



FREDERICK COUNTY BOARD OF APPEALS

JUNE 22, 2023

TITLE: **Robert McCutcheon**

CASE NUMBER: **B-23-09 (B27522)**

REQUEST: Requesting approval of a request to reduce the required 30 ft. front Building Restriction Line (BRL) to 0 Ft., in accordance with Frederick County Code Sections 1-19-3.220 Variances and 1-19-6.100 Design Requirements. The purpose of the variance is to allow the construction of an accessory structure (garage). Approval of this application would leave a front BRL of 0 Ft.

PROJECT INFORMATION:

ADDRESS/LOCATION: 6910 Maryland Ave, Frederick MD 21703
TAX MAP/PARCEL: Tax Map 66, Parcel 0469
ZONE: (R3) Low Density Residential
REGION: Middletown
WATER/SEWER: W-3/NPS
COMP. PLAN/LAND USE: Rural Community

APPLICANT/REPRESENTATIVES:

APPLICANT: **Robert McCutcheon**
OWNER: **Robert McCutcheon**
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: N/A

STAFF: Michael Paone, Zoning Planner

RECOMMENDATION: Based on the findings and conclusions in the staff report, Staff finds that the proposed 30 ft. variance to a 30 ft. front building restriction line in order to construct a 2-car garage, complies with Section 1-19-3.220 (Variance), and Section 1-19-6.100 (Design Standards) of the Frederick County Zoning Code. Approval of this Application would create an 0 ft. front BRL.

ATTACHMENTS:

Exhibit 1: Site Plan
Exhibit 2: Variance Location
Exhibit 3: Aerial
Exhibit 4: Comprehensive Plan
Exhibit 5: Zoning
Exhibit 6: Environmental Features

Background

The required setbacks for this Low Density Residential (PUD) zoned property are front – 30', side – 10', rear – 30'. The Applicant has provided confirmation that the accessory structure is a minimum of 10 ft. from the residential structure.

The Applicant is requesting a 30 ft. variance to a 30 ft. front building restriction line in order to construct a 2-car garage, in accordance with Section 1-19-3.220 Variances, and Section 1-19-6.100 Design Standards, of the Frederick County Zoning Ordinance. If approved, the variance would create a 0 ft. front building restriction line. (**Exhibit's 1&2**)

Sec. 1-19-3.220 General Criteria - Variance:

Under the provisions of Section 1-19-3.220(C) of the Frederick 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.
- (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 County Zoning staff directed him to file with the Board of Appeals.

- (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 states that the hearing is scheduled for June 22, 2023.

- (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 this property is shown as having a front yard on all three bordering streets and would require a variance to allow the garage to be placed in any reasonable location.

- (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 the having a front BRL on 3 sides of the property is a condition not of his actions.

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

The Applicant states that locating the garage where proposed does not confer any special privilege on the Applicant in that many lots are able to provide a garage on their property. They are asking for that ability as well.

- (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; and

The Applicant states that garages are allowed by right. The variance is in support of an allowed use under the R3 zoning district.

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

The Applicant states that the granting will be in harmony with Chapter 1-19 of the Frederick County Code and would have no detrimental effect on any adjoining properties. Adding a 2-car garage will have no negative impact on the surrounding community or 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 Frederick 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.

The Applicant states that they understand 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 Frederick County Code in the zone involved, or any use expressly or by implication prohibited by the terms of Chapter 1-19 in said zone.

The Applicant states that the requested use is permitted, and not prohibited, under the terms of Chapter 1-19 of the Frederick County Code.

- (F) Except as specified in § [1-19-4.220](#)(C), the Board of Appeals shall not grant a variance to a nonconforming structure for the portion of structure determined by the Zoning Administrator to be nonconforming.

The Applicant states that they are not asking for a variance to a nonconforming structure.

(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.

RECOMMENDATION

Based on the findings and conclusions in the staff report, Staff finds that the proposed 30 ft. variance to a 30 ft. front building restriction line in order to construct a 2 car garage, complies with Section 1-19-3.220 (Variance), and Section 1-19-6.100 (Design Standards), of the Frederick County Zoning Code.

