-8577 ext. 138 or planning@hagerstownmd.org.

Deliberations -

Other Business –

Briefing on Land Management Code Amendment Updates.

Adjourn -

Next Meeting: February 8, 2024 – 7:00 p.m.

NOTICE:

Pursuant to the Maryland Open Meetings Law, notice is hereby given that the deliberations of the Board of Zoning Appeals are open to the public. The Board, at its discretion, may render a decision as to some or all of the cases at the hearing described above or at a subsequent meeting or hearing, the date and time of which will be announced prior to the conclusion of the public hearing. Individuals requiring special accommodation are requested to contact the City Clerk at 301-739-8577, extension 113 or ADD 301- 797-6617.



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – SPECIAL EXCEPTION APPLICATION

Submittal Requirements:

- Original application with original signatures and 9 copies
- 10 copies of all site drawings and any additional supporting documentation
- Filing fee (please consult current fee schedule)

Case No. Z - 2023-09
Office Use Only

Munis #: _____

Location of Property: 1015 Rose Hill Ave, Hagerstown, MD 21740
(Please include street address, if known)

Size of Property (acres/square feet): .77 Ac or 33,541 SF

Applicant's Interest in Property:

Owner (including joint ownership) Other (describe your interest in the property on the lines below and provide the name, address, and telephone number of the owner. Attach written authorization from the owner of the property that they consent to this appeal, or have them sign this application form as a co-applicant.

Applicant's Name: Hagerstown First Church of God c/o David Sword

Trading As (if applicable): _____ Email: swordsmasonry@gmail.com

Mailing Address: 1015 Rose Hill Ave, Hagerstown, MD 21740

Daytime Telephone: 301-733-8185 Fax: _____

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: Trevor Frederick, PE/Consultant Email: tfrederick@fsa-inc.com

Mailing Address: 128 S Potomac St, Hagerstown, MD 21740

Telephone: 301-791-3650 Fax: _____

This Chart for Staff Use Only		Munis #:	
Date Accepted for Processing:	Drawing Attached:	Yes	No
Zoning District:	Posting Deadline:		
Assigned Hearing Date:	Opinion Due:		

Special Exception Request:

The undersigned hereby applies to the Board of Zoning Appeals for approval of a special exception under Section(s) Z. Chart of Permitted and Special Exception Uses of the Zoning Ordinance (Article 4 of the Land Management Code), pertaining to the RMOD zoning district for the following use(s):

Permit an 8,000 SF building expansion and parking addition to the existing 3,506 SF to the sanctuary building and associated parking. Although the use is permitted by right in the RMOD zoning district, design and zoning variances are needed which triggers the requirement for a Special Exception.

Description of Proposed Use:

A. Present or most recent use of the subject property:

Existing church, sanctuary and parsonage. Non-conforming to current City bulk regulations.

B. Proposed use of property, including any existing or permitted uses of the property that would be conducted on the site, in addition to the special exception use (include number and type of dwellings, area and use of commercial and industrial buildings and/or land uses):

The parsonage will be removed and the sanctuary will be unchanged. The addition will consist of a multi purpose/open area, warming kitchen and several small classrooms.

C. Provide a description of the operation of the proposed use, including where applicable: types of activities; hours of operation; number of employees, occupants, and customers; quantity and types of vehicles and trips to be generated to and from the site:

The operation of the church will remain the same for the most part. Normal church activities Wednesday evenings from 5:00-9:00 PM and Sunday 8:00 AM-12:00PM. Periodic use of the building on an as needed basis.

D. Some special exception uses have specific performance conditions cited in the Zoning Ordinance. Please provide additional information necessary to determine whether the proposed special exception complies with specific performance criteria (when applicable):

Not Applicable.

E. If the Zoning Ordinance has a minimum lot size requirement for this proposed use, list the requirement or write "not applicable."

.46 Ac or 20,000 SF, No variance required.

F. Please list any other factors or information you would like the Board of Zoning Appeals to consider.

The church as existed in the same basic size and location since the mid-1960s. Pastor David Sword has indicated that between 80 to 90 people attend the church on a weekly basis. It is not anticipated that the congregation will increase beyond the existing seating capacity of 135. The much needed addition will allow more room for fellowship and other church related activities that keep the congregation interested and thriving. The pastor has also met with the neighbors to explain the project which was well received.

G. Special exception uses are required to provide parking required by Section O. of the Zoning Ordinance. Based on the requirements of Section O., how many parking spaces are required for this use? How many parking spaces are provided for this use and other uses on this property? On-street parking spaces shall not figure into the total number of spaces provided. Count only those spaces on the property. If the parking provided on the property does not meet minimum requirements for all uses on the subject property, the applicant may proceed but completing a variance application seeking the Board of Zoning Appeals' approval of a variance to reduce this requirement is required.

Required: 1 space for every 5 seats in the sanctuary.

135 seats/5 = 27 parking spaces required.

Proposed: 46 total spaces, No variance required

H. Some special exception uses have specific performance conditions cited in the Zoning Ordinance. Please provide additional information necessary to determine whether the proposed special exception complies with specific performance criteria (when applicable); see Section U.8.a.(7):

There are no specific performance standards listed in U.8.a.7 for the proposed use.

Special Exception Site Drawing:

In order for the Board of Zoning Appeals to have a clear understanding of the unique conditions of your property and your special exception request(s), you must submit a drawing of the property with this application, showing the property lines, the property's relationship to adjacent streets and buildings, the location of existing buildings on the site, and proposed improvements that would occur if the special exception(s) is/are granted. Attach a copy to the original application form and each of the nine copies submitted.

Attached to this application is a sample drawing for you to use as an example and guide in preparing a drawing for your application.

Additional Materials, Fees, Posting, and Advertising:

A. If desired, supplemental pages may be attached to this application.

This original application form and nine (9) copies of the application must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.

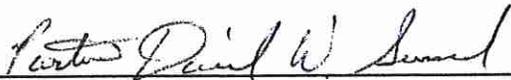
B. The undersigned agrees to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the "City of Hagerstown."

Signatures

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Attorney's Signature (if applicable)



Applicant's Signature



Property Owner's Signature (if other than applicant)

What is a Special Exception and what are the Standards Used by the Board to Make a Decision?

A special exception use is a use that is generally considered permitted in a zoning district, but the Board of Zoning Appeals must review the proposal to ensure that there are no unique impacts created by the proposal that would inordinately impact adjacent or nearby properties more than is generally inherent to the use in this district.

Simply stated, the Board makes sure that the proposed use is no worse at this particular site than it would be at any other typical property in the same zoning district. The process assumes there will be impacts. The question to be answered is: "Are the impacts of the proposed use greater at this location than it would be at other properties in the same zoning district"?

In order to approve a special exception the Board of Zoning Appeals must:

1. Receive this completed application, provided by you and submitted at the Planning and Code Administration Department.
2. Find that they have the power to grant the special exception. The Board has no authority to grant a special exception for a use that is not listed on the list of permitted special exceptions.
3. Find that granting the special exception will not materially or adversely affect the public interest. In making this determination, the Board shall consider, among other things, the impact of the proposed use on neighborhood parking and whether any proposed activities will create adverse visual, odor, dust, and/or noise impacts for surrounding properties.

