

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT FOR August 22, 2019 @ 7pm

Case Number: B-19-29 AP# 19678

Appellant: Thomas and Cynthia Webb

Appeal: Requesting a Special Exception Approval of a Special Exception to permit an Accessory Dwelling Unit Greater than 800 sq.ft. in accordance with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Ordinance.

Location: Property identified as 12408 Hanford Road, Tax Map 98, Parcel 0257, Tax ID #09-277536, 1.94 Acres

Planning Region: Urbana

Zoning District: Low Density Residential (R1)

Comp. Plan Designation: Rural Residential

Applicable Ordinances: Sec. 1-19-3.210 Special Exceptions
Sec. 1-19-8.321 Accessory Dwelling Units Greater Than 800 Square Feet.

Background:

The subject parcels are zoned Low Density Residential (R1) and contains approximately 1.94 acres.

Ordinance Section 1-19-8.321 requires that Accessory Dwelling Unit larger than 800 square feet require Special Exception from the Board of Appeals.

The proposed accessory dwelling unit is larger than 800 SF and is a permitted use as a special exception subject to site development plan approval.

Proposal

The applicant is proposing to create an Accessory Dwelling Unit larger than 800 Square Feet on the second floor of an existing garage located on the same property as the main residence. The existing home is approximately 7,258 square feet in size. It has a footprint of approximately 2,942 square feet. The Accessory Dwelling Unit will be approximately 917 Square Feet in size. The existing Garage (Accessory Structure) has a footprint of approximately 1,142 Square Feet. It should be noted that the second floor of the garage includes both the proposed ADU, 917 Square Feet and approximately 621 Square Feet of storage area not delineated as part of the ADU.

1-19-3.210. SPECIAL EXCEPTIONS.

- (A) An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.

The subject Application for a Special Exception is being applied for by Mark Thomas Schaefer, Agent-In-Fact, pursuant the attached Affidavit, for Mr. Thomas G. Webb.

(B) A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

- (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and

The Applicant states that the proposed ADU is consistent with the Frederick County Comprehensive Plan in that it promotes affordable housing as well as senior housing opportunities and maximizes the efficient and functional use of county infrastructure by creating housing opportunities without creating new developments or conversion of agricultural lands.

- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The Applicant states that the Proposed Use will remain Residential with no commercial or business operations of any kind. The Proposed Use adds an Accessory Structure with a Garage and Outdoor Living Space (i.e. Terrace) on the Ground Level and an In-Law Apartment on the 2nd Floor.

As such, the operations and size of the proposed Use will be strictly Residential and will be consistent, in harmony and with the appropriate and orderly development with the surrounding Residential Homes and Lots.

- (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The Applicant states the Use of the Garage, Terrace and In-Law Apartment will not add to, increase or create any noise, fumes, vibrations or other ill effects on the neighboring properties, and will be consistent with the surrounding Residential Uses and Operations.

- (4) Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The Proposed Use adds a Net Gain of one (1) new, parking spaces to the 10 Parking Spaces already existing. However, one (1) existing parking space is relocated to just outside the South Garage Door on the New Garage Structure. The attached Existing & Proposed Parking Diagram shows the Existing vs the Proposed Parking Spaces. Note the existing, mature, evergreen trees will screen the two (2) new parking spaces from the neighbor to the rear of the Webb's Property.

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

The Webb Property has full use of the Pipe Stem Driveway, which crosses the West Edge for the Webb Property, via an existing easement. Said Pipe Stem Driveway connects to Kemptown Road. Both Kemptown Road and Hanford Court are more than adequate to handle the one (1) additional vehicle, which may be produced by the Proposed In-Law Apartment.

Because the Proposed Use do not include any business or commercial operations, there is no applicable information explaining:

Days and Hours of Operation
Number of Anticipated Employees
Equipment Involved, or any
Special Conditions or Limitations.

(C) In addition to the general requirements listed above, uses requiring a special exception shall be subject to the specific requirements for each use outlined in §§ [1-19-8.320](#) through [1-19-8.355](#) of this Code.