The Board shall consider approval of a Variance in accordance with Section 1-19-3.220 and Section 1-19-6-100, of the Frederick County Zoning Code.

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.

Exhibit 1: Site Plan

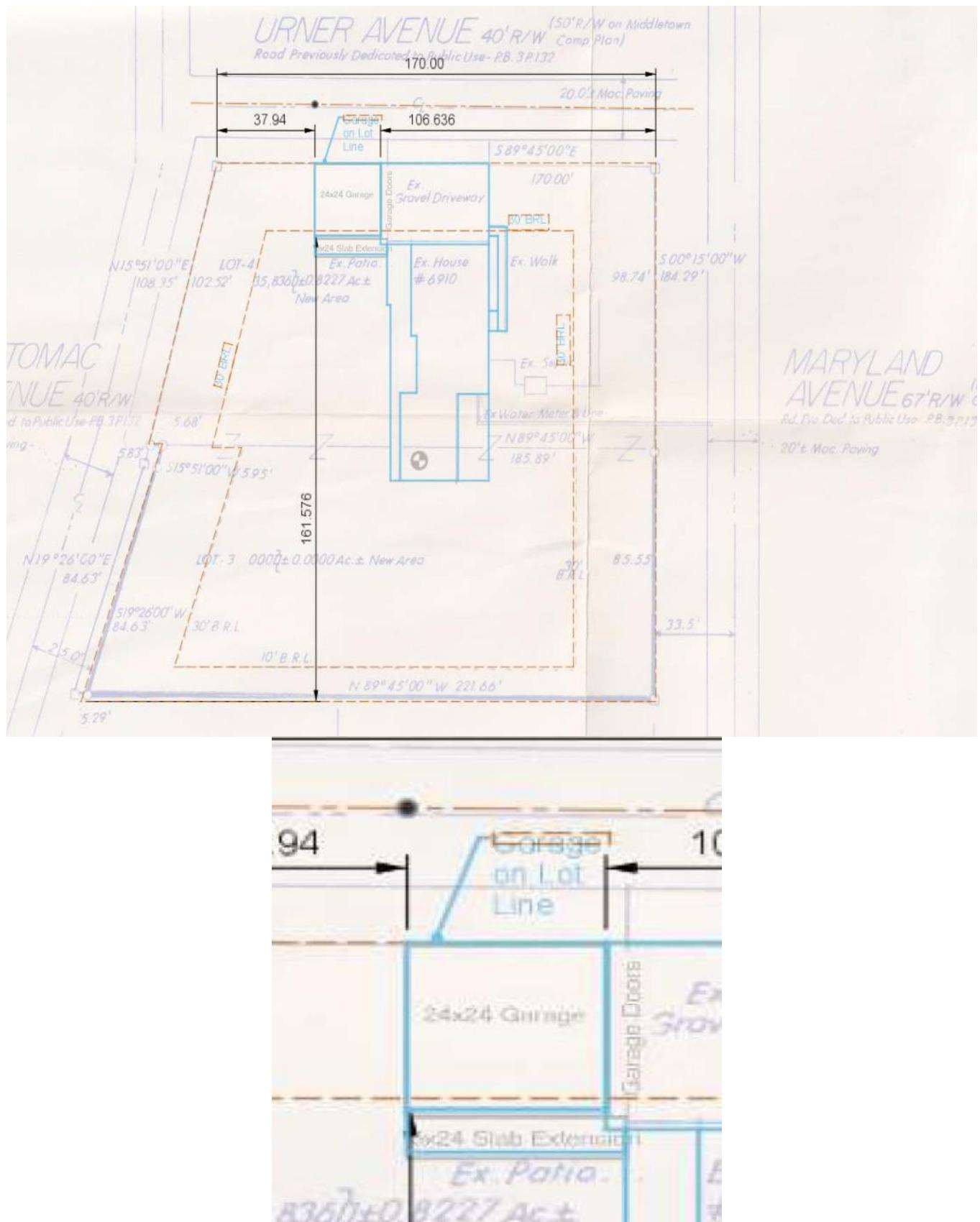
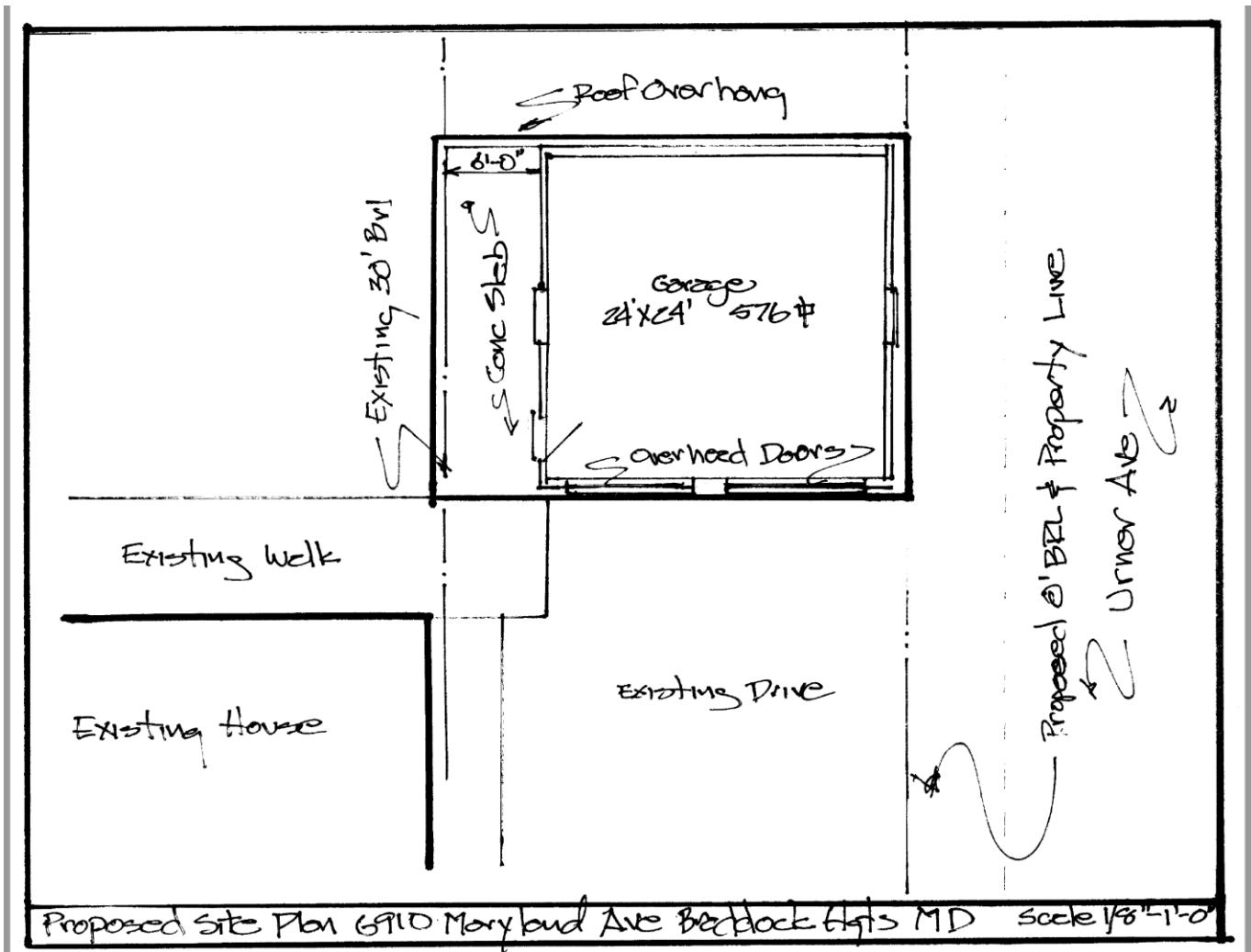