This is explained in more detail in the Zoning Ordinance, Section U.8.a.

It is these standards that you should be prepared to address at your hearing in order for the Board of Zoning Appeals to be able to approve your special exception.

In granting any special exception, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance and the issues considered in #3 above. Violation of such conditions and safeguards when made a part of the terms under which a special exception is granted, shall be deemed to be a violation of the Zoning Ordinance, subject to enforcement action.

For more information, please contact:

Hagerstown Planning and Code Administration Department

City of Hagerstown, Maryland
One East Franklin Street, Suite 300
Hagerstown, MD 21740

T: 301.739.8577, ext. 138
F: 301.791.2650

Email: planning@hagerstownmd.org

Last Amended: 2/5/2020



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – VARIANCE APPLICATION

Submittal Requirements:

- Original application with original signatures and 9 copies
- 10 copies of all site drawings and any additional supporting documentation
- Filing fee (please consult [current fee schedule](#))

Case No. Z - 2023-09
Office Use Only

Location of Property: 1015 Rose Hill Ave, Hagerstown, MD 21740
(Please include street address, if known)

Size of Property (acres/square feet): .77 Ac or 33,541

Applicant's Interest in Property:

Owner (including joint ownership) Other (describe your interest in the property on the lines below and provide the name, address, and telephone number of the owner. Attach written authorization from the owner of the property that they consent to this appeal, or have them sign this application form as a co-applicant.

Proposed Use (Number and types of dwellings, area and use of commercial and industrial buildings):
Existing church sanctuary and parsonage. Proposed church sanctuary with 8,000 SF multi purpose/open area without the parsonage.

Applicant's Name: Hagerstown First Church of God c/o David Sword

Trading As (if applicable): _____ Email: swordsmasonry@gmail.com

Mailing Address: 10105 Rose Hill Ave, Hagerstown, MD 21740

Daytime Telephone: 301-733-8185 Fax: _____

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: Trevor Frederick, PE/Consultant Email: tfrederick@fsa-inc.com

Mailing Address: 128 S Potomac St, Hagerstown, MD 21740

Telephone: 301-791-3650 Fax: _____

This Chart for Staff Use Only	Munis #:	
Date Accepted for Processing:	Drawing Attached:	Yes No
Zoning District:	Posting Deadline:	
Assigned Hearing Date:	Opinion Due:	

Variance Requests:

	See Below	Section of Zoning Ordinance (Article 4, LMC)	Type of Regulation (front setback, parking, etc.)	Ordinance Requirement	Proposed Dimension (Variance Requested) *See Below
Example		F.5.a.	Front yard setback	15 feet	5 feet
1.		D.5.a	Front yard setback	25 feet	0 feet
2.		D.5.a	Rear yard setback	50 feet	38 feet
3.					
4.					
5.					

** For applications involving multiple lots or properties, use this column to identify the specific lot that is the subject of this individual request. If only one property is involved in this application, please disregard this column.

*** The variance requested is the proposed dimension. Using the example above, if the setback requirement is 15 feet and you propose to go 10 feet into that requirement and have a new setback from the property line of 5 feet, the variance request is 5 feet.

Example: Requirement (15 feet) minus incursion into bulk requirement (10) feet = variance (new setback) requested (5 feet).

Description of Existing and Proposed Uses:

A. Present or most recent use of the subject property:

Existing 3,506 SF church, sanctuary, parsonage and associated parking

B. Proposed use of property, including any existing or permitted uses of the property that would be conducted on the site, size of proposed improvements (if construction is proposed):

Proposed uses are the same with the exception of the parsonage which will be removed and an 8,000 SF addition to the building will consist of a multi purpose/open area with several small classrooms and a warming kitchen. The sanctuary area will not be enlarged. Parking area will be improved and enlarged.

Variance Exhibit:

In order for the Board of Zoning Appeals to have a clear understanding of the unique conditions of your property and your variance request(s), you must submit with this application a drawing of the property, showing the property lines, the property's relationship to adjacent streets and buildings, the location of existing buildings on the site, and proposed improvements that would occur if the variance(s) is/are granted. Attach a copy to the original application form and each of the nine copies submitted.

Attached to this application is a sample drawing for you to use as an example and guide in preparing a drawing for your application.

Board of Zoning Appeals Variance Criteria:

The Board will make a decision on your application based on conformance with the six criteria found at the end of this application. The following spaces are provided to assist you in preparing your testimony to the Board based on these criteria. If you need additional space, please attach additional sheets. A more detailed explanation is provided on pages 5 and 6 of this application.

- A. Explain the unique physical conditions associated with your property and how compliance with the strict letter of the regulations would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

The property under the ownership of the applicant consists of several lots which were improved in the 1950's and 60's. These improvements preceeded zoning in the city and were developed and built on without regard to setbacks. Due to Rose Hill Ave having a 90' ROW, offset (50' west of center and 40' east of center), several of the structures on this street are on or within the ROW.

- B. Explain how the requested variance(s) are the minimum reasonably necessary to overcome the conditions described in A. above.

The addition to the front will not encroach any closer to Rose Hill Ave than where the existing parsonage is. The ex. sanctuary is closer. The addition to the rear is 22 ft larger than the existing sanctuary, encroaching 12 ft into the 50' setback which abuts an alley. Anything less than proposed does not meet the needs of the applicant and strict compliance precludes reasonable use of the facility.

- C. Explain how enforcement of the provision from which the variance is requested would deprive the property owner of uses commonly enjoyed by other similar properties in the same district.

Almost every structure on the west side of Rose Hill Ave is on or over the existing front property line. Our request is maintain the 0 ft. setback of the existing parsonage and not encroach any further. To the rear anything less than the proposed would not meet the needs of the applicant attempting improve the function of the parking lot. Properties to the rear have yards that are in excess of 100'.

- D. Explain how the variance(s) requested will not confer special treatment on the applicant.

Over the years the majority of lots along Rose Hill have developed or been added onto and been permitted to do so either by variance or application of special provisions for residential properties (setback averaging).

The church has been a member of this community since the 1950's and only wishes to enjoy the same treatment as others in the neighborhood.

E. Explain how the property owner or applicant has not created the conditions that they now use as justification for seeking a variance.

Nothing known has occurred on the property since zoning has been adopted by the City of Hagerstown that would indicate the applicant created a condition that they are now seeking a variance.

F. Explain how the requested variance will not be contrary to the intent of the Zoning Ordinance, will not be injurious to the neighborhood or the public welfare.

The variances are not contrary to the spirit of the ordinance which does have modifications built into it for setback reductions for residential properties. As mentioned previously, the land use of subject property has been in existence since the 1950's and grown with the community. The building and parking lot enhancements will only create a safer neighborhood.

Additional Materials, Fees, Posting, and Advertising:

A. If desired, supplemental pages may be attached to this application.

This original application form and nine (9) copies of the application must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.