[The Applicant understands this.](#)

(D) A special exception approval may be granted in accordance with the general and specific requirements enumerated in this section. The Board of Appeals may, in addition to other requirements imposed under this chapter and is hereby authorized to add to the specific requirements any additional conditions that it may deem necessary to protect adjacent properties, the general neighborhood, and its residents or workers. Violation of such additional conditions, when made a part of the terms under which the special exception permit is granted, is a violation of this chapter and may be grounds for termination of the special exception

[The Applicant understands this.](#)

(E) The Board of Appeals shall not grant a special exception unless and until:

(1) A written application for a special exception is submitted indicating the section of this chapter under which the special exception is sought and stating the grounds on which it is requested; and

[The Applicant understands this.](#)

(2) A public hearing has been held; and the Board had made a finding of fact that the special exception requested meets the general and specific requirements outlined in this section.

[The Applicant understands this.](#)

(F) The grant of special exception may include approval of customary incidental accessory uses as reviewed and approved by the Zoning Administrator.

[The Applicant understands this.](#)

(G) No use or activity permitted as a special exception shall be enlarged or extended beyond the limits authorized in the grant of special exception. All enlargements, extensions, and changes in use shall require grants of special exception, as in the case of an original petition.

[The Applicant understands this.](#)

(H) If a grant of special exception is denied, no new petition for the denied use on the same property shall be accepted by the Board of Appeals for 1 year after the date of denial of the petition.

[The Applicant understands this.](#)

(I) A decision of the Board of Appeals granting a special exception will be void 5 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.

§ 1-19-8.321. ACCESSORY DWELLING UNITS GREATER THAN 800 SQUARE FEET.

The following provisions shall apply to all accessory dwelling units greater than 800 square feet in the RC, A, R1, R3, R5, R8, R12, R16, VC, MXD, PUD and MX districts.

- (A) Only 1 accessory dwelling unit may be created on a lot.

The Applicant states Lot 4, on Parcel 0257 will contain only one (1) Accessory Dwelling Unit, as shown the on Plat Plan

- (B) Accessory dwelling units greater than 800 square feet shall be allowed in single-family dwellings, in an accessory structure, or built as a separate accessory structure, on a single-family lot.

Thomas Webb's proposed Accessory Dwelling Units is greater than 800 square feet and will be built on a single-family lot

- (C) The owner of the property must reside in the principal dwelling or in the accessory dwelling unit.

The Applicant states the existing property owners, Thomas G. & Cyndi Webb will reside, full- time, in the principal dwelling currently located on Lot 4, Parcel 257.

- (D) There must be at least 1 additional parking space provided for the accessory dwelling unit. On-street parking may be utilized to meet this requirement.

The Applicant states that one (1) additional, off street, parking space will be provided for the accessory dwelling unit. No on-street Parking will be required to meet this requirement.

- (E) An accessory dwelling unit located in an accessory structure or built as a separate accessory structure must comply with the accessory structure requirements of § [1-19-8.240](#)(B).

The Applicant states that the property owner fully understands the requirements of Frederick County Zoning Ordinance 1-19-8.240, and the proposal Accessory Structure meets all of the requirements of Frederick County Zoning Ordinance 1-19-8.240 (8).

- (F) ADUs are intended to serve ongoing housing needs of county residents. Short term rental of ADUs in the nature of extended stay hotels, Airbnbs, or seasonal temporary housing is not permitted.

The Applicant states the property owner will not rent, lease or otherwise use the proposed Accessory Dwelling Unit for any short term rental, or short term stays of any kind.

- (G) The owner of the principal residence shall file an annual statement with the Zoning Administrator verifying that the conditions under which the special exception was granted remain the same.

Thomas G. Webb, the existing property owner, will file an annual statement with the Zoning Administrator verifying that the conditions under which the special exception was granted remain the same.

- (H) If the ownership of the lot changes, the subsequent owner must provide a statement to the Zoning Administrator as to the continuing use and eligibility of the accessory dwelling unit.

- (I) The Applicant states

- (J) Due to the nature of this use, site plan approval can be granted by the Zoning Administrator in lieu of the Planning Commission.

The Applicant states

- (K) An accessory dwelling unit meeting the provisions of § [1-19-8.212](#) shall be considered a permitted accessory use and therefore not subject to this section.

Action Needed:

Staff requests that the Board review the request for Special Exception as per Sections 1-19-3.210 (*Special Exceptions*) and 1-19-8.321 (*Accessory Apartments Greater than 800 Square Feet located in an Accessory Structure*) to construct an ADU to be located on the second floor of an accessory structure (Garage), totaling, 917 Sq.Ft in size and render a decision on the Applicant's request.

SITE MAPS



