

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT for November 21, 2019 @ 7pm

Case Number: **B-19-34, AP# 19887**

Applicant: **Paul Schiller**

Appeal: **Requesting a *Variance* pursuant to Section 1-19-3.220 of the Frederick County Zoning Ordinance from the Building Restriction Lines, Section 1-19-6.100 of the Frederick County Zoning Ordinance, in order to build Solar Panels for his single family home. The variance request includes a 22 ft. variance from the 40 ft. required front Building Restriction Line.**

Location: **The property identified as 9700 Baltimore National Pike, Myersville, MD 21773, Tax Map 46, Parcel 439 Tax ID 16-360570, Zoning; Agricultural (A), Size 5.02 Acres**

Planning Region: **Middletown**

Zoning District: **Agricultural (A)**

Comp. Plan Designation: **Agricultural**

Applicable Ordinances: **Sec. 1-19-3.220 Variances
Sec. 1-19-6.100 Design Requirements**

Background:

The applicants property is zoned Agricultural (A) and the lot size is 5.02 Acres. The applicant has met with Department of Planning and Permitting staff to discuss the Variance process and relevant matters associated with the construction of the Solar Panels within the required Building Restriction Lines.

Proposal:

The applicant is requesting a *Variance* pursuant to Section 1-19-3.220 of the Frederick County Zoning Ordinance from the front Building Restriction Line, Section 1-19-6.100 of the Frederick County Zoning Ordinance, in order to build a Solar Panel for his single

family home on the same lot. The applicants request includes a 22 ft. variance from the 40 ft. required front Building Restriction Line, fronting along Route 40. The proposed panels would be 18 feet from the front property line.

General Criteria - Variance:

Section 1-19-3.220 of the Frederick County Zoning Ordinance sets forth the criteria which must be satisfied before the Board of Zoning Appeals may grant a variance. The Applicant's request satisfies all of these criteria which are described as follows:

- (A) The Board of Appeals may authorize a variance in height, lot area and yard regulations.

The applicant understands

- (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 Paradise Energy Solutions applied for a Frederick County building permit to construct the solar array in question on 6/26/19. On 6/28/19, Justin Horman placed a hold on the application (#196811), noting that our proposed structure fell within the 40-foot front yard setback. In a follow-up conversation with Mr. Horman, he said our only option to proceed was by obtaining a variance.

- (C) 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:

The applicant understands

- (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 topography, shade and other existing features on this property render everywhere but proposed location, which extends "slightly" beyond the front building restriction line, unsuitable for a solar array.

- (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 the special conditions and circumstances that form the basis of our application are the result of existing conditions on the site

that are beyond the control of and do not result from actions of the property owner.

(b) The literal interpretation of the provisions of this chapter would result in unreasonable hardship and deprive the applicant of rights commonly enjoyed by other properties in the same district under terms of this chapter; and

The applicant states that the literal interpretation of the provisions of this chapter would prevent the property owner from installing a solar array capable of meeting all their current electrical demand.

(c) That granting the variance will not confer on the applicant any special privilege that is denied by this chapter to other lands or structures in the same district; and

The applicant states that the granting of this variance does not confer special privileges on the property owner. Instead, it allows for the construction of a solar array – an improvement in keeping with the county's comprehensive plan – in spite of natural and pre-existing constraints that have led to this variance appeal.

(d) That the granting of the variance will be in harmony with the general purpose and intent of this chapter and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The applicant states that the array will not be visible from the road fronting the property, nor be injurious in any way to the neighborhood. Furthermore, the installation of a solar array is in keeping with Frederick County Comprehensive Plan Goal NR-G-02.

(D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of this chapter.

The applicant understands

(E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this chapter in the zone involved, or any use expressly or by implication prohibited by the terms of this chapter in the said zone.

The applicant understands

(F) Under no circumstances shall the Board of Appeals grant a variance to a nonconforming structure for the portion of the structure determined by the Zoning Administrator to be nonconforming.

