

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT VIRTUAL MEETING ON January 28, 2020 @ 7pm

<u>Case Number:</u>	B-20-23, (B260574)
<u>Applicant:</u>	ProBuilt Construction
<u>Appeal:</u>	The Applicant is requesting a 12' rear yard variance from the required 25' rear yard setback per Sections 119-3.220 and 1-19-6.100 of the Frederick County Code, to build a two-story deck structure with a screened in area between the main level deck at the kitchen door and the basement level, deck.
<u>Location:</u>	The property is identified as 10008 Shalom Court, New Market, MD, Tax Map 68, Parcel 0142, Tax ID# 27511945, Zoning Planned Unit Development (PUD), Size .215 Acres
<u>Planning Region:</u>	New Market
<u>Zoning District:</u>	Planned Unit Development (PUD)
<u>Comp. Plan Designation:</u>	Low Density Residential
<u>Applicable Ordinances:</u>	Sec. 1-19-3.220 Variances Sec. 1-19-6.100 Design Requirements

Background:

The Applicant's property is zoned Planned Unit Development (PUD) and is .215 acres in size. The required setbacks for this community are front, 25 ft., side 8 ft. and rear 25 ft. Per BOA Approval B-97-11, the applicant has previously received approval of a Variance of 2' from the 8' required side yard setback to add a 2 car garage.

Proposal:

The Applicant is requesting a variances of 12 feet from the 25 ft. rear yard setback to build a two-story deck structure with a screened in area in between the main level deck at the kitchen door and basement level deck as per attached drawings. The deck will be setback 13 ft. from the rear property line. (Attachment 1)

General Criteria - §1-19-3.220 - Variances:

Under the provisions of Section 1-19-3.220(C) of the County Zoning Ordinance, the Board of Appeals shall not grant a variance unless and until a public hearing is held and all of the following criteria are met:

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

The Applicant states that they are requesting a variance from the 'yard' regulations as listed under 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 deck location did not meet minimum building setback requirements as per Ordinance Section 1-19-6.100, and could not be approved in its proposed location without a BOA approved 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:

(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, due to the extreme height of this deck at the kitchen level where the existing exterior door is located, we are proposing to build this deck on top of an approximately 34'x30' L-shaped deck that is at the basement level, which is approximately 12 feet off the ground due to the existence of the 12 foot tall subbasement. This L-shaped deck wraps around the side of the Applicant's home to serve as a walkway to safely access the rear yard space. Both decks extend into the rear Building Restriction Line by approximately 12 feet. (Attachments 2 & 3)

(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.

The Applicant states that the hardship is based on the topography of the lot and nothing that the Applicant could control.

(b) The literal interpretation of the provisions of Section 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 the terms of Chapter 1-19 of the Frederick County Code.

The Applicant states that should no variance be granted there is no other reasonable location to place the deck on this property.

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

The Applicant states that a screened deck located in the Residential zone is not an unreasonable or a special request and therefore is not granting a special privilege.

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

The Applicant states that the request is consistent with the Residential zoned properties and will not impact or be injurious to the neighborhood or detrimental to the public welfare.

(D) In granting the variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with Chapter 1-19 of the County Code. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, is a violation of Chapter 1-19 of the County Code.

The Applicant understands this requirement.

(E) Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of Chapter 1-19 of the County Code in the zone involved, or any use expressly or by implication prohibited by the terms of Chapter 1-19 of the County Code in said zone.

The Applicant understands this requirement.

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

The Applicant understands this requirement.