B. The undersigned agrees to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the "City of Hagerstown."

Signatures

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Attorney's Signature (if applicable)

Pastor David W. Sewell
Applicant's Signature (if different from owner)

Pastor David W. Sewell
Property Owner's Signature (if other than applicant)

What is a Variance and what are the Standards Used by the Board to Make a Decision?

A variance is a deviation from the bulk requirements required by the Zoning Ordinance, such as setbacks, building height, number of parking spaces, etc. For example, if you want to build an addition to your house and you need to construct it ten feet from the property line, but the Ordinance requires that you keep it 20 feet from the property line, you need to apply for a variance. This process exists to provide reasonable accommodation of plans for properties that may be impacted by unique

physical conditions such as shape of the lot, topography, etc. The six criteria below are used by the Board of Zoning Appeals to evaluate whether a variance is appropriate. The variance process does not exist to simply waive the Ordinance requirements with which an applicant may find undesirable. In order to approve a variance, the Board of Zoning Appeals must make positive findings on each of the following six criteria (*simplified explanations and examples of what is an appropriate variance and what is not are provided in italics*).

1. Whereby reason of exceptional narrowness, shallowness, shape, topographical conditions, or other unusual situations or conditions peculiar to a specific parcel of property or of the use of the property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or undue hardship upon, the owner of the property; and

Example: An applicant wants to build a two-car garage like most of his neighbors have. Because of the shape of his property, or the location of the existing house, he cannot do it without building in violation of the setback. This is a reasonable argument for a variance. Requesting a variance to adjust a setback to build a four-car garage when most of his neighbors have only two-car garages is an example of when a variance is not appropriate. Simply wanting to build the garage closer to a property line because that is where he desires to place it, or seeking a variance in order to build improvements that are excessive compared to surrounding properties are not grounds for a variance.

2. The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property; and

The applicant will need to demonstrate that the request she makes is the minimum necessary to accomplish her needs. She should not ask for a variance to reduce a setback to ten feet if she could reasonably build her desired improvements 12 feet from the property line. The applicant needs to determine the minimum that she needs and request that amount.

3. The literal interpretation of the provisions of this Ordinance would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Ordinance; and

The applicant will need to demonstrate that failure to obtain the variance would not permit him to make similar use of his property as other similar properties in the same zoning district. For example, if the applicant's property is 5,000 square feet and most other lots of that size have two-car garages, the applicant needs to show that his request would allow him to construct improvements that are typical of the surrounding area; and if he does not obtain the variance, he would not be allowed to improve his property comparably to similar properties.

4. That granting the variance will not confer on the applicant any special privilege that is denied by this Ordinance to other lands or structures within the same zoning district; and

The applicant will need to demonstrate that her property meets these criteria, and that the Board will not be giving her special treatment by granting a variance that does not meet these standards. The Ordinance not permitting her to build what she desires is not grounds for approval of a variance.

5. No variance shall be granted in any case where the applicant or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with the Ordinance; and

The applicant will need to demonstrate that he did not create the problem for which he now seeks a variance. For example, if a property owner desires to build an addition on a house and place it in a location that needs a variance, he will need to demonstrate that there is no other side or area on the house that could reasonably be used to construct the addition without the variance. Also, he will need to show that the addition is a reasonable size (i.e., the Board is not granting a variance to allow him to build an addition that would make his house significantly larger than other houses in the area). Desire to place more improvements on a property than it would normally be accommodated by a similar property is not grounds for a variance.

6. That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board may prescribe appropriate and specific conditions and safeguards, including location, construction, maintenance, and operation in conformity with the Ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be a violation of this Ordinance.

The applicant will need to demonstrate that her request will not harm her neighbor's reasonable use and enjoyment of their property, and will not damage the public welfare. An example of damaging the public welfare would be building an addition too close to a street intersection that the improvements block traffic visibility approaching the intersection, creating an unsafe traffic condition.

It is these standards that you should be prepared to address at your hearing in order for the Board of Zoning Appeals to be able to approve your variance.

In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Zoning Ordinance and the criteria considered above. Violation of such conditions and safeguards when made a part of the terms under which a variance is granted, shall be deemed to be a violation of the Zoning Ordinance, subject to enforcement action.

NOTE: Per Maryland law, the Board of Zoning Appeals is prohibited from granting a variance for a use that is not permitted in the district in which the property is located. For example, the BZA would be prohibited from approving a variance to establish a retail store or a car repair business in a residential district when the residential districts do not permit these uses.

For more information, please contact:

Hagerstown Planning and Code Administration Department
City of Hagerstown, Maryland
One East Franklin Street, Suite 300
Hagerstown, MD 21740

