



# FREDERICK COUNTY BOARD OF APPEALS

July 27, 2023

**CASE NUMBER:** B-23-12 (B274972) Morales Variance

**REQUEST:** Requesting approval of a variance in accordance with Section 1-19-4.220 of the Frederick County Code, Nonconforming Structures. The Applicant is requesting a variance under 1-19-4.220 (C) of the Frederick County Code to add approximately 210 square feet of second floor area above the non-conforming area of the existing building, and to reconfigure and raise the roof to provide eight (8') ceilings for the existing bedrooms for a total addition of approximately 430 square feet of new space. The property is located at and further described as 5901 Quinn Road, Frederick MD 21701

## PROJECT INFORMATION:

ADDRESS/LOCATION: 5901 Quinn Rd, Frederick MD 21701  
TAX MAP/PARCEL: Tax Map 78, Parcel 0365  
ZONE: Low Density Residential (R1)  
REGION: New Market  
WATER/SEWER: W-5/S-5  
COMP. PLAN/LAND USE: Low Density Residential

## APPLICANT/REPRESENTATIVES:

APPLICANT: B & R Design Group  
OWNERS: Deana Morales and Alexander Morales  
ENGINEER: B&R Design Group  
ARCHITECT: N/A  
ATTORNEY: N/A

**STAFF:** Mike Paone, Zoning Planner

**RECOMMENDATION:** Based on the findings and conclusions in the staff report, Staff has no objection to the approval of this Application. The Applicant meets the standards and requirements contained in Sections 1-19-4.220(C). (Non-Conforming Structures), and 1-19-6.100 (Design Standards), of the Frederick County Code.

## Exhibits:

- Exhibit #1: Property Site Plan
- Exhibit #2: Non-Conforming Area of the Proposed Structure
- Exhibit #3: Non-Conforming Area of the Existing Structure
- Exhibit #4: Aerial Map
- Exhibit #5: Comprehensive Plan Map
- Exhibit #6: Zoning Map
- Exhibit #7: Environmental Features Map

## Background

The required setbacks for this Low Density Residential (R1) zoned property are front – 40', side – 10', rear – 30'.

The Applicant states in their Justification letter that due to the R1 zoning district setback requirements, the Applicant cannot raise the roof and remodel the second story due to the orientation of the building. The structure is non-conforming due to the setbacks.

***Therefore, the Applicant is requesting a variance under section 1-19-4.220 (C) of the Frederick County Code to add approximately 210 square feet of second floor area above the non-conforming area of the existing building and to reconfigure and raise the roof to provide eight (8') ceilings for the existing bedrooms or approximately 430 square foot of area.***

## 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 states that they understand this requirement. This application is not requesting a variance in height, or lot area. The Applicant is requesting relief from the yard regulations because the structure was constructed in 1935 prior to the adoption of the zoning ordinance. It is considered non-conforming due to setbacks because the structure was constructed prior to the adoption of the R1 zoning district.***

(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.

(C) ***The Applicant states that they were directed by the Zoning Administrator to apply for a variance.*** The Board of Appeals shall not grant a variance unless and until a public hearing is held and all 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 special conditions and circumstances exist in that 55% of residence is located within the building setback. The building is non-conforming as it was legally constructed in 1935 prior to the adoption of the current zoning requirements.***

(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 setbacks are not the result of any action taken by the Applicant as the building was legally constructed at this location in 1935, which was prior to the zoning requirements that were adopted in January 1977.***

(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 of the Frederick County Code; and

***The Applicant states that without the variance from the BOA, they would not be able to expand the house upward to provide normal ceiling heights, and would be unable to use the existing stairs to access the second floor. Most property owners enjoy the ability to expand their home. The owner of this property is not able to expand the house, due to zoning requirements that were adopted forty years after the house was constructed the area of expansion is also limited due to the location of the well and the septic system that serves the house.***

(c) That the 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 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.***

(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 variance will be in harmony with the neighborhood and with the purpose and intent of Chapter 1-19. It will not be injurious to the neighborhood and will not be detrimental to the public welfare. This application does not interfere with or impact the use of any other property.***

(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 of the Frederick County Code.

