

STANDARD APPLICATION
Harford County
Board of Appeals
 Bel Air, Maryland 21014

Case No. 5992
 Date Filed 6/30/23
 Hearing Date _____
 Receipt _____
 Fee \$900.00
 Type _____

Information to be Submitted with Application

1. A plot plan drawn to scale indicating all pertinent data.
2. A list of all adjoining property owners with mailing addresses.
3. Names and addresses of all persons having legal or equitable interest in the property.
4. All required supporting documentation or additional studies as may be required; including traffic and environmental studies, etc.

NOTE:

All applicants **MUST** schedule a pre-application meeting with the Department of Planning and Zoning prior to filing any application to the Board of Appeals.

To schedule please call **410-638-3119**.

Shaded areas for Office Use Only

Nature of Request and Section(s) of Code

CASE 5992 MAP 24
TYPE Appeal of Written Determination/Special
Exception/Variance
ELECTION DISTRICT 04 TAX ID 04-036077/04-036107
LOCATION 3700 Rush Road/Chrome Hill Road, Jarrettsville
21084
BY David & Mary Ellen Kelly
Appealed because an appeal pursuant to Section 267-7A(6)
of the Harford County Code of the final written determination
by the Director of Planning and Zoning in a letter dated
June 1, 2023 that the existing use on the subject property is
not a valid non-conforming use, a Special Exception to
~~permit a construction services use pursuant to 267-80H(1), a~~
variance from the minimum 5 acre lot size requirement, and a
variance from the minimum 40' side yard setback in the AG
District.

Owner (please print or type)

Name David & Mary Ellen Kelly Phone Number call attorney

Address 3700 Rush Road, Jarrettsville, Maryland 21084
Street Number Street City State Zip Code

Co-Applicant _____ Phone Number _____

Address _____
Street Number Street City State Zip Code

Contract Purchaser _____ Phone Number _____

Address _____
Street Number Street City State Zip Code

Attorney/Representative Bradley R. Stover
bstover@robinsonstover.com Phone Number 443-371-7248

Address 124 N. Main Street, Bel Air, Maryland 21014
Street Number Street City State Zip Code

Land Description

Address and Location of Property 3700 Rush Road/Chrome Hill Road, Jarrettsville, Maryland 21084

Subdivision Land of Thomas Moore Plat 25/94 Lot Number 13 (p. 319)

Acreage/Lot Size 4.05 Election District 4th Zoning AG Tax ID # 04-036077/04-036107

Tax Map No. 24 Grid No. 3F Parcel 134/319 Water/Sewer: Private Public

List ALL structures on property and current use: Office, barn/storage structure/shed; all used for Jones Well Drilling business

Estimated time required to present case: 2 hours

If this Appeal is in reference to a Building Permit, state number _____

Would approval of this petition violate the covenants and restrictions for your property? Yes _____ No

Is this property located within the County's Chesapeake Bay Critical Area? Yes _____ No

If so, what is the Critical Area Land Use designations: _____

Is this request the result of a zoning enforcement investigation? Yes No _____

Is this request within one (1) mile of any incorporated town limits? Yes _____ No

Request

See attached.

Justification

See attached.

If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)

REQUEST AND JUSTIFICATION FOR APPEAL OF WRITTEN DETERMINATION,
SPECIAL EXCEPTION AND VARIANCES
HARFORD COUNTY BOARD OF APPEALS STANDARD APPLICATION

Subject Property

3700 Rush Road/Chrome Hill Road, Jarrettsville, Maryland 21084
Harford County Tax Map 24, Parcels 134/319
Approx. 4.05 Acres

Requests

1. Appeal pursuant to §267-7(A)(6) of the written determination by the Director of Planning and Zoning dated June 1, 2023 that the existing use on the Subject Property is not a valid non-conforming use.
2. Special Exception to permit a construction services use in the AG District pursuant to §267- 88(H)(1) of the Harford County Zoning Code; variance from minimum five (5) acre lot size requirement and variance from minimum 40' foot side yard setback.

