

**FREDERICK COUNTY BOARD OF APPEALS**  
**STAFF REPORT for November 19, 2020 @ 7pm**

**Case Number:** B-20-19 (B260278)

**Applicant:** Tabettha Klein  
5316 & 5318 Stone Road  
Frederick, MD 21703

**Appeal:** Requesting Variances from (1) the 10 acre minimum lot size, (2) the minimum 300 foot lot width, and (3) the 50 foot front yard setback to subdivide 1 lot with an existing house, as per Section 1-19-3.220, Resource Conservation (RC) Zoning District, of the County Code

**Location:** Located at the corner of Teen Barnes Road and Stone Road (5316 & 5318 Stone Road, Tax Map 85, Parcel 100, and Tax ID #23-442086), Acre 13.39

**Planning Region:** Middletown

**Zoning District:** Resource Conservation (RC)

**Comp. Plan Designation:** Natural Resource

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

**Background:**

The subject parcel is zoned Resource Conservation (RC) contains 13.39 acres. ***(Staff Notes: The BOA Ad in the Frederick News Post indicates the total acreage contained in this application as 12.4 acres, per the Frederick County GIS “Plan Base – Arc Reader” that we use. The Applicant has provided in (Attachment 1 Unrecorded Plat of Both Lots) a total acreage of 13.39. For the purpose of this staff report we are using the acreage provided in the Unrecorded Plat of Both Lots attachment.***

This case was reviewed and approved previously as B-18-08 and expired. Therefore, they are in again for reapproval. Section 1-19-6.100 of the Frederick County Zoning Ordinance requires that new lots created in the RC zoning district meet a minimum lot size of 10 acres.

Tabetha Klein (the “Applicant”) is the owner of the +/- 13.39 acre parcel of property designated as 5316 & 5318 Stone Road (Tax ID #23-442086) (the “Property”). Based on information submitted by the Applicant, the smaller house designated as 5318 Stone Road (directly fronting Stone Road) has been in existence since the late 19<sup>th</sup> century. The larger house designated as 5316 Stone Road (set on the hill) was built in the 1974-75 timeframe, prior to the Applicant coming into ownership. Both the house and an existing shed on the proposed lot 1 are

considered existing non-conforming structures. The home would be setback from the front building restriction line (BRL) 28 ft. and the existing shed would be located 41 ft. from the front BRL and 8' from the side yard. There is no new construction proposed. **(Attachment 1, Unrecorded Plat of Both Lots and Attachment 2, Proposed Lot 1)**

The Frederick County Subdivision Regulations do not permit the location of two primary residences on one lot. Therefore, the Applicant is seeking to subdivide the Property into two lots. In accordance with Section 1-19-6.100 of the Frederick County Zoning Code, the Code does not permit lots in the RC zone to have a minimum lot area below 10 acres. The Applicant is proposing to create one 12.25 acre lot for the Main House (5316 Stone Rd), and create a 1.14 acre lot for the Small House (5318 Stone Rd). **(Attachments 1 Unrecorded Plat of Both Lots and Attachment 2, Proposed Lot 1)**

### **Proposal:**

The Applicant is requesting the following Variances in order to meet the requirements to subdivide one (1) lot in the Resource Conservation zoning district:

- (1) a variance of 8.86 acres from the 10 acre minimum lot size,
- (2) a variance of 26.29 feet from the minimum 300 foot lot width, and
- (3) a variance of 22 feet from the 50 foot front yard setback for the existing SFD.

### **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 is requesting a variance from the 'lot area' and 'yard' regulations as listed under Zoning Code, Section 1-19-6.100.](#)

- (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 the Zoning Administrator determined that the Applicant's proposed subdivision does not meet minimum RC zone lot requirements as per Zoning Code, Section 1-19-6.100, and could not be approved as designed.](#)

- (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:

- (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 in their Justification Statement that both homes were constructed prior to the enactment of Chapter 1-19 of the Frederick County Zoning Code \(January 24, 1977\). The Applicant also notes that the existing house along Stone Road and its proximity to similarly sized lots create a uniqueness to the](#)

Property compared to other lands or structures in the RC zoning district. The Applicant has noted that granting the requested variances would eliminate the “nonconforming use” of two dwellings on a single lot, reducing the impact of the current situation.

**Staff notes that although the Applicant has requested a variance from the 10 acre minimum, they have not addressed why they cannot meet the 5 acre minimum cited in Section 1-19-7.200 (A)(1) of the Frederick County Code, which states: “On parcels, legal lots of record as of the effective date of Ord. 08-19-495 [May 20, 2008], at least 10 acres in size, but less than 20 acres in size, one (1) residential lot and a remainder may be created by subdivision. These lots shall have a minimum lot size of 5 acres after subdivision of the lot, no further development rights shall exist on the lot or the remainder, and a note shall be placed on the record plat to this effect.”**

- (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 in their Justification Statement, that the construction of the two dwellings pre-dated the Applicant taking ownership of the Property by decades, and therefore special conditions and circumstances do not result from actions of the Applicant.