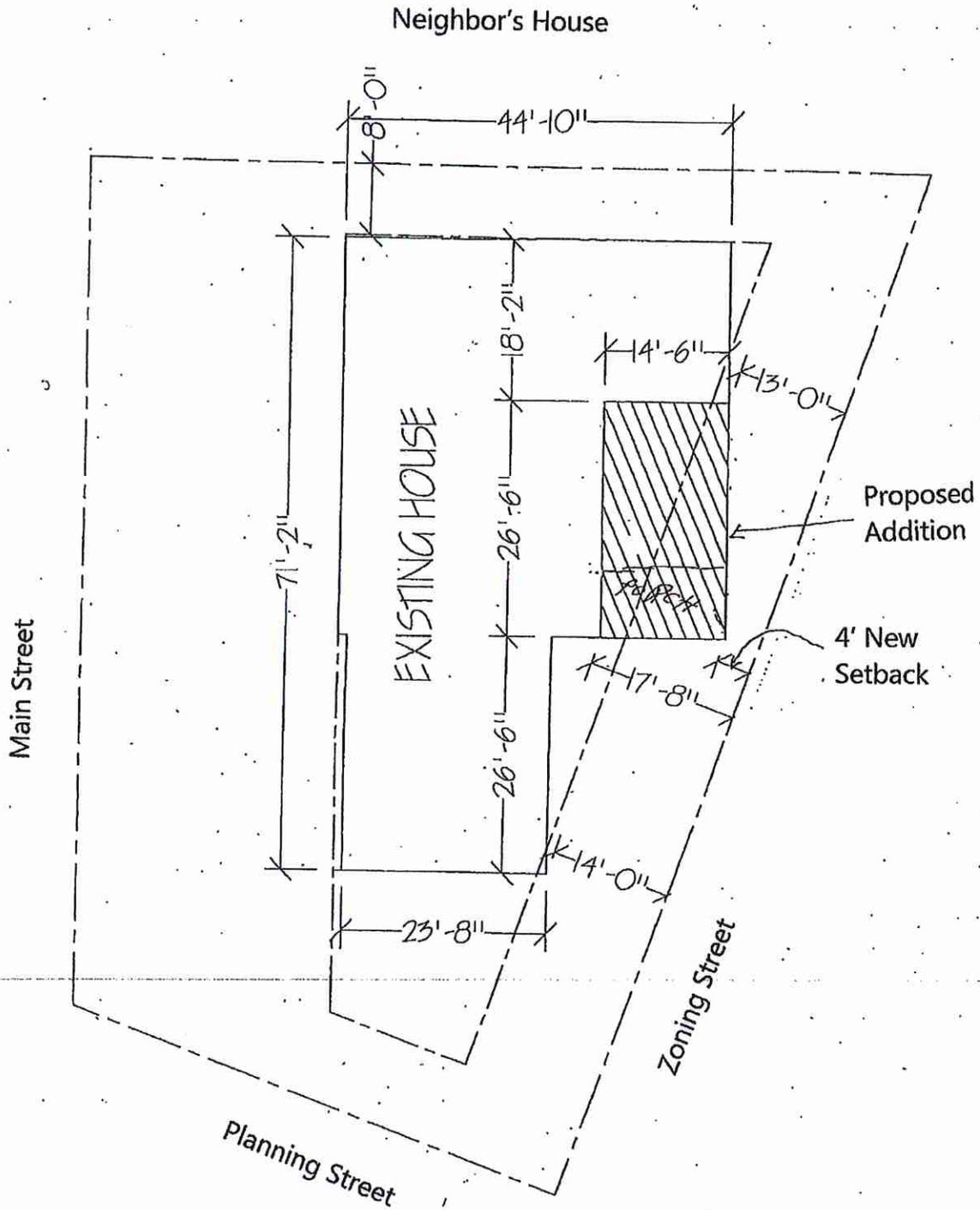
T: 301.739.8577, ext. 138

F: 301.791.2650

Email: planning@hagerstownmd.org

Last Amended: 2/2016

This drawing is an example of what will need to be provided as an exhibit with your variance application.