***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 of the Frederick County Code in said zone.

***The Applicant states that they understand this requirement. 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 believes that section 1-19-4.220 (C) applies to this case and that the Board of Appeals can grant a variance. Section 1-19-4.220. (C) of the Frederick County Zoning Ordinance applies to this case. See further discussion below.**

(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 states that they understand this requirement.***

#### **§ 1-19-4.220. NONCONFORMING STRUCTURES.**

(A) A nonconforming structure is a structure lawfully existing January 24, 1977, or on the effective date of an amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, or other characteristics of the structure or its location on the lot. A nonconforming structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- (1) The conforming portion of a nonconforming structure may be expanded or modified provided that the expansion or modification does not increase the portion of the structure determined by the Zoning Administrator to be nonconforming.
- (2) The nonconforming portion of a nonconforming structure may be modified in accordance with the requirements of this chapter provided that the modification reduces the portion of the structure determined by the Zoning Administrator to be nonconforming, or if the modification meets the conditions set forth in subsection (C) below.

***The Applicant states that they understand this requirement. This application does not expand the non-conformity concerning the yard regulations.***

- (3) Such structure once destroyed by any means will not be reconstructed unless:
  - (a) It is in conformity with Chapter 1-19 of the County Code; or
  - (b) The Board of Appeals grants a variance.

***The Applicant states that they understand this requirement.***

- (4) Such structure once moved, will thereafter conform to the regulations for the district to which it is moved.

***The Applicant state that they understand this requirement.***

(5) This movement does not include minor shifting or settling of the structure from natural or accidental causes.

***The Applicant states that they understand this requirement.***

(B) Except as specified below in subsection (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 understand this requirement and are seeking variance relief in accordance with 1-19-4.220. C.***

(C) The Board of Appeals may grant a variance to expand a nonconforming portion of an existing nonconforming structure only if the proposed expansion does not.

(1) Increase the original footprint of the nonconforming portion of the structure.

***The Applicant states that they are seeking a variance to expand a nonconforming portion of an existing nonconforming structure but that the expansion does not increase the footprint because the additional is vertical.***

(2) Extend farther into the required setback(s) than the existing nonconforming portion(s) of the nonconforming structure; or.

***The Applicant states that the expansion does not extend farther into the required setback than the existing nonconforming portions of the nonconforming structure.***

(3) Include the construction of a nonconforming porch, enclosure of an existing nonconforming porch, or the addition of stories on top of a nonconforming porch.

***The Applicant states that they understand this requirement. The proposal does not include the construction of a porch, or the addition of stories on top of a non-conforming porch.***

## **RECOMMENDATION**

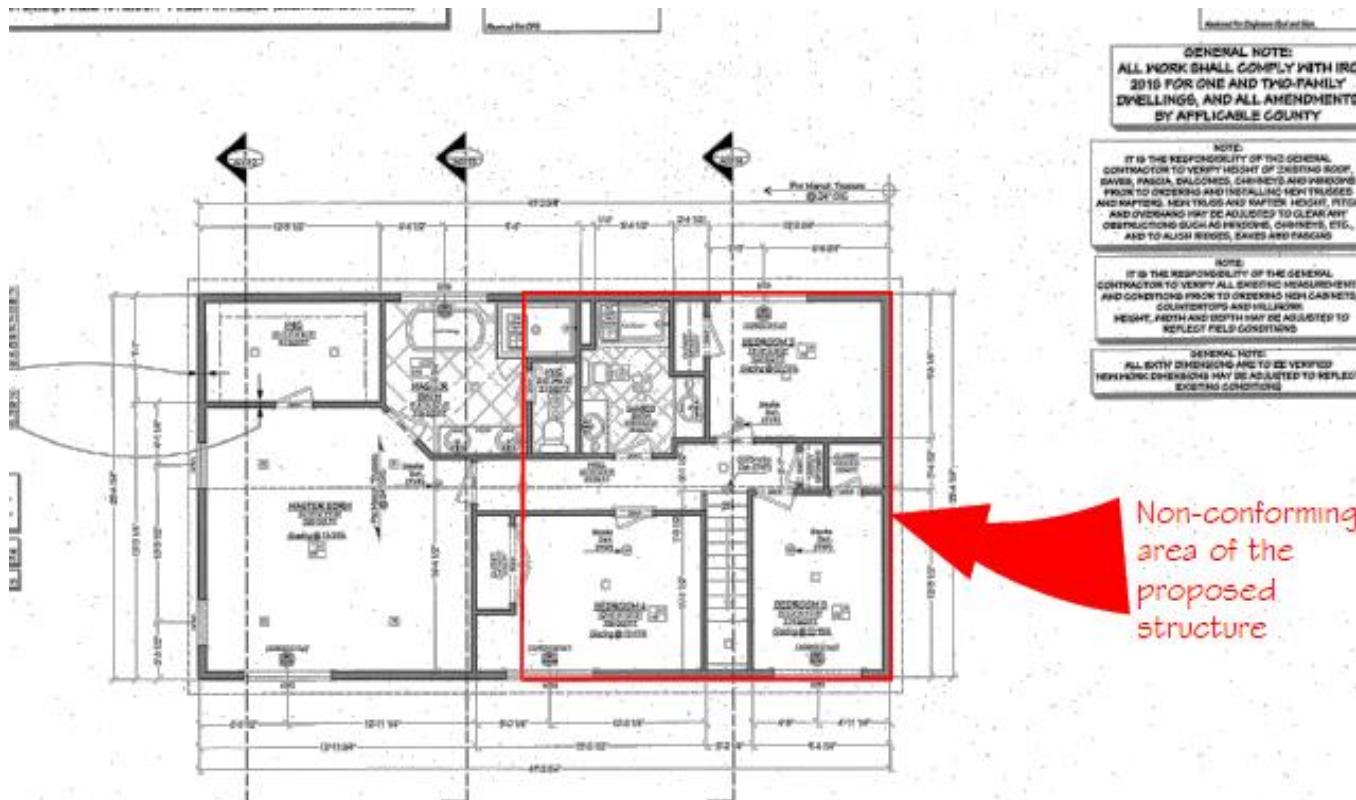
Based on the findings and conclusions in the staff report, Staff finds that the proposed variance under §1-19-4. 220.C to add approximately 210 square feet of second floor area above the non-conforming area of the existing building and reconfigure and raise the roof to provide eight (8') ceilings at the existing bedrooms or approximately 430 square foot of area as stated above. Section 1-19-4.220(C). and 1-19-6.100 (Design Standards), of the Frederick County Zoning Code.

