

Board of Zoning Adjustment

Staff Report

July 24, 2023



Case No:	23-VARIANCE- 0096
Project Name:	Tucker Station Road Variance
Location:	221 Tucker Station Rd
Owner(s):	William Bond
Applicant:	Alex Marsh, Marsh Family Builders
Jurisdiction:	Middletown
Council District:	19 – Anthony Piagentini
Case Manager:	Amy Brooks, Planner I

REQUESTS:

- **Variance** from the Middletown Land Development Code section 5.3.1.C.1.a to allow a structure to exceed the maximum setback as established by infill regulations.

Location	Requirement	Request	Variance
Infll Front Yard Setback	35 ft	249.28'	214.28'

CASE SUMMARY/BACKGROUND

The subject site is zoned R-4 Single- Family Residential in the Neighborhood form district. The subject site is in the city of Middletown and is currently vacant. The applicant is proposing to construct a 2,208 SF single-family home that will be located more than two-hundred feet from the adjacent road frontage.

This site is subject to the infill regulations as specified by 5.1.12 of the Land Development Code. As such, the front yard setback line shall fall within the range of the front yard setbacks of the two nearest lots containing principal structures within the same block face. A proposed building on an infill lot must be constructed within this established front yard setback range. The range for this site has been determined to be between 30 feet and 35 feet. Therefore, the maximum setback is 35 feet.

STAFF FINDINGS

Staff finds that the requested variance is adequately justified for approval based on the staff's analysis contained in the standard of review.

Based upon the information in the staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards for granting a variance established in the Middletown Land Development Code section to allow a structure to exceed the maximum setback.

TECHNICAL REVIEW

There are outstanding MSD items that must be addressed during the building permit review process.

INTERESTED PARTY COMMENTS

None.

RELATED CASES

None.

STANDARD OF REVIEW AND STAFF ANALYSIS FOR VARIANCE FROM 5.3.1.C.1.a

- (a) The requested variance will not adversely affect the public health, safety or welfare.

STAFF: The requested variance will not adversely affect public health, safety, or welfare. While the principal structure will sit further back from Tucker Station Road than the site design standards allow, the house must be constructed to comply with all applicable building codes and the Land Development Code, except where relief is requested.

- (b) The requested variance will not alter the essential character of the general vicinity.

STAFF: The requested variance will not alter the essential character of the general vicinity since there are other properties within the surrounding area that also exceed the maximum front yard setback to this degree. Examples include properties located at 220, 230, and 260 Clarland Drive that also are setback from the front property line more than 200 feet. Please see aerial photography of the cited examples under attachment #4 in the staff report.

- (c) The requested variance will not cause a hazard or nuisance to the public.

STAFF: The requested variance will not cause a hazard or nuisance to the public because the principal structure must be developed to comply with all applicable building codes. Additionally, the site itself will be subjected to erosion and sediment control measures that are required by MSD to ensure positive-flow in the public through-drainage that bisects the property.

- (d) The requested variance will not allow an unreasonable circumvention of the zoning regulations.

STAFF: The requested variance will not allow an unreasonable circumvention of the zoning regulations. Because the required setback on this site is determined by infill development standards, which is intended to preserve the basic feel of the streetscape by requiring new development to complement existing construction, this request does not to be out of character with the established pattern of front yard setbacks.

ADDITIONAL CONSIDERATIONS:

1. The requested variance arises from special circumstances which do not generally apply to land in the general vicinity or the same zone.

STAFF: The requested variance does arise from special circumstances which do not generally apply to land in the general vicinity or in the same zone. There is a stormwater drainage that runs across the property parcel.

2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would not create an unnecessary hardship on the applicant as the applicant could move the location of the home forward to be more in line with the established pattern of front yard setbacks.

3. The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

STAFF: The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought as the applicant is requesting the variance prior to beginning construction.

VARIANCE PLAN REQUIREMENT

In accordance with LDC Section 11.5B.1.C (Requirement to Follow Approved Plan), a variance shall be approved only on the basis of the plan approved by the Board and shall be valid only for the location and area shown on the approved plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the variance.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the Variance from the Middletown Land Development section 5.3.1.C.1.a to allow a structure to exceed the maximum setback.

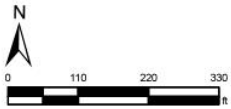
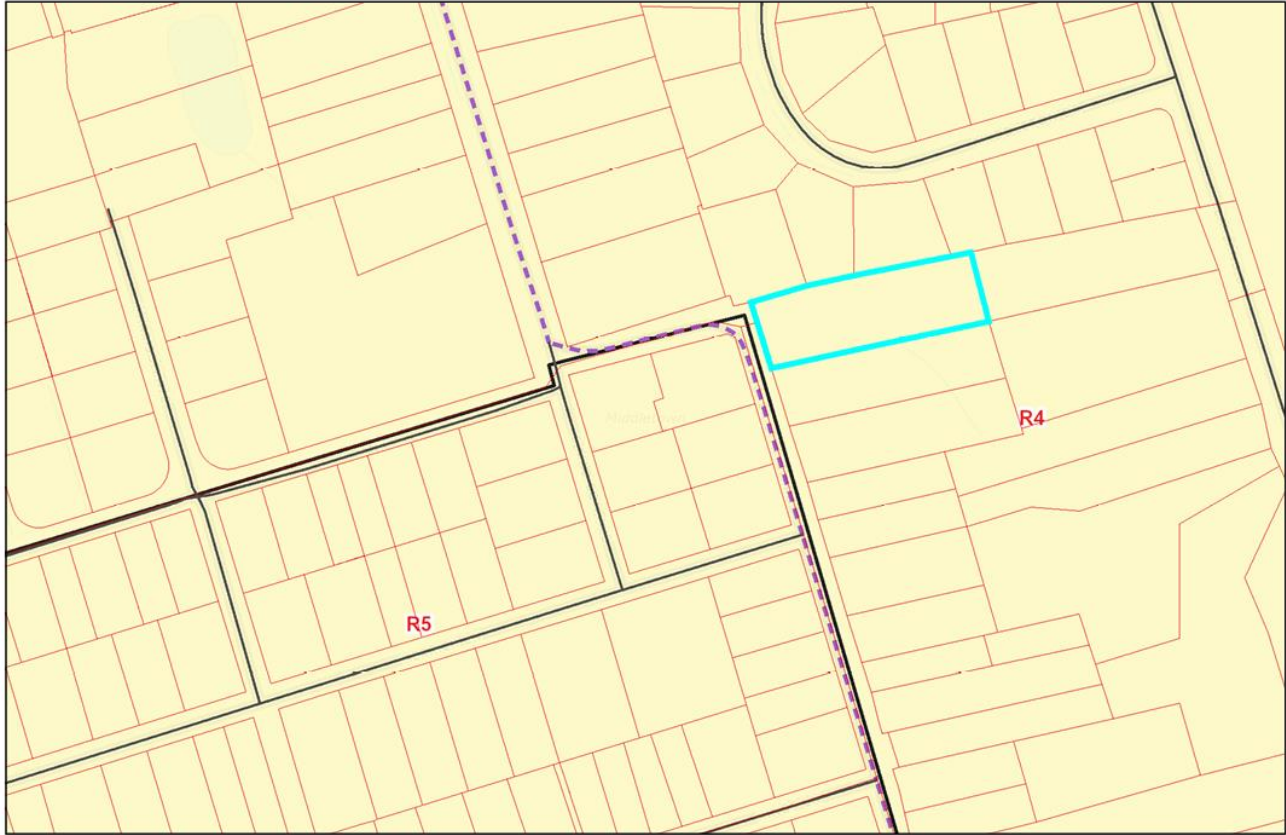
NOTIFICATION

Date	Purpose of Notice	Recipients
07-10-2023	Hearing before BOZA	1 st tier adjoining properties Registered Neighborhood Groups in Council District 19
07-12-2023	Hearing before BOZA	Notice posted on property