Hagerstown First Church of God

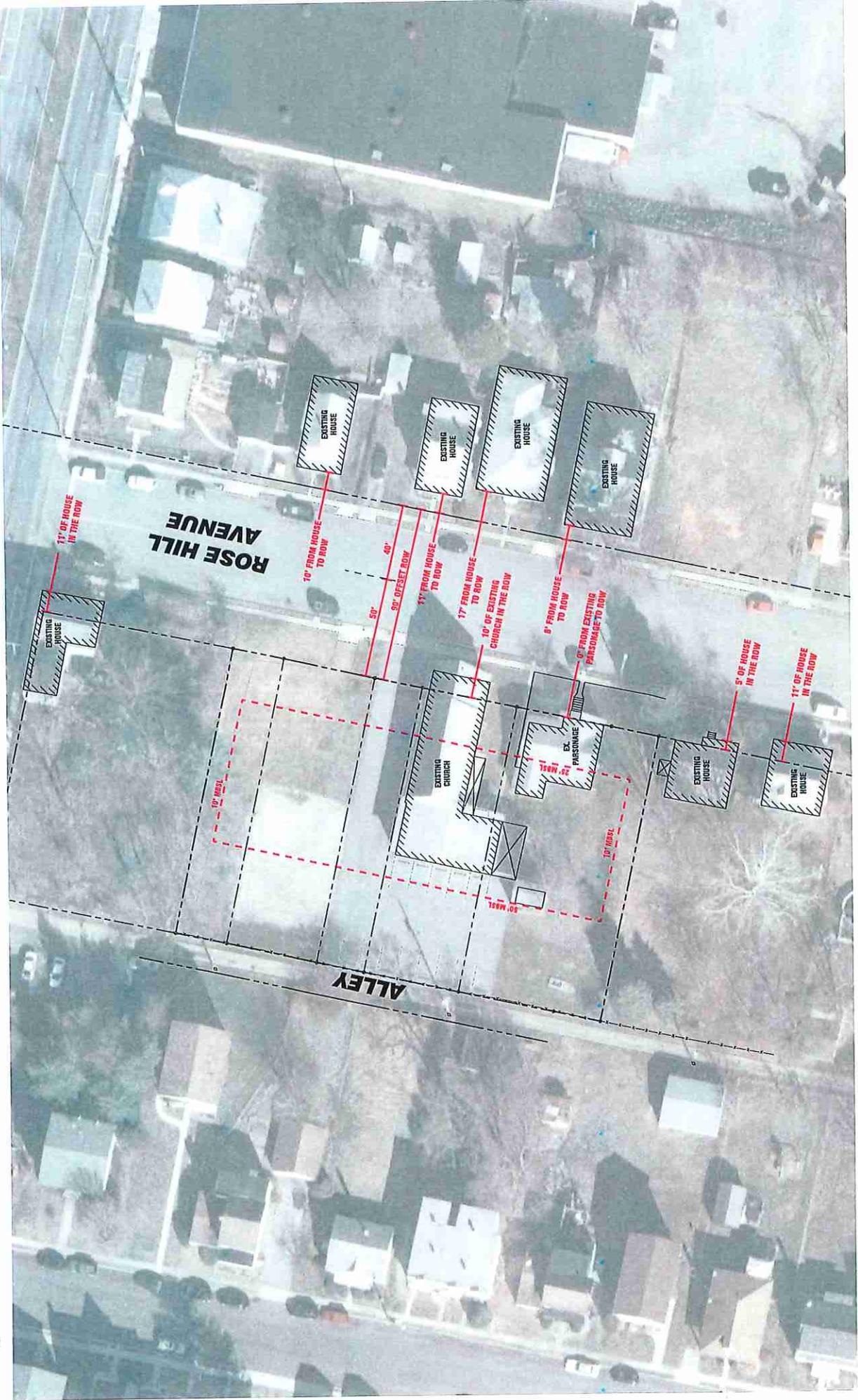
BZA Exhibit

Hagerstown, Maryland

November, 2023

FSA Job #404.1

DRAWING NOT TO SCALE



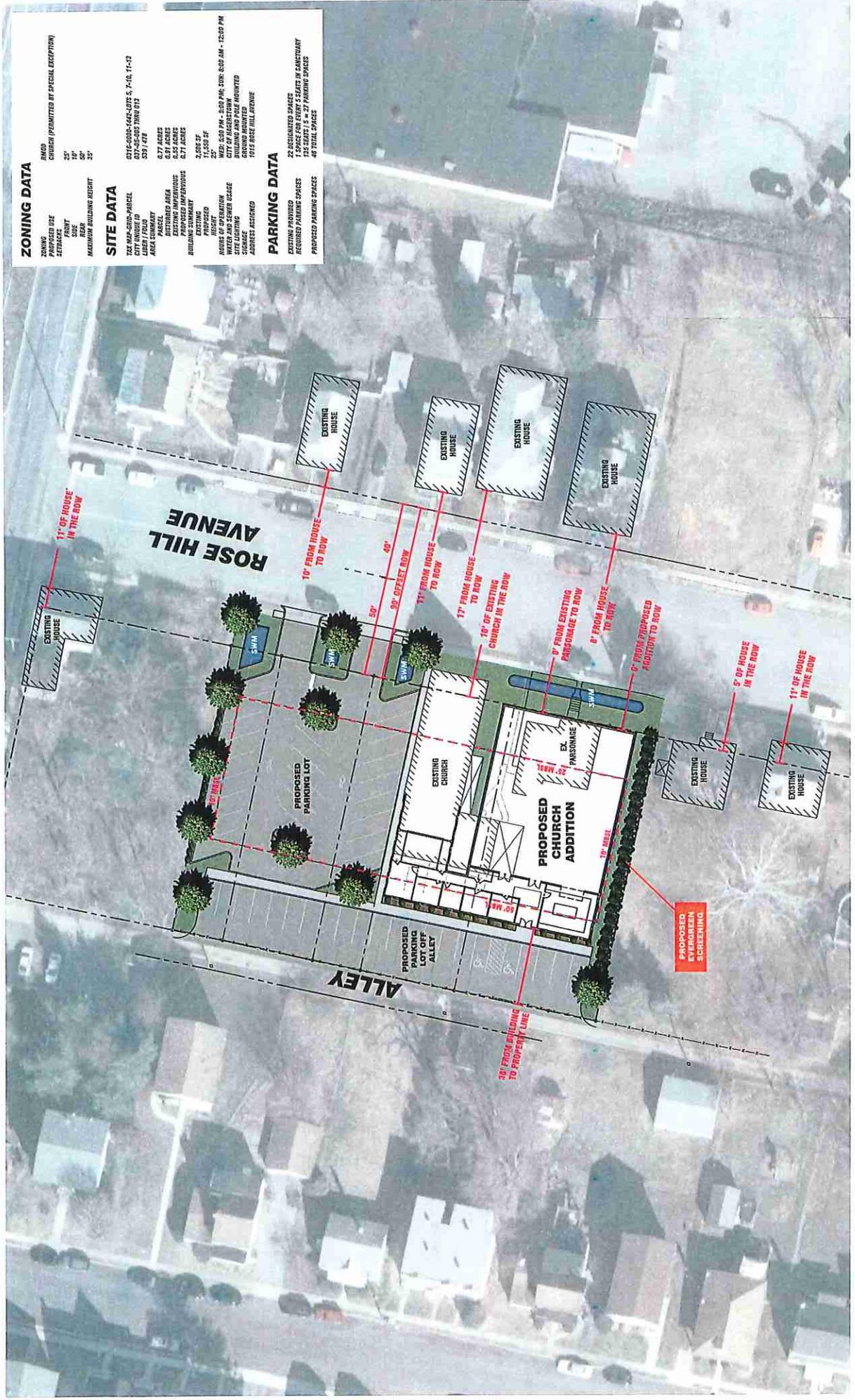
Hagerstown First Church of God

BZA Exhibit

Hagerstown, Maryland

November, 2023

FSA Job #43041 DRAWING NOT TO SCALE



ZONING DATA	
RMD	CHURCH (PERMITTED BY SPECIAL EXCEPTION)
PROPOSED USE	
SETBACK	
SIZE	
ROOF	
MAXIMUM BUILDING HEIGHT	

SITE DATA	
TAX MAP-3000-PARCEL	017E-000-1442-1003 S, 7-10, 11-13
APPLICANT	1111 W. WOOD
OWNER	7100 013
AREA SUMMARY	531,140
PARCELED AREA	6.77 ACRES
EXISTING IMPERVIOUS	0.55 ACRES
PROPOSED IMPERVIOUS	6.77 ACRES
BUILDING EXISTING	3,508 SF
PROPOSED	11,550 SF
HOUSE OF OPERATION	WED: 8:00 PM - 8:00 PM; SUN: 8:00 AM - 12:00 PM
WATER AND SEWER USAGE	
EXISTING	
PROPOSED	
ADDRESS ASSIGNED	1016 ROSE HILL AVENUE

PARKING DATA	
EXISTING PROVIDED	22 DOCUMENTED SPACES
REQUIRES PARKING SPACES	1 SPACE FOR EVERY 5 SEATS IN SANCTUARY
PROPOSED PARKING SPACES	116 SEATS / 5 = 23 PARKING SPACES
	40 TOTAL SPACES



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department

One East Franklin Street • Hagerstown, MD 21740

E-mail: planning@hagerstownmd.org

Telephone: 301-739-8577, ext. 138 • Website: www.hagerstownmd.org

MEMORANDUM

TO: James Stouffer, Jr., Chairperson,
Hagerstown Board of Zoning Appeals

FROM:  Stephen R. Bockmiller, AICP
Development Review Planner and Zoning Administrator

DATE: January 5, 2024

SUBJECT: Administrative Appeal – Judy Smith, 309 South Potomac Street – Z-2023-10

Since this is an administrative appeal, there is no staff report.

The record in the appeal file is attached herewith. Any additional information from the enforcement investigation will be provided you at the meeting.



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department, 1E. Franklin St., Hagerstown, MD 21740
Phone: 301-739-8577 Fax: 301-791-2650

FORMAL NOTICE OF ZONING VIOLATION

CHAPTER 140 - HAGERSTOWN CITY CODE - LAND MANAGEMENT CODE

October 31, 2023

Case Number: 105077

Smith Judy L
309 S Potomac St
Hagerstown, MD 21740

RE: 309 S Potomac St Tax Parcel: 03-023710

Dear Smith Judy L:

An inspection of the premises listed above was conducted on October 31, 2023. You are hereby notified that the following violation or violations of the City of Hagerstown's Land Management Code (Chapter 140 of the City Code) exist on the premises and corrective actions are necessary:

Land Management Code Article 4, Section D.5 - Minimum Lot area, Locational, Lot Width and Yard (Setbacks) Requirements.

Specifics: CONSTRUCTED DECK IS IN VIOLATION OF MINIMUM SIDE SETBACK OF 5 FEET FROM SIDE PROPERTY LINE.

TO BRING THE PROPERTY INTO COMPLIANCE: DECK NEEDS TO BE MODIFIED WITH BUILDING PERMITS TO ALLOW 5 FEET SETBACK FROM SIDE PROPERTY LINE.

The violation(s) listed above must be corrected by **Thursday, November 30, 2023** and the property made compliant with the City of Hagerstown Code within time period indicated on this notice. If the property is not brought into compliance within this period, you will be subject to the following actions pursuant to Chapter 1, Articles II and III, and Chapter 140 (Land Management Code) of the Hagerstown City Code: 1) Civil penalties carrying an initial fine of up to five hundred dollars (\$500) for each violation, and fines up to five hundred dollars (\$500) for each day thereafter that the violation continues; 2) criminal penalties; and 3) an injunction or other appropriate action in a Court of Law. Each day a violation continues constitutes a separate and distinct violation.

Per the Land Use Article (formerly Article 66B) of the Annotated Code of Maryland and per Article 4, Section U.2 of the City of Hagerstown Land Management Code (Chapter 140 of the City Code), you may appeal this decision to the Board of Zoning Appeals within thirty (30) days of the date shown at the top of this notice. Said appeal must be filed with the Planning Office by **4:30 p.m. on November 30, 2023** and shall include the required filing fee. Per the above provisions, appeals shall specify the grounds on which the appeal is filed. Administrative appeal application forms may be obtained by contacting the Planning and Code Administration Division (see above), or downloaded from the City's website www.hagerstownmd.org

If you should have any practical difficulties, or have questions concerning this notice, please contact me at (301) 739-8577. If you intend to correct the violations, but cannot meet the deadline, contact this office as soon as possible to propose a schedule and provide substantiation for the need for a reasonable extension of the deadline.