Exhibit 2: Variance Map



GIS Maps

Exhibit 3: Aerial Map



Exhibit 4: Comprehensive Plan

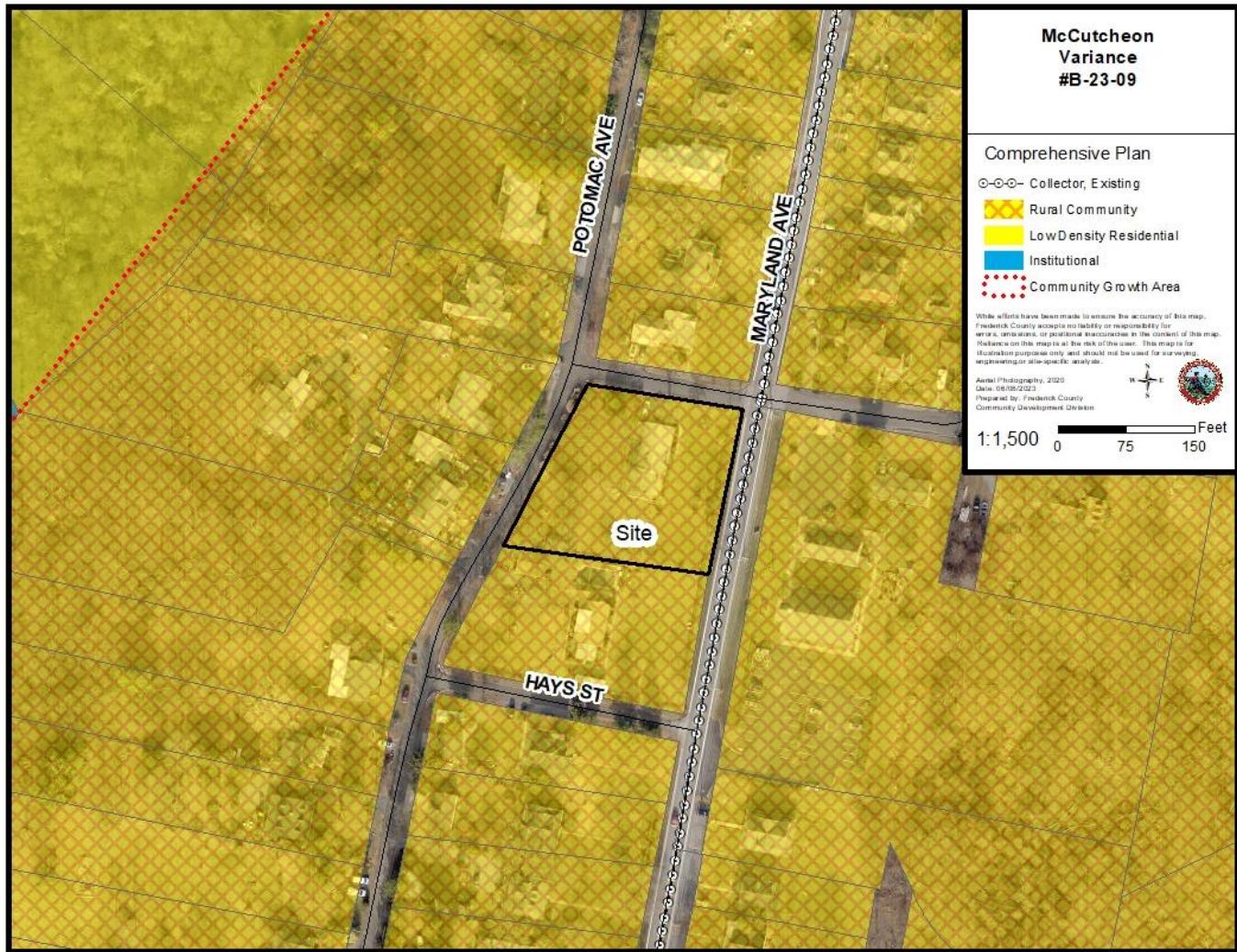