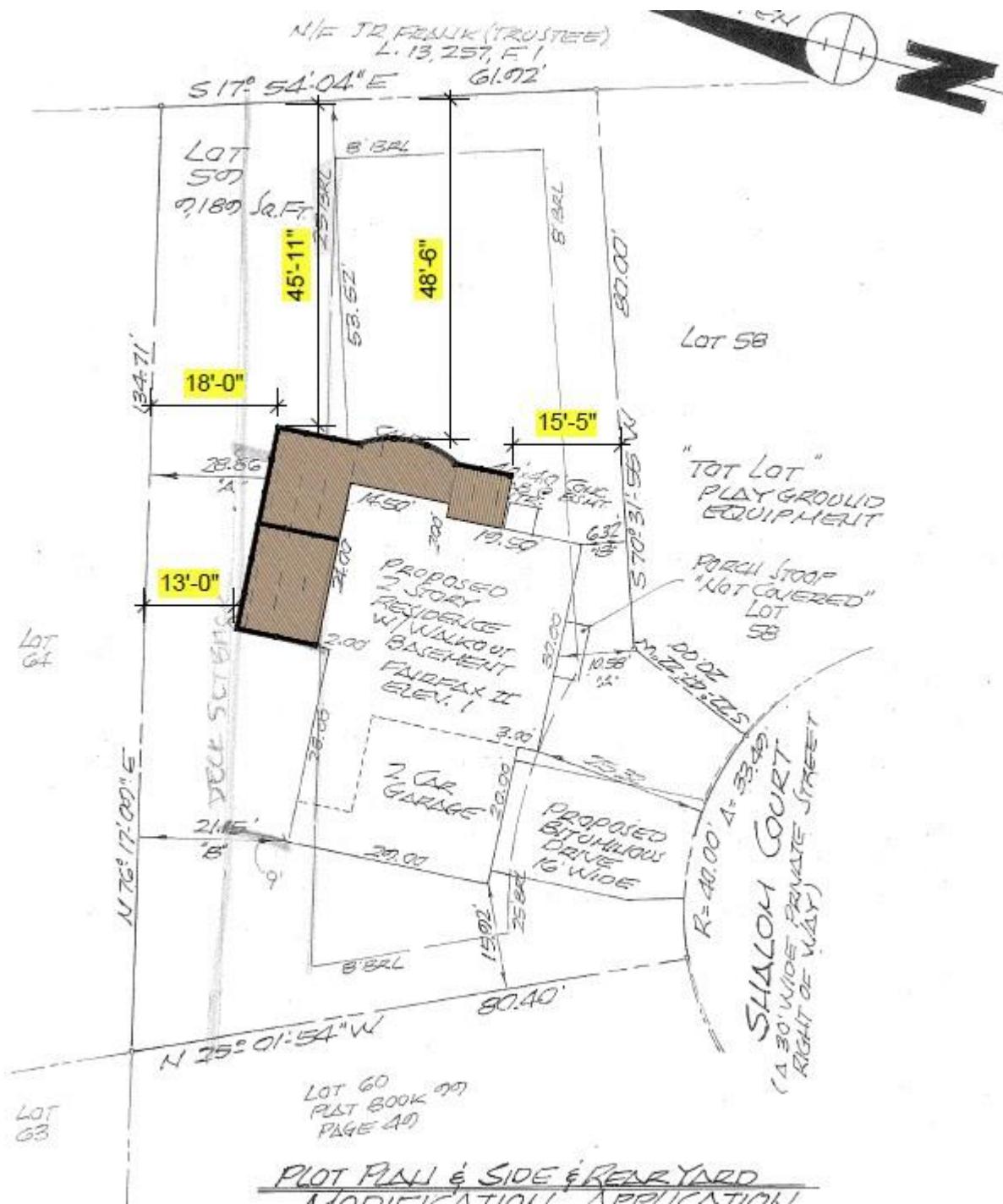
(G) A decision of the Board of Appeals granting a variance will be void 2 years from date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in accordance with the terms of the 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 this requirement.

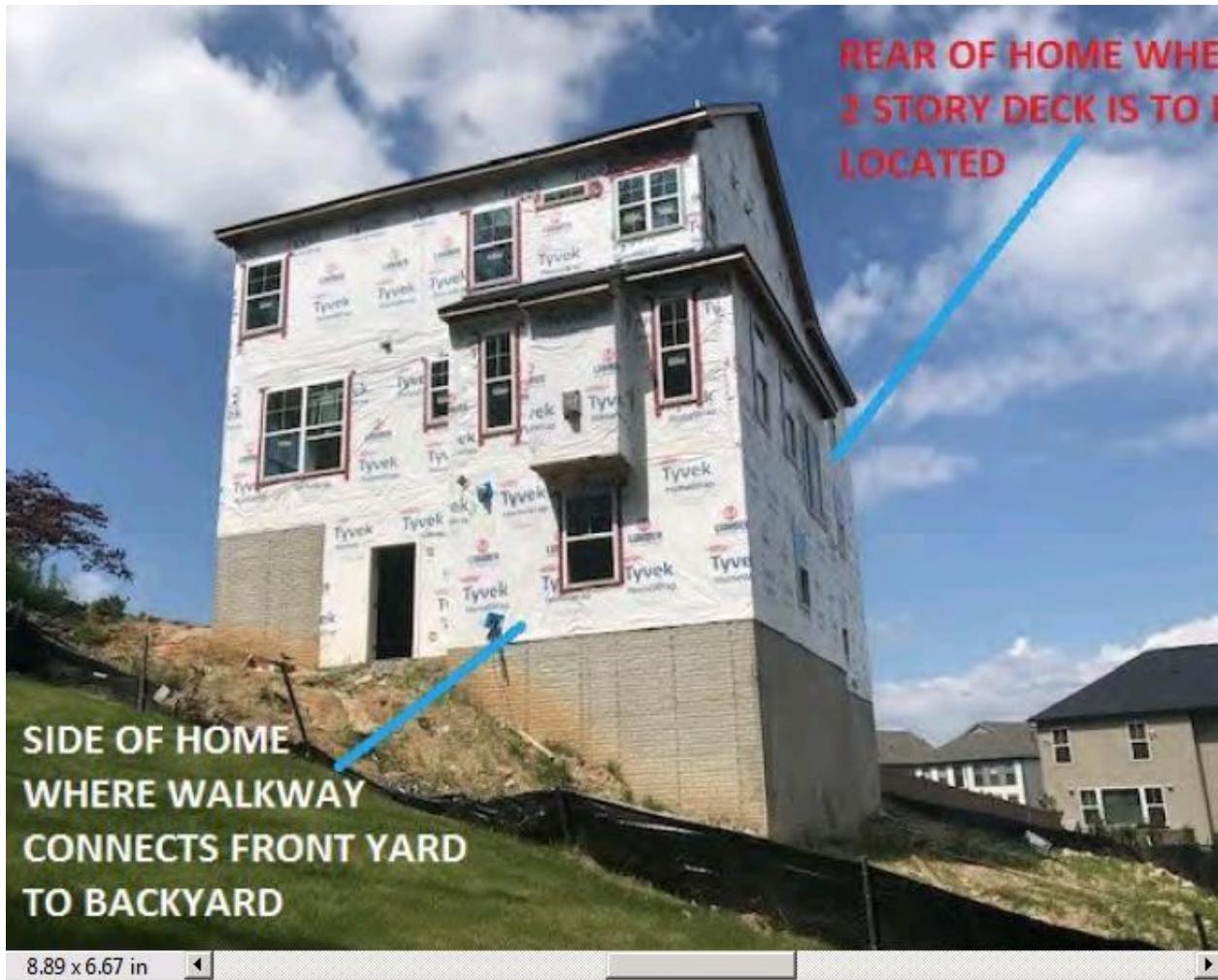
Actions Needed:

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 12 ft. variance from the 25 ft. required rear building restriction line, to construct a two-story deck structure with a screened in area in between the main level deck at the kitchen door and basement level deck.

Attachment 1



Attachment 2



Attachment 3



GIS Maps