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department

One East Franklin Street • Hagerstown, MD 21740

E-mail: codecompliance@hagerstownmd.org

Telephone: 301-739-8577, ext. 103 • Website: www.hagerstowncode.org

November 17, 2023

Judy L. Smith
309 S. Potomac St.
Hagerstown, MD 21740

RE: 309 S. Potomac St. SDAT Account ID: 03023710, Map: 0312, Parcel: 2327

Dear Judy L. Smith:

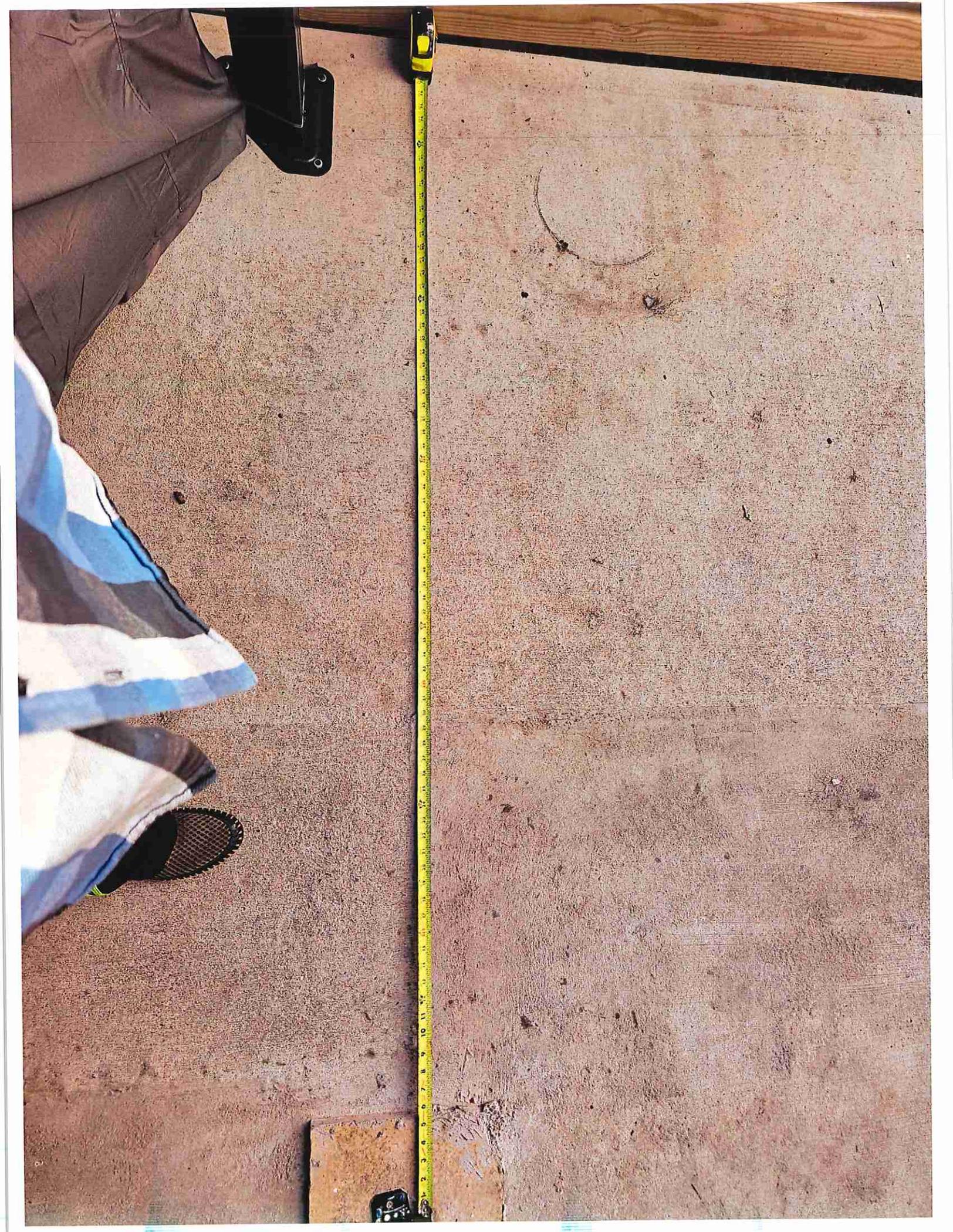
A request was made in our office yesterday to extend the appeal time for Case #: 105077 till December 14, 2023. The request has been approved. A Board of Zoning Appeals must be filed on or before **December 14, 2023** for Case #: 105077 to be considered for appeal.

If you should have any questions regarding this letter, please let me know.

Sincerely,

Paul W. Fulk
Neighborhood Services Manager

- c. Matthew Sutton, Neighborhood Services Inspector II
- Stephen Bockmiller, Zoning Administrator
- Mary Revilla, Administrative Coordinator II
- Blaine Mowen, Chief Code Official









CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – ADMINISTRATIVE APPEAL PETITION

Submittal Requirements:

- Original application with original signatures and 9 copies
- Copies of the ruling or notice that is being appealed; failure to do so may result in the petition being dismissed
- 10 copies of all additional supporting information you wish to include
- Filing fee (please consult current fee schedule)

Case No. Z - 2023-10

Office Use Only

Munis #: 20233502

Location of Property: 309 S. Patomac St
(Please include street address, if known)

Size of Property (acres/square feet): 6,510

Applicant's Interest in Property:

Owner (including joint ownership) Other (describe your interest in the property on the lines below and provide the name, address, and telephone number of the owner. Consent of the property owner is not required. If you are appealing a decision rendered regarding a property that you have no direct interest in but the decision affects you in some way (i.e., you are an adjacent property owner that would be affected by the decision being appealed), state this in the space provided below. You may attach an additional sheet.

Applicant's Name: Nsabar Neri

Trading As (if applicable): _____ Email: nsabar@babelcorp.org

Mailing Address: 309 S. Patomac St. Hagerstown MD 21740

Daytime Telephone: 301 338 7216 Fax: _____

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: _____ Email: _____

Mailing Address: _____

Telephone: _____ Fax: _____

Respondent (person or agency whose decision you are appealing): Planning & Code Administration

Mailing Address: 1 E Franklin St Hagerstown MD

Telephone: 301 739-8577 Fax: _____

Email (if available): _____

This Chart for Staff Use Only	Munis #:
Date Accepted for Processing:	Drawing Attached: Yes No
Zoning District:	Posting Deadline:
Assigned Hearing Date:	Opinion Due:

Appeal Request:

Briefly describe the ruling or action from which this appeal is being taken:

Deck is an attached/adjacent structure to the main building therefore requiring a setback of 5'

Date of Ruling or Action:

NOTE: Maryland law and the Zoning Ordinance require that applications in appeals include the grounds on which this appeal will be argued. Failure to complete this section may result in your application being denied.