- (b) The literal interpretation of the provisions of Chapter 1-19 of the 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 County Code; and

The Applicant notes in their Justification Statement that the literal interpretation of yard regulations as they apply to the subject Property prevents the Applicant from obtaining permits or making improvements to the two dwellings on the Property, as well as preventing financing or conveyances of the respective properties. Such an interpretation results in an unreasonable hardship and a deprivation of rights commonly enjoyed by other property owners in the RC zoning district.

- (c) That granting the variance will not confer on the applicant any special privilege that is denied by Chapter 1-19 of the County Code to other lands or structures in the same district; and

The Applicant notes in their Justification Statement that the granting of the requested variances will allow the platting of conditions that are already existing, and other applicable regulations will still constrain future activities for the two dwellings. The Applicant has noted that the existing parcels immediately to the north and south, as well as house across Stone Road are of similar acreage to what is being proposed.

- (d) That the granting of the variance will be in harmony with the general purpose and Intent of Chapter 1-19 of the County Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

The Applicant notes in their Justification Statement that the granting of the requested variances will allow the Applicant to bring the property and dwellings in to compliance with conditions that have existed in nonconformity for decades. The variances requested will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

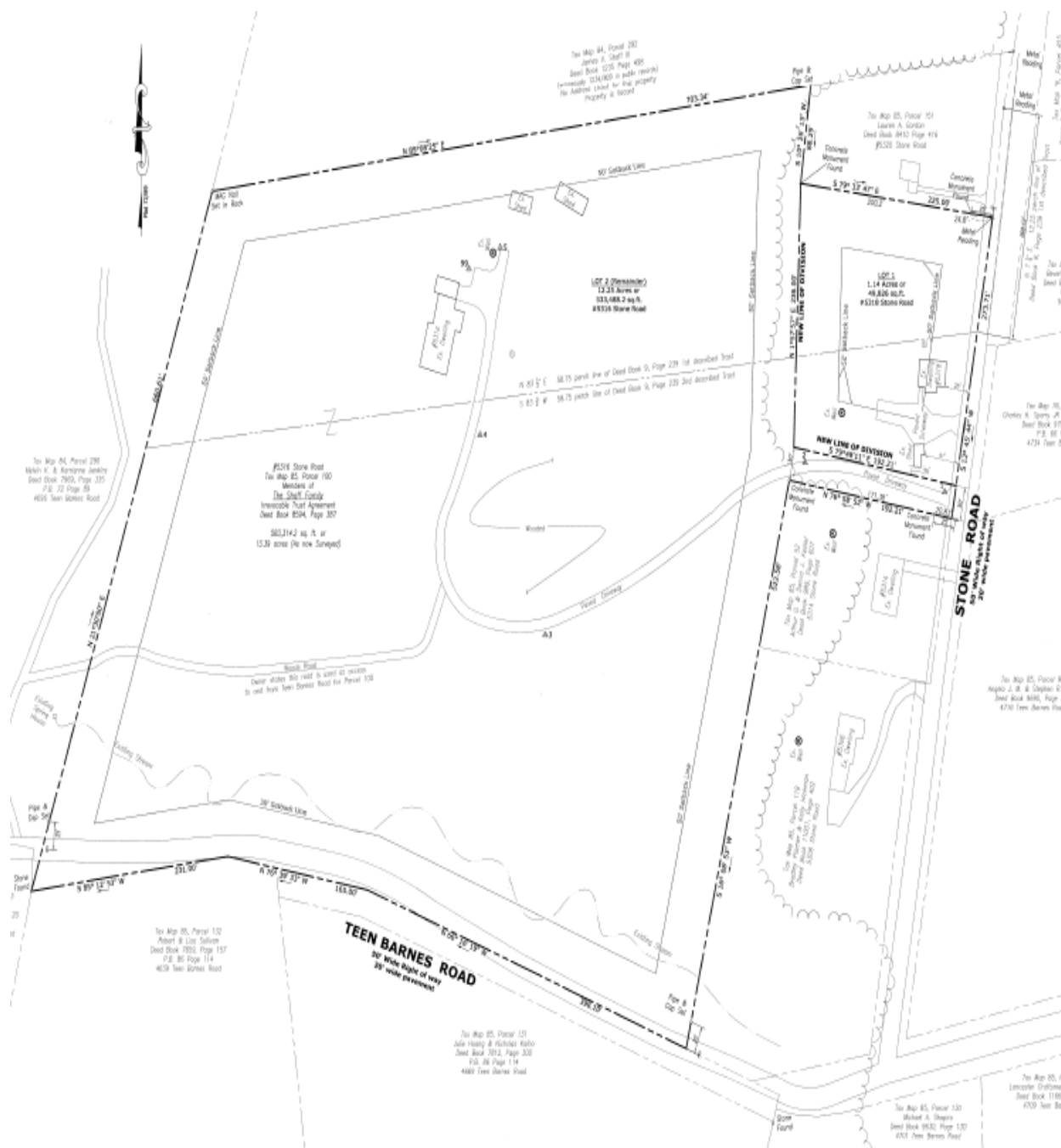
**Staff Conditions for Approval:**

Staff recommends that the proposed subdivision be required to meet the requirements of Section 1-19-7.200 (A)(1) of the Frederick County Zoning Ordinance: "On parcels, legal lots of record as of the effective date of Ord. 08-19-495 [May 20, 2008], at least 10 acres in size, but less than 20 acres in size, one (1) residential lot and a remainder may be created by subdivision. These lots shall have a minimum lot size of 5 acres after subdivision of the lot, no further development rights shall exist on the lot or the remainder, and a note shall be placed on the record plat to this effect."

