

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

Case Number: B-19-28 AP # 19677

Appellant: Adam Belanger, Rachel Belanger, Alan Jackson

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 9805 Accipiter Court New Market, MD 21774 Tax Map 0068, Parcel 0156, Tax ID # 27-588784, Lot Size, .33 Acres, Zoned Planned Unit Development (PUD)

Planning Region: New Market

Zoning District: Planned Unit Development (PUD)

Comp. Plan Designation: Low Density 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 Planned Unit Development (PUD) and contains approximately .33 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 that will be located in the basement of an existing home. The existing home is 5,247 square feet in size and has a footprint of 2044 square feet. The Accessory Dwelling Unit will be 1446 Square Feet in size.

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 Applicant is an owner of the home and property

- (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 all neighbors are aware the only exterior change to the structure is the addition of 3 windows to the back of the existing home on the basement level that the neighbors can only see if they are standing in the backyard. The two adjacent properties already have windows on their basement level; Thus our home will actually look more in line with theirs with the added windows compared to its current appearance having only small basement windows. The ADU will be for residential use of one of the owners, which is in harmony with its current use, and the development of the neighborhood.

- (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 that the 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 beyond those inherently associated with the special exception at any other location

within the zoning district.

- (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 to achieve maximum safety.

The Applicant states that the residence features a 2-car garage and a driveway, which can accommodate 4 vehicles (6 off- street parking spaces total). One of the driveway spaces will be designated for the ADU. Alternatively, on-street parking along Accipiter Ct. adjacent to the lot can be utilized.

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

The Applicant states The existing road system at Accipiter Ct that provides access for residential use is adequate to serve the site for the intended residential use.

- (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 that one 1 ADU is being requested. The ADU is entirely within my existing basement of our single-family dwelling. The only exterior change at all is adding 3 windows on the rear of the structure at basement level, which are only visible when standing on my property in the back.

- (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.

The Applicant states the ADU is entirely within my already built single-family dwelling. No accessory structure or separate accessory structure will be built. The ADU is proposed to be 1446 Square Feet.

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

The applicant states that two property owners currently reside in the main portion of the house. One of the owners of the home will live in the ADU with

his wife who has Alzheimer's after permit is approved.

- (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.

My residence features a 2-car garage and a driveway, which can accommodate 4 vehicles (6 off- street parking spaces total). One of the driveway spaces will be designated for the ADU. Alternatively, on-street parking along Accipiter Ct. adjacent to the lot can be utilized.

- (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 the ADU is not located in an accessory structure. No new structure will be constructed.

- (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.

Applicants understand and will comply. After the permit is approved, the ADU will become the primary residence of one of the three property owners and his wife who has Alzheimer's. The other two property owners already do and will continue to reside in the primary dwelling.

- (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.

Applicants understand and will comply with this filing an annual statement with the Zoning Administrator verifying that the conditions remain the same under which the special exception was granted.

- (I) 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 understands this.

- (J) 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.

The Applicant understands this.

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*) for 1446 Square Foot ADU and render a decision on the Applicant's request.

Site Maps