**1-19-3. 220.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.**

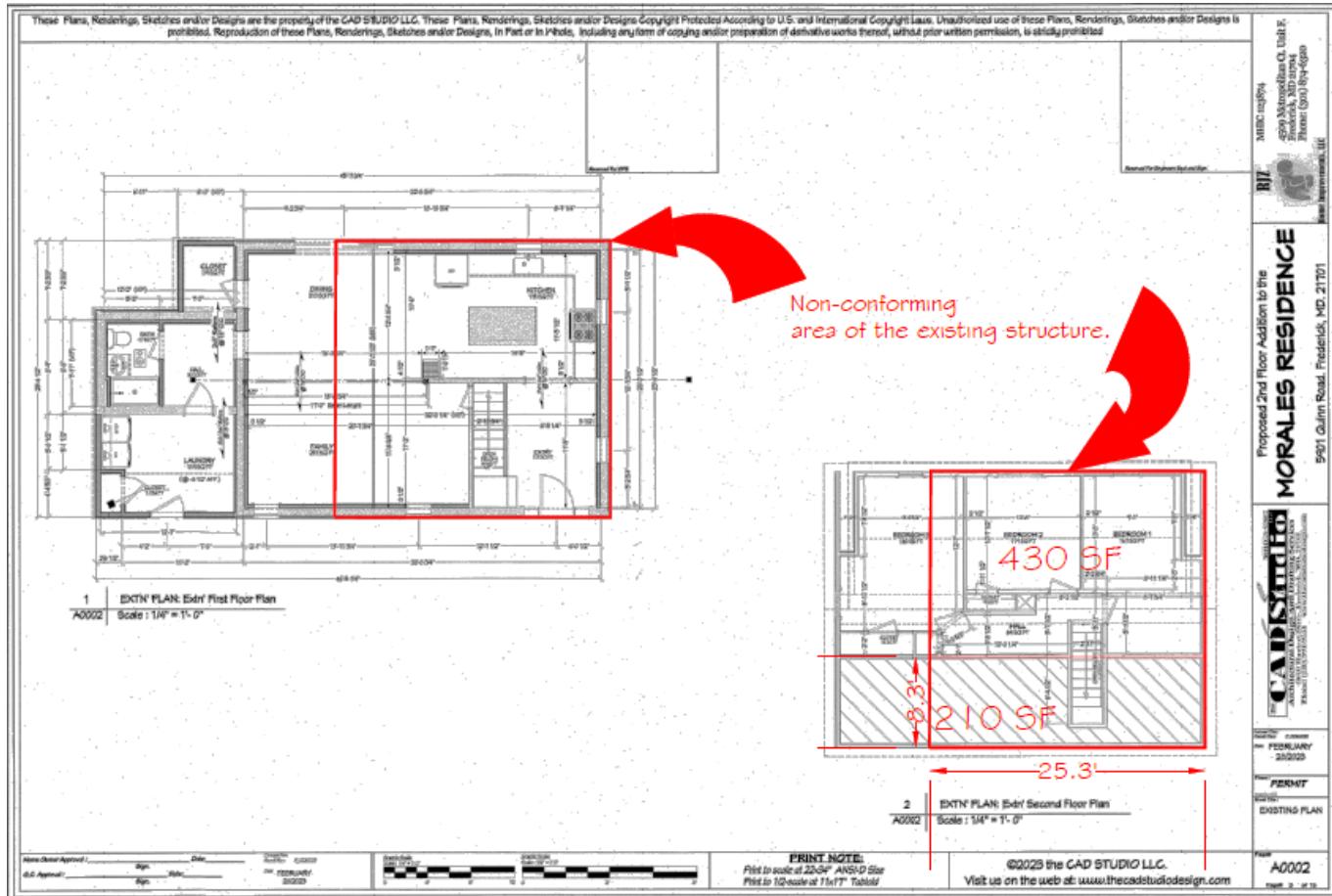
## **Exhibit #1: Property Site Plan**



## Exhibit #2: Non-Conforming Area of the Proposed Structure



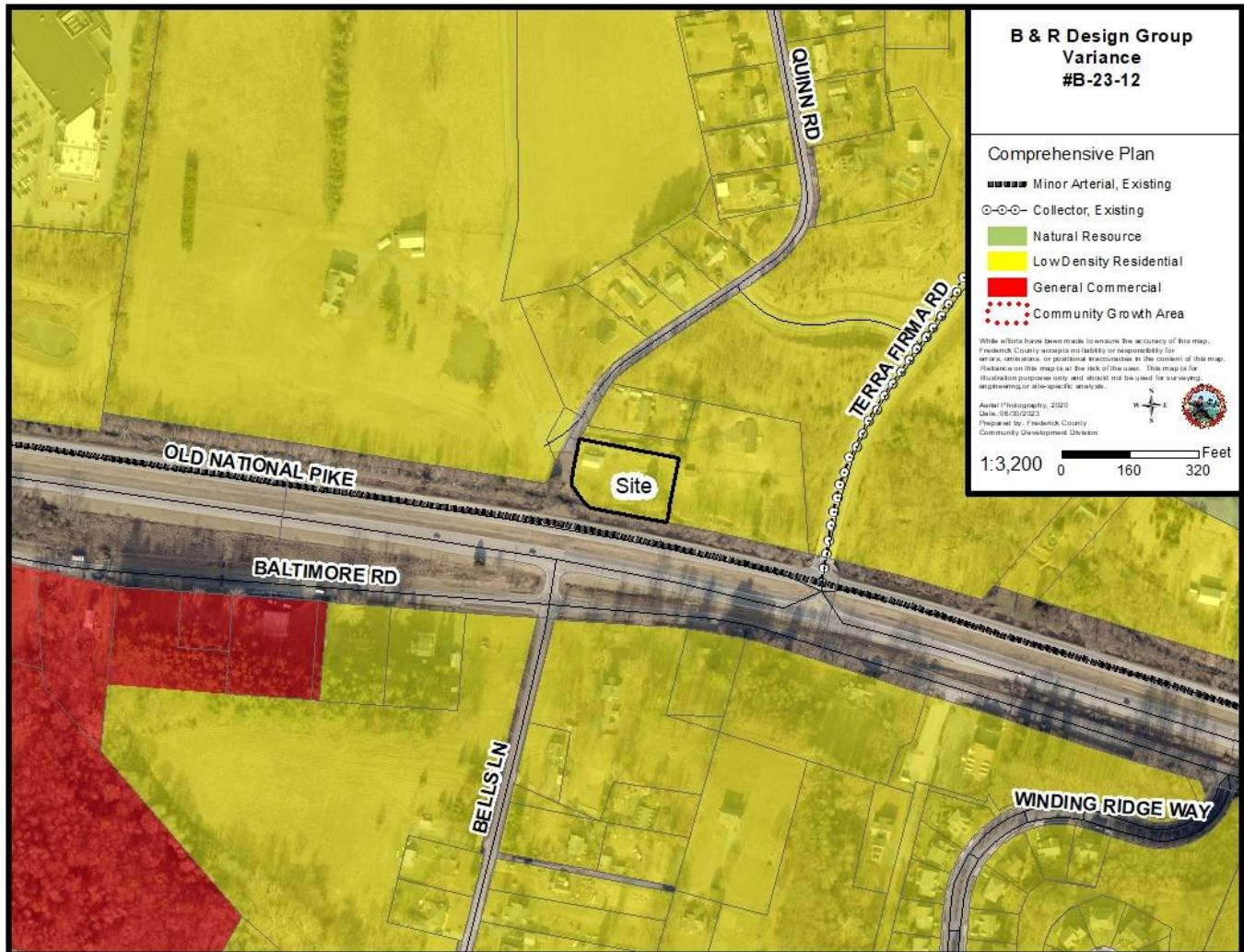
### **Exhibit 3 Non-Conforming Areas of the Existing Structure**