Justification – Code Application

The Subject Property is zoned Agricultural (AG) as defined in the Harford County Zoning Code. The Subject Property is operated as a construction services use known as Jones Well Drilling, which has been operating at the Subject Property since the early 1970s. The Subject Property is improved by storage buildings, an office, and impervious areas for vehicular and equipment storage. The Applicants are the fee simple owners of the Subject Property. Applicants took title to the Subject Property in 2022. Applicants' predecessors in title, Diane and Earl Jones, operated Jones Well Drilling Service at the Subject Property since approximately 1971, which business has operating continuously at the Subject Property since. Applicant David Kelly was an employee of the business at its inception, and has since taken ownership of the business. Mr. Kelly has been involved in the business on the Subject Property for over fifty (50) years.

1. Appeal from Written Determination.

On May 16, 2023, the Applicant made a formal request for written determination from the Director of Planning and Zoning to determine that the construction services use on the Subject Property is a valid, non-conforming use. The Director determined that the construction services use is not a valid, non-conforming use.

Applicants appeal the written determination, as the Jones Well Drilling Services business has continuously operated prior to and since the inception of the 1977 Harford County Zoning Code. Applicants do not intend to expand or materially alter this use.

Zoning Code Requirements

Appeal from Administrative Decision/Interpretation Requirements (Article 267-7A)

- (6) Render a final written determination, within 45 calendar days of the written request, of whether a proposed use is permitted in a particular zoning district, or whether a proposed use is a legal nonconforming use upon written request of any person. The Director of Planning may determine a materially similar use exists, based on the North American Industrial Classification System (NAICS). The final written determination of the Director of Planning shall be subject to appeal to the Board by the applicant within 20 calendar days of the date of the decision.

Variance Requirements (Article 267-11)

- (A) Variances from the provisions or requirements of this Code may be granted if the Board finds that:
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of the Code would result in practical difficulty or unreasonable hardship; and
 - (2) The variance will not be substantially detrimental to adjacent properties, or will not materially impair the purpose of this Code or the public interest.

(The Board may impose such conditions as it deems necessary in each particular case. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Code.)

Special Overlay District Requirements (Article 267-62)

(E) Natural Resources District

Variances. The Board may grant a variance to Subsection C or D upon a finding by the Board that the proposed development has been designed to minimize adverse impacts to the Natural Resources District to the greatest extent possible. Prior to rendering approval, the Board shall request advisory comments from the Director of Planning, the Soil Conservation District and the Maryland Department of the Environment.

Chesapeake Bay Critical Area Overlay District (Article 267-63)

- (1) Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant.
- (2) All applications for variances shall be reviewed by the Director of Planning for conformance with applicable provisions of this section, and a written report shall be provided to the Board of Appeals.
- (3) In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:

- (a) That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.
 - (b) That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.
 - (c) That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the Critical Area.
 - (d) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
 - (e) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the purpose and intent of this section.
 - (f) That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.
 - (g) That the growth allocation for the County will not be exceeded by the granting of the variance.
 - (h) That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.
- I. Special exceptions. All projects requiring approval as special exceptions within the Critical Area must meet the standards of this section. The Director of Planning may require such additional information, studies or documentation deemed necessary to ensure that applicable requirements of this district are met. Applications will not be considered complete for processing until all information as required by the Director of Planning has been received.

Change/Extension of Non-Conforming Use Requirements

267-20(3) - When authorized by the Board, one nonconforming use may be substituted for another nonconforming use.

267-21(d) - The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- (A) The proposed extension or enlargement does not change to a less restricted and more intense use.
- (B) The enlargement or extension does not exceed 50% of the gross square footage in use at the time of the creation of the nonconformity.

Special Exceptions Requirements (Article 267-87)

(a) Special exceptions require the approval of the Board of Appeals in accordance with 267-9 (Board of Appeals). The Board may impose such conditions limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Code and the public health, safety and welfare.

- (b) A special exception grant or approval shall be limited to the Site Plan approved by the Board. Any substantial modification to the approved Site Plan shall require further Board approval.
- (c) Extension of any use or activity permitted as a special exception shall require further Board approval.
- (d) The Board may require a bond, Irrevocable letter of credit or other appropriate guarantee as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.
- (e) In the event the development or use is not commenced within 3 years from date of final decision, after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Director of Planning shall have the authority to extend the approval for an additional 12 months or any portion thereof. (See Article 267-88 for specific requirements of Special Exception uses.)