Exhibit 5: Zoning Map

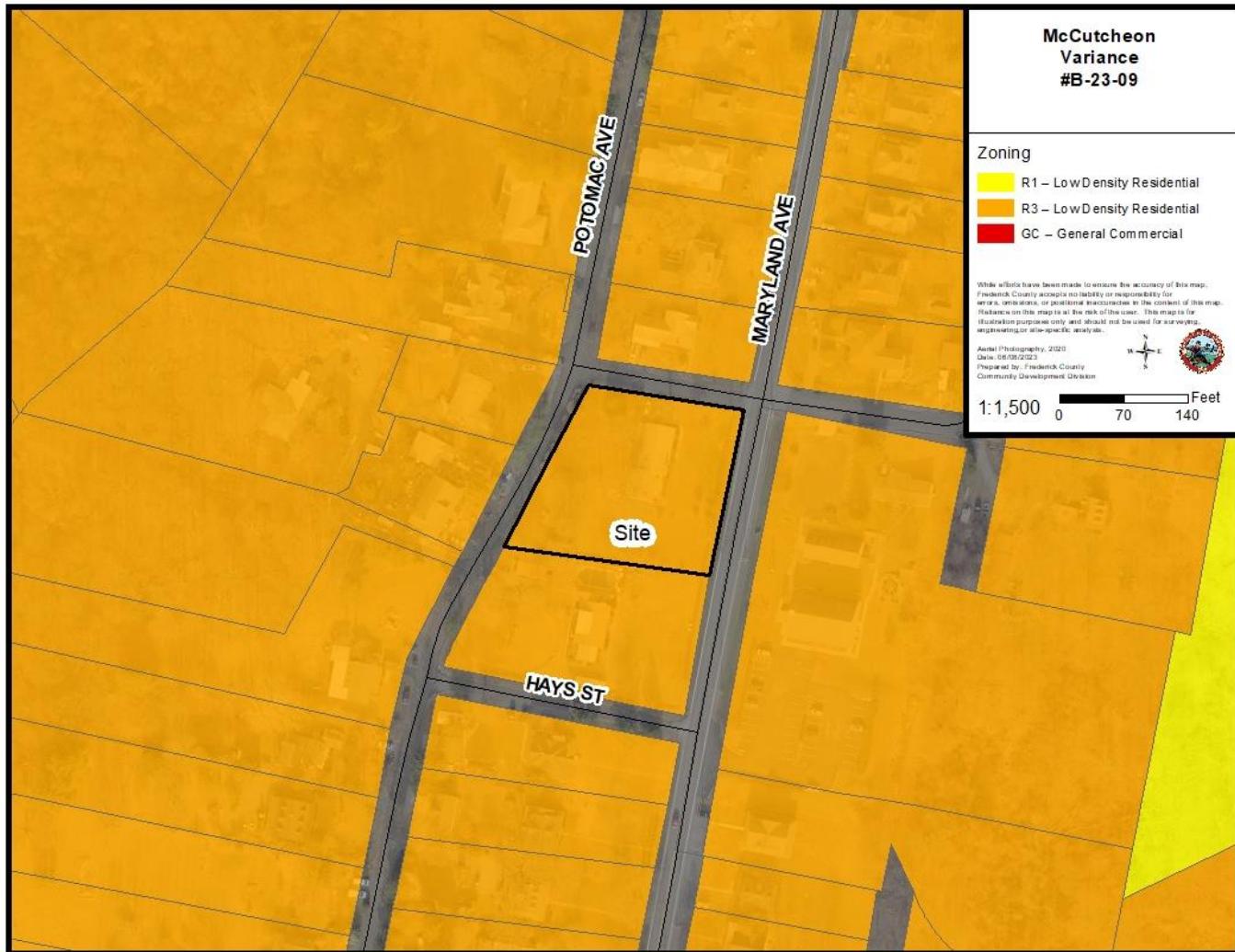


Exhibit 6: Environmental Features Map