Brief description of the position of the applicant as to why the decision should be set aside or reversed:

The Deck cannot be classified as an attached/adjacent structure to the main build as it has a distance greater than the 3' required by zoning ordinance, it is a detached structure and therefore does not fall under the prescribed setback distance

Other factors which the appellant wishes the Board of Zoning Appeals to consider:

Additional Materials, Fees, Posting, and Advertising:

A. If desired, supplemental pages may be attached to this application.

This original application form and nine (9) copies of this petition must be submitted. If the applicant desires to submit additional materials, pages, etc., ten (10) copies are required. However, additional copies of original photographs and large graphic exhibits are not required. Single copies of original photographs and large graphic exhibits are sufficient. Please do not mount large exhibits to foam core or other rigid backing, as the exhibit can be damaged when removed for placement in the file.

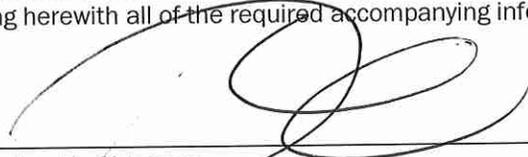
B. The undersigned agrees in matters involving land use, except in administrative appeals where the appellant has no authority to enter onto the property in question, to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the property is required to be posted. Failure to comply with this requirement will delay the Board hearing the case.

C. The undersigned agrees to pay all costs in accordance with the current fee schedule adopted by the Mayor and City Council. Checks are to be made payable to the "City of Hagerstown."

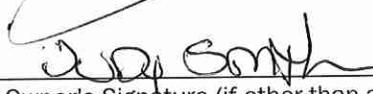
Signatures

The undersigned hereby affirms that all of the statements and information contained in, or filed with, this petition are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information.

Attorney's Signature (if applicable)



Applicant's Signature



Property Owner's Signature (if other than applicant)



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – ADMINISTRATIVE APPEAL PETITION

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Case No. Z - 2023-10

Office Use Only

Munis #: 20233502

Location of Property: 309 S. Patomac St
(Please include street address, if known)

Size of Property (acres/square feet): 0.510

Applicant's Interest in Property:

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Applicant's Name: Nsabar Nuru

Trading As (if applicable): _____ Email: nsabar@babelcorp.org

Mailing Address: 309 S. Patomac St. Hagerstown MD 21740

Daytime Telephone: 301 338 7216 Fax: _____

Attorney (legal counsel is not required, but if an attorney will represent you, please complete this section):

Name of Attorney: _____ Email: _____

Mailing Address: _____

Telephone: _____ Fax: _____

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Mailing Address: 1 E Franklin St Hagerstown MD

Telephone: 301 739-8577 Fax: _____

Email (if available): _____

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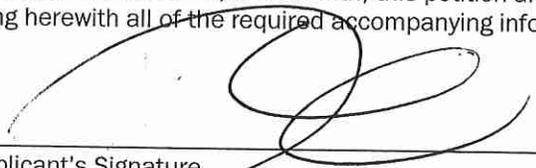
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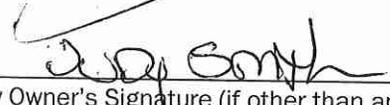
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Applicant's Signature



Property Owner's Signature (if other than applicant)



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department, 1E. Franklin St., Hagerstown, MD 21740
Phone: 301-739-8577 Fax: 301-791-2650

FORMAL NOTICE OF ZONING VIOLATION

CHAPTER 140 - HAGERSTOWN CITY CODE - LAND MANAGEMENT CODE

October 31, 2023

Smith Judy L
309 S Potomac St
Hagerstown, MD 21740

Case Number: 105077

RE: 309 S Potomac St Tax Parcel: 03-023710

Dear Smith Judy L:

An inspection of the premises listed above was conducted on October 31, 2023. You are hereby notified that the following violation or violations of the City of Hagerstown's Land Management Code (Chapter 140 of the City Code) exist on the premises and corrective actions are necessary:

Land Management Code Article 4, Section D.5 - Minimum Lot area, Locational, Lot Width and Yard (Setbacks) Requirements.

Specifics: CONSTRUCTED DECK IS IN VIOLATION OF MINIMUM SIDE SETBACK OF 5 FEET FROM SIDE PROPERTY LINE.

TO BRING THE PROPERTY INTO COMPLIANCE: DECK NEEDS TO BE MODIFIED WITH BUILDING PERMITS TO ALLOW 5 FEET SETBACK FROM SIDE PROPERTY LINE.

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CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

BOARD OF ZONING APPEALS – ADMINISTRATIVE APPEAL PETITION

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Case No. Z - 2023-10

Office Use Only

Munis #: 20233502

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(Please include street address, if known)

Size of Property (acres/square feet): 0.510

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Email: nsabar@babelcorp.org

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Fax: _____

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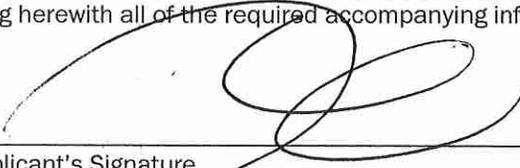
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Attorney's Signature (if applicable)



Applicant's Signature



Property Owner's Signature (if other than applicant)



CITY OF HAGERSTOWN, MARYLAND

Planning & Code Administration Department, 1E. Franklin St., Hagerstown, MD 21740
Phone: 301-739-8577 Fax: 301-791-2650

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U. Board of Zoning Appeals - Applications, Notice, Powers and Duties.

1. Application and Notice for Administrative Appeals, Special Exceptions, Confirmation, Enlargement and Change of Nonconforming Uses and for Variances.
 - a. Applications shall be filed with the Board of Zoning Appeals by the applicant at least 21 days in advance of the public hearing.
 - b. The Board of Zoning Appeals shall advertise the hearing and provide notice in accordance with the Land Use Article of the Annotated Code of Maryland.
 - c. Notice of said advertised hearings shall be posted on the property at least ten days prior to the public hearing at a location where the sign is readable from curbside, or a sidewalk in front of the property. However, in the case of an administrative appeal, if the appellant does not have control over a property subject to appeal and cannot secure permission from the property owner to post the property, the appellant shall provide written notice to the Board and the hearing may proceed without the property displaying the sign.
 - d. The owner of the property subject to appeal or his or her agent shall be notified at the time of advertisement by mail of the date, time and place of the public hearing.
 - e. At the hearing, having been advertised and notice provided to parties in accordance with the requirements of the Land Use Article of the Annotated Code of Maryland, any party may appear in person or by agent or by attorney. The Board of Zoning Appeals shall provide a written decision within 45 days of the hearing. Failure of the Board to comply with this time limitation shall be construed as approval of a requested administrative appeal, variance, special exception, or confirmation, enlargement or change of a nonconforming use, and shall vacate a notice of violation appealed to the Board.
 - f. Upon request of the applicant or a party with standing, or upon its own motion, the Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session.
 - g. Upon request of the applicant or a party with standing or upon its own motion, the Board may postpone a scheduled hearing. Requests for postponement of a scheduled hearing shall be filed in writing with the Board not less than five working days prior to the date of the hearing. The granting of such requests shall be at the discretion of the Board.