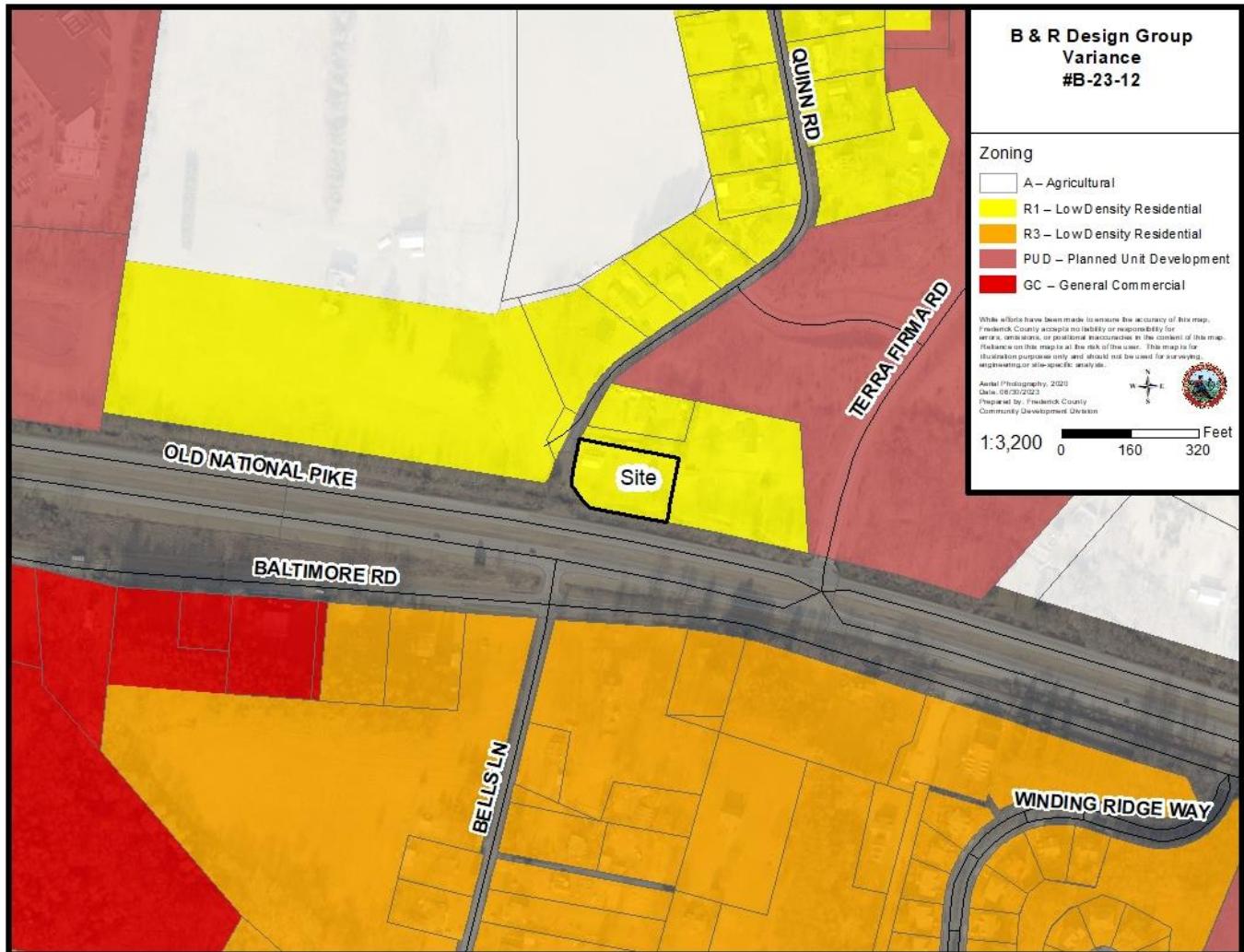
## Exhibit 4: Aerial Map



## Exhibit 5: Comprehensive Plan Map



## Exhibit 6: Zoning



## Exhibit 7: Environmental Features Map