I/We agree to provide additional information as requested by the Department of Planning and Zoning or the Hearing Examiner.

I/We do hereby declare that no officer or employee of Harford County, whether elected or appointed, has received prior hereto or will receive subsequent hereto any monetary or material consideration, any service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally in connection with the submission, processing, issuance, grant or aware of the within application or petition.

I/We do solemnly declare and affirm under the penalties of perjury that this petition contains names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information and belief.

I/We agree, upon final action, to comply with all requirements or conditions imposed by the Board.

David M. Kelly 6/20/23
Signature of Owner Date

Mary Ellen Kell 6/20/23
Signature of Co-Applicant Date

[Signature] 6/21/23
Signature of Attorney/Representative Date

Director of Planning and Zoning Date

Witness Date

Witness Date

Christina Wade 6/21/23
Witness Date

M. D. Dufford 6.30.23
Zoning Staff Date

2. Special Exception/Variances.

The proposed use requires special exception approval from the Harford County Board of Appeals as more fully set forth in Section 267-88(H)(1) of the Harford County Zoning Code:

H. Services.

(1) Construction services and suppliers. These uses may be granted in the AG and VB districts, provided that:

(a) A minimum parcel area of 5 acres in the AG district and .5 acres in the VB district is required.

The subject parcels, when combined constitute approximately 4.05 acres of land. This falls short of the 5-acre minimum requirement in the AG zone. Applicants seek a variance from this requirement insofar as strict imposition of the Code requirement would impose hardship upon them as they would not be able to operate a business that has existed at the Subject Property for in excess of 50 years. Moreover, the configuration of parcel 134 is unique insofar as the right-of-way Rush Road impinges upon the eastern boundary of the Subject Property, creating a curve shape. This curvature and lot configuration are unique.

(b) If the use includes the storage of commercial vehicles and equipment, the vehicles and equipment must be stored entirely within an enclosed building or fully buffered from view of adjacent residential lots and public roads.

Applicant will comply.

(c) All parking and storage areas must be paved.

Applicant will comply.

(d) A type "C" buffer, pursuant to §267-30 (Buffer Yards), shall be provided along any adjacent road rights-of-way or adjacent residential lots.

As shown on the site plan, a type C buffer is contemplated along Rush and Chrome Hill Roads.

3. Setback Variance.

As shown on the site plan, Applicant seeks a variance from the minimum 40' side yard setback requirement in the AG district for the construction services use. For the reasons set forth above, strict imposition of the Code would cause hardship on the Applicants, insofar as the longstanding existing uses on the Subject Property and the uses on the adjacent property are located within close proximity of each other. Requiring a 40' side yard setback for the existing buildings located on the Subject Property would be impractical.

Justification – Limitations, Guidelines and Standards

The proposed use will fall within the applicable limitations guidelines and standards to be adhered to by the Board of Appeals as set forth in §267-9(i):

1. The Subject Property and the use thereon should not have an impact on the number of persons living or working in the immediate area. The subject construction services use does not seek to expand but rather remain in its current configuration as it has existed since the 1970's.
2. The use should not have any negative impact on traffic conditions, insofar as any existing traffic conditions on site have remained relatively static since the 1970's.
3. The use should not affect the orderly growth of the neighborhood and community, insofar as the construction services use has been operating since the 1970's.
4. There will be no effect as the result of any odors, dust, gas, smoke, fumes, vibration, glare or noise as the result of the use. Again, the operation will remain the same as what has existed since the 1970's.
5. The use shall not have any adverse impact on facilities, fire protection, sewage, water, trash and garbage collection or the like. The Subject Property is served by well and septic, and the owner of the Subject Property provides for trash and garbage collection.
6. The requested use is consistent with generally accepted engineering planning principles and practices. The construction service use provides well water services to citizens of Harford County, especially in the northern areas of the County where public water is not available.
7. There would be no additional impact on structures in the vicinity such as schools, houses of worship, theaters or hospitals, none of which are in close proximity to the Subject Property.
8. The use is consistent with the purposes of the Code, the Master Plan and related studies for land use and the like.
9. The use will not have any environmental impact on any nearby sensitive features.
10. The use will not have any negative impacts on any cultural or historic landmarks.