2. Appeals; Transmission of Records; Time Limitations.

Appeals to the Board of Zoning Appeals may be taken by any person who may have the right to appeal or by any department, board or bureau of the City affected by any decision of the Zoning Administrator. Such appeal shall be heard by the Board of Zoning Appeals at their next available meeting. The Zoning Administrator from whom the appeal is taken shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

- h. Shall give all interested parties an opportunity to testify as to any material facts in connection with the proposed use;
- i. Shall act as a fact-finding body and shall approve or disapprove the application for the proposed use in accordance with the evidence in the record before it.

5. Review of Applications and Recommendations by Interested Boards and Commissions on Applications for Interpretations, Special Exceptions and Variances.

The Planning Commission, Historic District Commission, and Board of Traffic and Parking may submit recommendations and the Board of Zoning Appeals shall consider such recommendations at the time of public hearing on any application for special exception or variance.

6. Appeals, Special Exceptions, Nonconforming Use Actions and Variances.

- a. **Administrative Appeals.** The Board of Zoning Appeals is empowered to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination, including but not limited to questions concerning nonconforming uses made by the Zoning Administrator or any other agent of the City in the enforcement of this Article.
- b. **Special Exceptions.** The Board of Zoning Appeals is empowered to hear and decide such special exceptions as specifically authorized by the terms of this Article; to decide such questions as are involved in determining whether special exceptions should be granted; and to grant special exceptions if same does not violate the spirit and intent of this Article. A special exception shall not be granted by the Board of Zoning Appeals unless and until it finds that the general criteria found in Subsection U.7.a and when applicable, the specific criteria for particular special exception uses in specific districts found in Subsection U.7.a.7 are met.
- c. **Nonconforming Use – Confirmation, Enlargement and Change.** The Board of Zoning Appeals is empowered to hear and decide applications requesting confirmation of a nonconforming use, enlargement of a nonconforming use in accordance with the limitations in Section M, and the change of a nonconforming use to another use that is not a permitted or special exception use in that zoning district. Authority to approve the change of a nonconforming use is subject to certain limitations and exceptions found in Section M.7. In order to approve the change of a nonconformity to another use not permitted within that zoning district, the Board shall make the finding set forth in Section M.7.
- d. **Variances.** The Board of Zoning Appeals is empowered to authorize upon appeal applications for a variance filed by a person or persons with a contractual or proprietary interest in the property. The Board may only authorize a variance from height, lot width, lot area, lot area per dwelling unit, setback requirements, parking space requirements and sign area requirements of this Article. A variance shall be granted only upon specific findings made by the Board that each of the criteria for variances found in Subsection U.7.b are met.

-
- (5). **Change of Special Exception Use.** Changes from one special exception use to another use permitted by special exception shall require approval by the Board.
- (6). **Use Variances or Special Exceptions for Uses Not Enumerated As Such are Prohibited.** Under no circumstances shall the Board of Zoning Appeals grant a variance to allow a use not permissible under the terms of this Article in the zone involved or any use expressly or by implication prohibited by the terms of this Article in such zone.
- (7). **Specific Special Exception Criteria for Certain Uses.** The following special exception uses shall be subject to the following specific use standards. The Board of Zoning Appeals shall not approve a special exception unless the use complies with these requirements, and shall not grant a variance to the following standards.
- (a). Fitness & Recreational Sports Centers (71394), provided that:
- (i). The nature of the use will not materially or adversely conflict with the character of the neighborhood.
- (ii). A pool shall not be located nearer than 75 feet from any property line nor nearer than 125 feet from any existing dwelling.
- (b). Bed and breakfast inns in an existing structure (721191):
- (i). There shall be no exterior evidence that a building is being used for any purpose other than a residence, except for one permitted sign of no more than two square feet.
- (ii). Off-street parking shall be provided; one space per guest room. In no case shall parking be provided in a front yard. See Article 5, Section I.4.h(10) for parking buffer requirements.
- (iii). A site plan shall be submitted and approved by the Planning Commission prior to the issuance of the zoning certificate.
- (c). Uses permitted by right in the CL District of a type to serve the particular high-density residential development provided for in the RH District, as well as nearby residents, so long as located geographically on the same tract of land as the proposed new residential development:
- (i). The commercial use shall occupy no more than 10% of the tract area.
- (ii). There shall be a phasing requirement which ensures that:
- [a] The residential development will precede the commercial development; and
- [b] The commercial development will never exceed the 10% ratio for the ultimate build-out of the residential development.

-
- (2). **Minimum Necessary to Afford Relief.** The variance requested is the minimum reasonably necessary to overcome the unusual conditions applicable to the property; and
 - (3). **Compliance Would Preclude Common Use.** That the literal interpretation of the provisions of this Article would deprive the applicant of uses commonly enjoyed by other similar properties in the same district under the terms of this Article; and
 - (4). **No Special Privilege.** That granting the variance will not confer on the applicant any special privilege that is denied by this Article to other lands or structures with the same zoning; and
 - (5). **Self-Created Hardship.** No variance shall be granted in any case where the applicant, owner or their agent has created or caused to be created a situation which would or has necessitated the issuance of a variance in order for such property to comply with this Article; and
 - (6). **Consistent With the Intent of the Ordinance.** That the granting of the variance will be in harmony with the general purpose and intent of this Article, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- c. **Confirmation of a Nonconforming Use.**
- No confirmation of a nonconforming use shall be approved by the Board of Zoning Appeals until and unless the Board, in its written order, finds that a sufficient preponderance of evidence has been provided by the applicant of the existence and extent of the nonconforming use. The written order of the Board in such matters shall include a summary of its understanding of the size, location, nature, extent and intensity of the nonconforming use.
- d. **Enlargement of a Nonconforming Use.**
- No enlargement of a nonconforming use shall be approved by the Board of Zoning Appeals until and unless the nonconformity has previously been confirmed to exist by the Zoning Administrator or the Board. After the legal existence of the nonconformity is confirmed, the Board may permit the enlargement of the use, in accordance with the provisions of Section M.5. The written order of the Board in such matters shall include a summary of the approved enlargement regarding size, location, nature, extent and intensity of the enlarged nonconforming use.
- e. **Change of a Nonconforming Use.**
- No change of a nonconforming use to another use not permitted by right or special exception in the district in which a property is located shall be approved by the Board of Zoning Appeals until and unless the nonconformity has previously been confirmed to exist by the Zoning Administrator or the Board. After the legal existence of the nonconformity is confirmed, the Board may permit changing the use to another use, in accordance with the provisions of Section M.7. The written order of the Board in such matters shall include a summary of the new approved use regarding the activity, size, location, nature extent and intensity of the new use.

9. Variance Exception for Public Improvements.

There are occasions where the City of Hagerstown, Washington County Board of County Commissioners or the State of Maryland may enter into an arrangement to purchase part of a property in the furtherance of public interest (street right-of-way, park land, public building, etc.). When the land remaining to the owner is less than minimum lot standards for the district in which it is located, or a building is left closer to a property line than would otherwise be permitted by setback requirements, reduction of parking spaces below current minimum standards, or the development would no longer comply with other bulk requirements of this Article (or be driven further into noncompliance), neither the property owner nor the City, County or State shall be required to apply for and obtain variances for the proposed subdivision of that land.