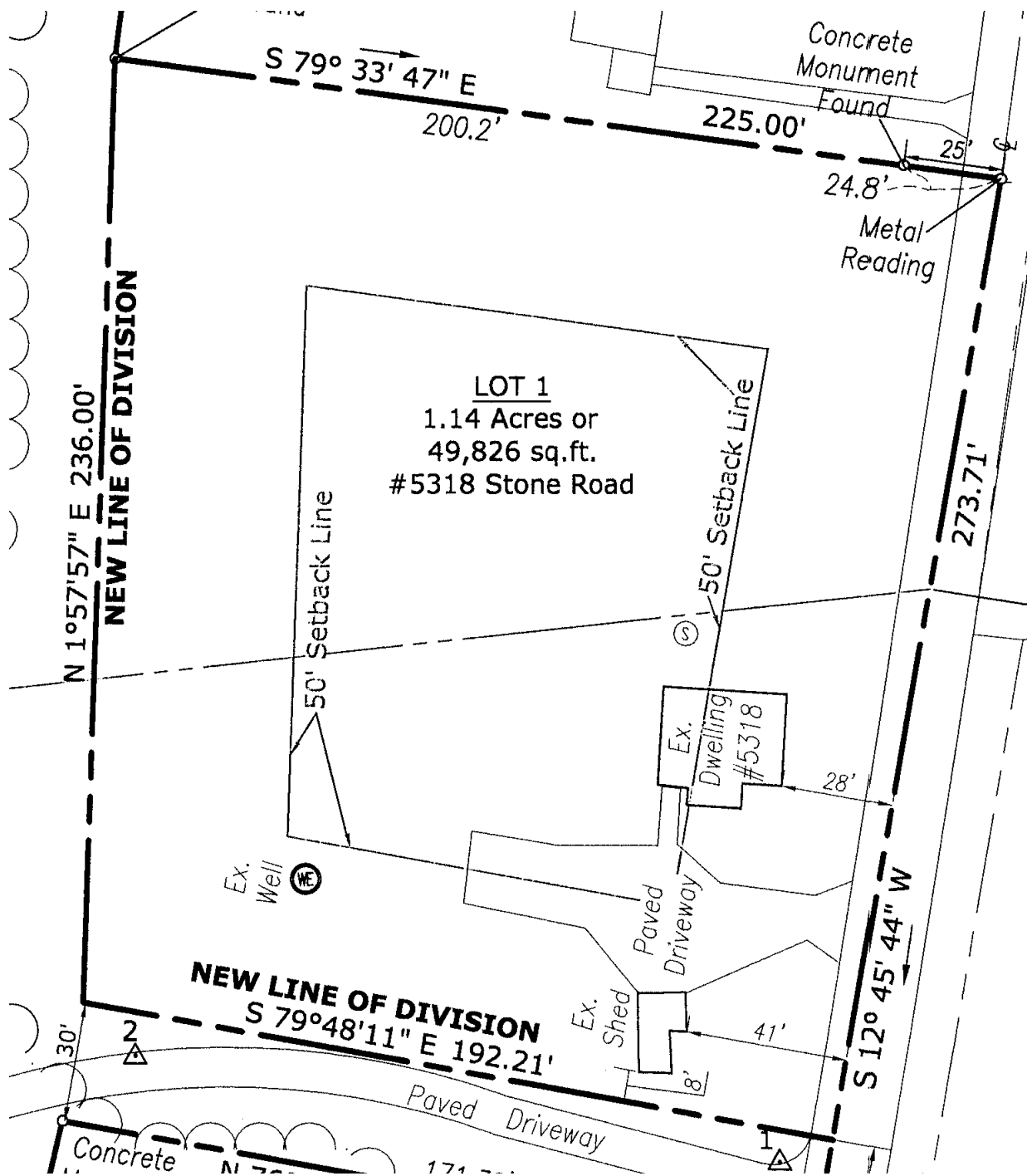
**Actions Needed:**

Staff request that the Board review the general criteria for a Variance under Section 1-19-3.220 of the Frederick County Code, from (1) the 10 acre minimum lot size, (2) the minimum 300 foot lot width, and (3) the 50 foot front yard setback to subdivide 1 lot with an existing house, as per Section 1-19-3.220, Resource Conservation Zoning District, (RC) of the County Code and render a decision on the Applicant's request.

# Attachment 1 Unrecorded Plat of Both Lots



**Attachment 2, Proposed Lot 1**





## Site Maps:

