



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

HAGERSTOWN BOARD OF ZONING APPEALS AGENDA

DATE: Thursday March 14, 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, February 5, 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 are 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 –

None.

Applications Filed for May Hearing -

Case No. Z-2023-10 – To hear an administrative appeal filed by Nsabar Neru regarding the issuance of a notice of zoning violation at the property located at 309 South Potomac Street and located in the RO Zoning District, Parties aggrieved by a decision of the zoning administrator or staff 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 –

None.

Adjourn -

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.

Next Meeting: April 11, 2024 – 7:00 p.m.



CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

20240189

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 - 2024-01

Office Use Only

Location of Property: 309 S. Potomac St. Hagerstown Md 21740

(Please include street address, if known)

Size of Property (acres/square feet): 6510 sqf

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: N'sabar Neru

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

Mailing Address: 309 S. Potomac St Hagerstown MD 21740

Daytime Telephone: 3013387216

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: 1E franklin st Hagerstown MD 21740

Telephone: 3017398577

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:
 Received a violation notice for erecting a gazebo within 12 inches of the side setback, allegedly non-compliant with the zoning regulations for accessory structures and setback requirements.

Date of Ruling or Action: 12/20/23

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:
 See attached documents

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

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.

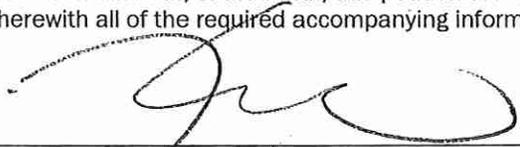
B. The undersigned agrees in matters involving land use, except in administrative appeals where the appellant has no authority to enter onto the property in question, to properly post the property at least ten (10) days immediately prior to the hearing and maintain the poster(s) during the period the 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."

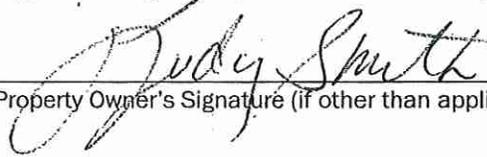
Signatures

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 (if different from owner)



Property Owner's Signature (if other than applicant)

Brief Description of the Position of the Applicant as to Why the Decision Should be Set Aside or Reversed:

- The gazebo, measuring 20'x12', adheres to zoning code's size limits for accessory structures, as it doesn't exceed 900 square feet, in line with standards set forth in Subsection K.6 of Article 4.
- The gazebo's proximity to the principal structure should be measured from the main walls, excluding the rear porch awning. Eaves and bay windows are not considered part of the building for setback purposes (Zoning), suggesting a similar interpretation could apply to non-permanent structures like awnings.
- The function of the gazebo, covering and protecting an outdoor hot tub, and other outdoor equipment fits within the definition of incidental and subordinate accessory use.
- No warning or formal notice was provided before issuing the violation, contrary to the procedural requirements outlined in the 'Appeals Violation Penalties' document, which mandates the issuance of a notice including a list of violations and a reasonable period for remedial action.

Other Factors Which the Appellant Wishes the Board of Zoning Appeals to Consider:

- The lack of initial notice or warning deprived the opportunity for remedial action before formal enforcement, undermining fairness and due process.
- The gazebo enhances the property's utility and aesthetic appeal, contributing positively to the neighborhood's character.

Regarding the Requirement for a Permit:

- The gazebo, although capable of being up year-round, should be considered in the context of its function and construction. As a store-bought structure primarily used for covering an outdoor hot tub, it differs from traditional permanent buildings or structures typically subject to permitting as per the

zoning code, which requires permits for buildings or structures erected, moved, added to, or structurally altered.

- Despite its potential for year-round use, the gazebo's nature as a non-permanent, accessory structure aligns it more with temporary or movable structures. The zoning ordinance's definition of 'Accessory Building, Use or Structure' is broad, potentially including gazebos, but does not explicitly categorize such non-permanent, movable structures as requiring permits.
- The ambiguity in the zoning ordinance concerning the need for permits for structures like this gazebo, which are not traditional permanent fixtures, suggests a need for clarification. This ambiguity should be addressed in the context of the gazebo's specific use and construction characteristics.

Conclusion:

- In light of these considerations and the procedural oversight of not providing a formal warning or notice prior to issuing the violation, as mandated by the zoning code, it is respectfully requested that the violation notice be reconsidered. A re-evaluation based on the specific characteristics of the gazebo and a clearer interpretation of the zoning ordinance regarding such structures is sought. It is proposed that a formal warning be issued now, allowing the opportunity to address any concerns in accordance with proper procedures.



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

December 20, 2023

Smith Judy L
309 S Potomac St
Hagerstown, MD 21740

Case Number: 106596

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

Dear Smith Judy L:

An inspection of the premises listed above was conducted on December 20, 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: A GAZEBO WITH A METAL ROOF HAS BEEN ERECTED ON THE PROPERTY AND IS IN VIOLATION OF THE MINIMUM SIDE SETBACK. A GAZEBO OF THIS SIZE AND CONSTRUCTION REQUIRES A BUILDING PERMIT.

TO BRING THE PROPERTY INTO COMPLIANCE: APPLY FOR A BUILDING PERMIT TO BUILD THE GAZEBO AND IT MUST ADHERE TO ALL SETBACK AND HEIGHT REQUIREMENTS.

The violation(s) listed above must be corrected by **Friday, January 19, 2024** 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 on said deadline** 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.