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Plan
4. Site Photos

1. Zoning Map



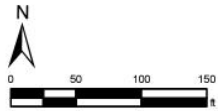
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2. Aerial Photograph



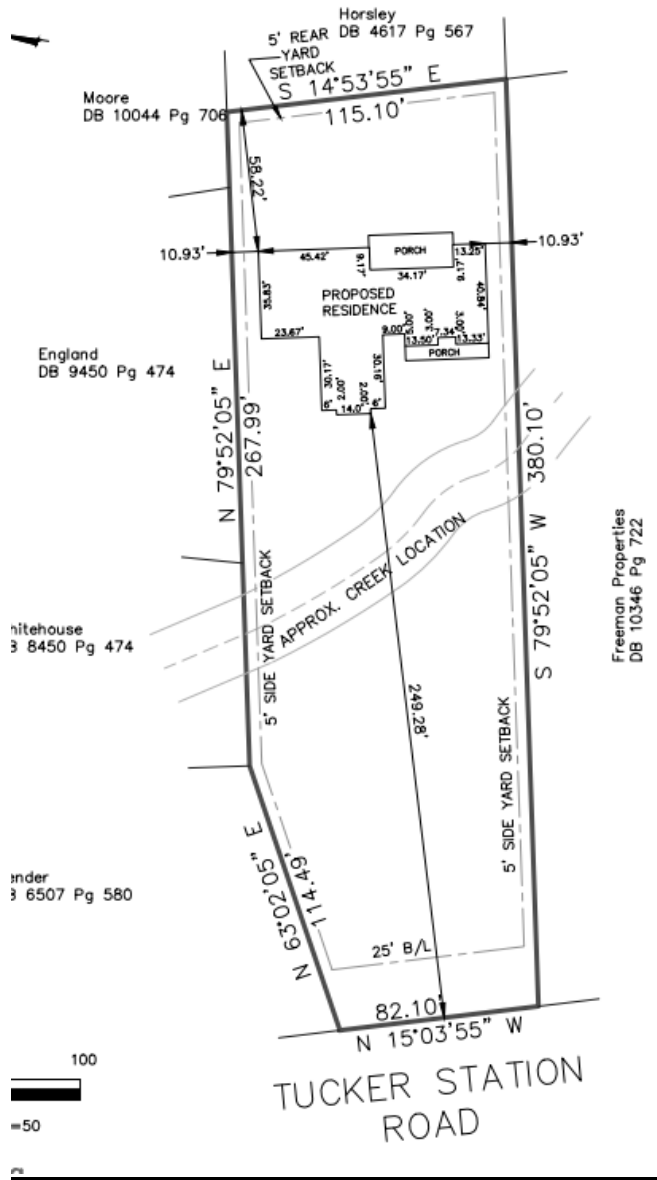
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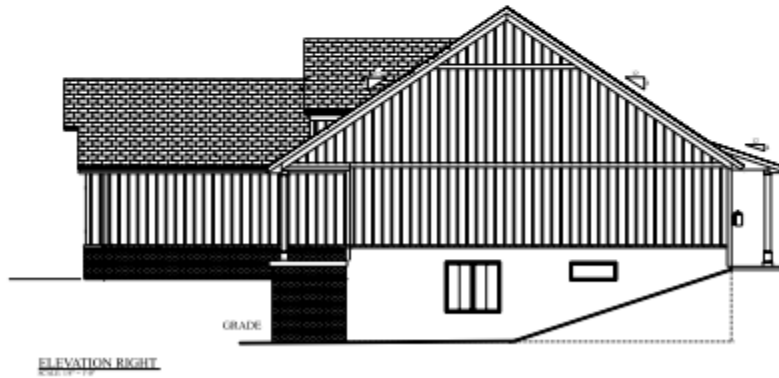
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3. Site Plan



4. Elevations



5. Site Photos



Front of subject property.



To the left of the subject property.



To the right of the subject property.



Across the street from subject property.



Properties in the general vicinity that appear to exceed the maximum setback.