The applicant understands

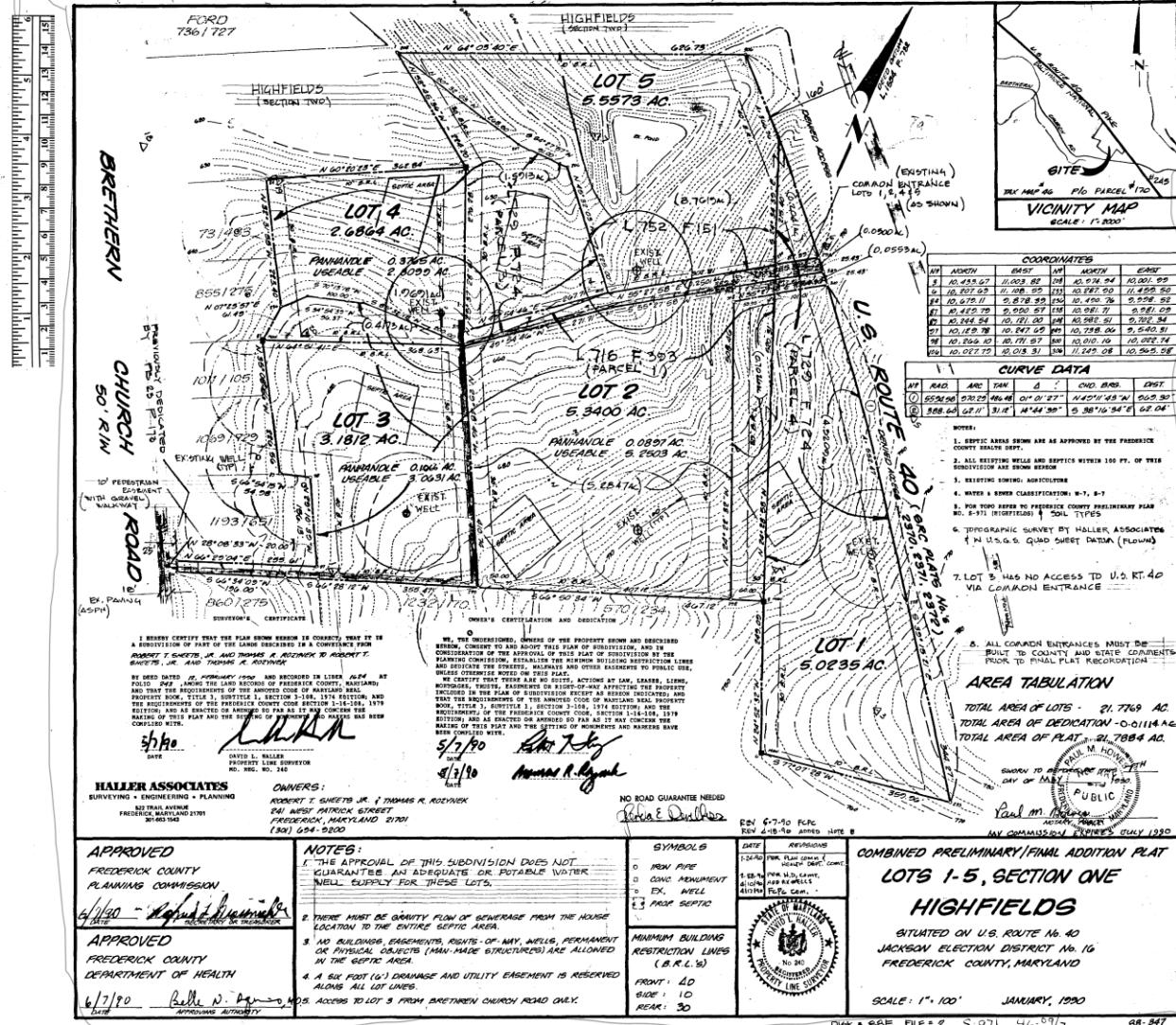
(G) A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the decision. Upon written request submitted to the Zoning Administrator no later than 1 month prior to the expiration date and for good cause shown by the applicant, a 1 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The applicant understands

Actions Needed:

Staff requests that the Board review the general criteria for a Variance under Section 1-19-3.220 (Variances) and Section 1-19-6.100 Design Requirements and render a decision on the Applicant's request for a 22 ft. variance from the 40 ft. required front setback, in order to construct a Solar Panel for the single family home on the same lot.

Plat of Applicants Lot



MAPS