VIOLATION ADDRESS	PROPERTY OWNER AND MAILING ADDRESS			TENANT		
Rush Road Jarrettsville, Maryland 21084	David M. Kelly Mary Ellen Kelly 3700 Rush Road Jarrettsville, Maryland 21084					
ENERGOV CASE #	DATE FILE OPENED			DATE FILE CLOSED		
E-000543-2022	7/19/22					
INSPECTOR	PRIORS			TAX ID #		
Will	No			04-036107		
ZONING/USE	ACRES	TAX MAP		GRID	PARCEL	
Ag / R	1.7	24		3F	0134	
SUBDIVISION	LOT #	Critical Area	Floodplain	NRD/FRA	AG Pres.	Other
N of Rocks						
PERMIT(S)						
#254-1967 one family, one story dwg, #1716-72, 2-two car garage private use only in sy ...private non-commercial use only... #2345-73, block building for a horse barn (private stable)...						
INQUIRY						
TV – Business (Jones Well Drilling - owner Brian Smith) . Employees from 7am-6pm. C/e (well rigs, trucks, etc.) Operating for many years. Attached permits for dwg, garage (private use only – non comm), and block building (for horse barn-private stable).						
<p>8/1/22 – Letter - The Department of Planning and Zoning recently received a complaint concerning a construction services business at the above referenced property. Section 267-7C of the Harford County Code requires that we investigate complaints received and determine whether violations of the Zoning Code exist. Records indicate this property is zoned AG-Agricultural and contains approximately 1.7 acres. Review of aerial photography indicates a business use is likely operating at this location which includes storage of commercial vehicles and equipment. It also appears to encroach if not also operate on 3704 Rush Road as well. In addition, the Maryland State Department of Assessment and Taxation’s records indicates that Jones Well Drilling is located at 3700 Rush Road. We were unable to locate any zoning certificate or other approvals for a business use. Zoning certificates were issued as follows: zoning certificate #254 issued in 1967 for a dwelling; zoning certificate # 1716-72, issued in 1972 for a 2-car garage which was specifically conditioned for private non-commercial use only; and, zoning certificate #2345-73, issued in 1973 to construct a block building for a horse barn. Construction uses in the AG zoning district require Special Exception approval from the Board of Appeals if all of the criteria can be met. Five acres is required for construction services uses. As you do not have the required acreage, a variance would also have to be approved. Within 20 calendar days, please contact our office at 410.638.3103 x3119 to schedule a pre-application meeting to discuss the requirements of the Board of Appeals. If you have any questions, feel free to contact me by calling 410.638.3106. F/U 8/22/22</p> <p>8/12/22 – TR – Advised by Brad Stover that he met with the owner and he will be requesting a pre application meeting in the near future. Follow up 9/2/22 Supervisor</p> <p>9/1/22 – TV – Theresa has file for f/u.</p> <p>9/19/22 – TR – Per Brad Stover, he and an engineering company will be meeting with the property owner next week to see what is involved. Change F/U to 10/17/22.</p>						

10/14/22 – TV – Theresa has file for f/u.

10/27/22 – TR – Brad Stover advised a site plan is being prepared. He will reach out to the engineer and see when it will be ready and will get back to me. F/U Supervisor 11/17/22

11/15/22 – TV – Theresa has file for f/u.

11/29/22 – TR – Emailed Brad Stover

12/1/22 – TR – Email from Brad Stover. He asked the engineer for a status but they are really backed up. I asked him to let me know asap. F/U Supervisor 12/27/22

12/22/22 – TV – Theresa has file for f/u.

12/22/22 – TR – Dudley Campbell and Brad Stover were here yesterday. At that time, Brad asked Dudley to make sure this is a priority. Change f/u again to 1/17/23

1/17/23 – TV – Theresa has file for f/u.