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$	
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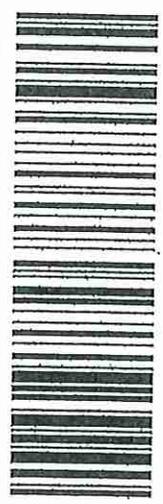
Sent To _____
 Street and Apt. No., or PO Box No. _____
 City, State, ZIP+4® _____
PS Form 3800, January 2023 PSN 7530-02-000-9017 See Reverse for Instructions

Smith Judy L
 309 S Potomac St
 Hagerstown, MD 21740

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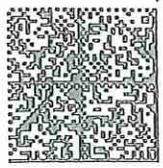
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 Hagerstown, Maryland 21740

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RESPONSES TO THE APPELLANT’S APPENDED SUMMARY

Brief Description

Bullet 1 – This point is erroneous. All accessory structures are required to comply with the required accessory structure setback found in Article 4 (Zoning) Section D.5.b (pages 4-15 to 4-16). This requires a four-foot side setback from side property lines.

Article 3 (Definitions) Defines accessory as follows:

ACCESSORY BUILDING, USE OR STRUCTURE –

1. *As pertains to Article 4, a use or structure on the same lot or adjacent lot under the same ownership with and of a nature customarily incidental and subordinate to the principal use or structure. Typically, an accessory use occupies not more than 25% of the space occupied by the principal use and its permitted accessory uses.*

It further defines “structure” to include other uses (such as hot tubs, gazebos, etc.) as follows:

STRUCTURE –

1. *As pertains to all but Article 6, a combination of material to form a construction that is stable, including among other things, buildings, tanks and towers, trestles, piers, bridges, bulkheads, loading docks, smokestacks, cranes, booms, sheds, coal bins, shelters, fences, walls and display signs visible or intended to be visible from a public way; the term “structure” shall be construed as if followed by the words, “or part thereof.” Structures shall comply with building setbacks as required by the various provisions of Article 4. (Emphasis in red added).*

Therefore, all accessory buildings and structures shall comply with the required setback. This has been longstanding and common practice. Buildings and structures should not be permitted to be constructed or placed right on property lines, except as stated in the Ordinance (such as fences, attached buildings such as semi-detached dwellings, etc.).

Bullet 2 - The required side setback is 5 feet if the gazebo is within 3 feet of the principal structure or anything attached to it. Section D.5.a (setback chart for residential districts), pages 4-17 and 18 sets setback requirements for principal structures, and those accessory that are adjacent, as they can be perceived as being part of the same structure. The following explanatory note of the chart, found on page 4-18 explains this:

Accessory buildings located within three feet of a principal structure shall be considered part of the principal structure for setback purposes. Accessory buildings on the same lot located within three feet of another accessory buildings shall be considered cumulatively as if they were attached for bulk regulations purposes. For accessory setback requirements to apply, all parts of the accessory structure shall be at least 3 feet from the principal structure, including any deck, porch, stoop, eave, carport on either or both structures. Three feet of clear unattached space shall be maintained between the structures at all points. (Emphasis in red added).

If any part of the gazebo (or other accessory building, structure or use) is within 3 feet of any part of the principal structure, it is subject to the principal structure setback of 5 feet.

Bullet 3 - No additional comment, other than to point out the appellant refers to the gazebo as an “incidental and subordinate accessory use” and per page 1 of this report, the definition of structure (which includes a gazebo or hot tub) requires it to comply with setback requirements. In this case, the accessory setback requirement of 4 feet, unless it is determined to be close enough to the principal structure to be considered part of it for setback purposes, in which case the setback is 5 feet.

Bullet 4 - The appellant’s assertion is incorrect. This notice of violation being appealed IS the formal notice he describes. By being provided formal notice, he is given the documentation to pursue this appeal. The notice explicitly states that the violation be corrected within 30 days or file this appeal. Thirty days to remove a gazebo is a reasonable period, per Code, and the enforcement staff has a long history of working with parties subject to violation notices in providing extensions if they need additional time to gain compliance. This point is contrary to the evidence at hand and without merit.

Other Factors

Bullet 1 - This is erroneous, as described in Bullet 4 above.

Bullet 2 - This is immaterial to the issue at hand. The gazebo may enhance the property’s utility and aesthetic appeal, but that does not then give the appellant license to not seek required permits or comply with required setbacks from property lines. The Board has no authority in any form to overturn a notice of zoning violation merely because “it looks nice.”

Regarding the Requirement for a Permit

Bullet 1 - Article 4 (Zoning Ordinance), Section S.1, states:

1. Zoning Permits.

- a. Zoning Permits Required. No building or structure shall be erected, moved, added to or structurally altered or use of said building, structure or land changed to another use without a zoning permit issued by the Zoning Administrator wherein the Zoning Administrator certifies that the proposed building or alteration described in the permit conforms with the provisions of this Article.

This cannot be made much clearer. This can be done in two ways – by issuance of a zoning permit when a building permit is not required, or the zoning administrator’s approval (among other agencies) of a building permit when one is required. Neither have been obtained by the appellant.

Bullet 2 - “Temporary or movable structures” as the appellant describes, are subject to compliance with setbacks, and have always been. Calling the gazebo temporary and movable is misleading as there is no intention for it to be moved about the property and will stay in one location indefinitely.

Bullet 3 - There is no ambiguity in the Ordinance. These provisions have been in place for many years and applied and enforced thousands of times without incident. It is not reasonable to expect to be able to build structures (especially those with roofs) right up to property lines, and without permits, in most situations.