1/23/23 – letter - As you are aware, the Department of Planning and Zoning opened an investigation in regard to the above referenced address in July, 2022. It is my understanding that preparation of the site plan for the property has taken longer than anticipated; however, this matter has been open for six months and we cannot continue to provide extensions of time. Please contact me within 10 calendar days to provide a reasonable timeframe in which you will be prepared to move forward and schedule the pre-application meeting which is required prior to application to the Board of Appeals. I can be reached by calling 410.638.3106. Please give this matter your immediate attention. Thank you. F/U Supervisor 2/3/23

1/24/23 – TR – A pre app is scheduled for 2/9/23. Change f/u to that date.

2/6/23 – TV – Theresa has file for f/u.

2/7/23 – TR – Pre app held with the owner, Attorney Brad Stover, Engineer Mitch Ensor, Eric Vacek, Mary Pirog and Theresa Raymond. We advised they cannot consider themselves nonconforming just because they have been operating since the 1960's; the permits indicate no commercial use. They will need to see if they can purchase additional land to make up the 5 acres for construction services and the owner is considering that. The setback is also an issue from the neighboring property. Follow up Supervisor Review in 1 month for update on acreage issue. 3/8/23 SUPERVISOR

2/8/23 – Ariels attached from 1964 – 2022.

3/7/23 – TV – Theresa has file for f/u.

3/9/23 – Emailed Brad Stover asking him if there was any update as to the owners obtaining additional acreage.

3/15/23 – Response from Mr. Stover. The acreage issue has not been resolved. He will prepare a BOA application and coordinate with Bay State for an exhibit. F/U May 8, 2023 Supervisor.

5/5/23 – TV – Theresa has file for f/u.

5/15/23 – TR – Mr. Stover advised he will be sending a request for written determination in the next several days regarding the nonconforming claim. I let the Director know. Change the follow up to 6/16/23.

5/19/23 – Copy of letter copied to TR and mailed addressed to Shane Grimm “requesting written determination that the use is a non-conforming use as it existed prior to the inception of the 1977 Harford County Zoning Code.”

6/1/23 – Letter from Shane re: written determination of nonconformity. The use of the property for construction services is not a valid nonconforming use. They must go to the BOA for S/E and variances to apply for approval to continue at this location.

6/15/23 – TV – Theresa has file for f/u.

6/21/23 – TR – Letter received by P&Z – BOA Application. Request for Appeal of Written Determination, Special exception and Variance. Appealed pursuant to 267-7A(6) of the final written determination by P&Z Director in a letter dated 6/1/23 that the existing use on the property is not a valid nonconforming use, a SE to permit a construction service use pursuant to 267-88H(1), a variance from the minimum 5 acre lot size requirement and a variance from the minimum 40' side yard setback.

6/23/23 – TR – Provided copy of this record to J.Freeman for the BOA file as required in the Rules of Procedure. Follow up Supervisor Review 8/23/23

ATTACHMENT TO SPECIAL EXCEPTION APPLICATION

ADJACENT PROPERTY OWNERS

The adjacent property owners to 3700 Rush Road and Chrome Hill Road parcel are identified as follows:

OWNER	ADDRESS	ACCOUNT IDENTIFIERS	
Sandra E. Roberts, et al.	1228 Chrome Hill Road Jarrettsville, MD 21084-1606	04-056639	Map 24 Parcel 350 Lot PAR1
Jaret Duran Courtney Schneider	3713 Rush Road Jarrettsville, MD 21084	04-090675	Map 24 Parcel 145 Lot 1
Brian Warfel Cassandra Warfel	3704 Rush Road Jarrettsville, MD 21084	04-008642	Map 24 Parcel 318
Elizabeth Diane Jones David E. Jones Donna R. Jones	Mailing Address: 15 Vale Road Bel Air, MD 21014 Premises Address: Chrome Hill Road Jarrettsville, MD 21084	04-036085	Map 24 Parcel 319 Lot PAR14
Doris Ann Knopp	1317 Chrome Hill Road Jarrettsville, MD 21084	04-038991	Map 24 Parcel 192

LIST OF PERSONS HAVING AN INTEREST IN THE SUBJECT PROPERTY

Applicant: David and Mary Ellen Kelly
3700 Rush Road
Jarrettsville, MD 21084