

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT FOR November 21, 2019 @ 7pm

Case Number: B-19-33 AP# 19886

Appellant: Melvin and Teresa Boone

Appeal: Requesting 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 10542 Liberty Road, Frederick, MD 21701, Tax Map 59, Parcel 0285, Tax ID #306710, 5.6 Acres

Planning Region: Walkersville

Zoning District: Agricultural (A)

Comp. Plan Designation: Agricultural

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 Agricultural (A) and contains approximately 5.6 acres.

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

The proposed detached accessory dwelling unit is 960 sq ft and is a permitted use as a special exception subject to site development plan approval.

Proposal

The applicant is proposing to create a 960 square foot ADU on the same property, located as shown on the applicant's site plan. The existing home is 4,983 square feet in size and has a footprint of 3,111 square feet. The ADU will be 960 Square Feet in size comprised of a single story double wide mobile home.

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 states that the subject applications is being applied for Theresa and Melvin Boone, Trustees for the Boone Family Trust

- (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 the County infrastructure by creating housing opportunities without creating new developments or conversion of agricultural land.

- (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 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 operation of any kind. The proposed use will be strictly residential and will be consistent and in harmony with the surrounding residential homes.

- (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 use of the ADU 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.

(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 applicant states that the ADU will have its access off the existing main driveway. There will be parking area for two (2) cars, handicapped and emergency vehicles located to west side of the proposed accessory structure.

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

The applicant states that the Boone Family trust has full use of the Driveway, Property, via an existing easement. Driveway connects to liberty Road. Liberty Road and existing driveway are more than adequate to handle the additional vehicles, which may be produced by the proposed accessory dwelling unit.

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

The Applicant agrees and understands this.

(D) The 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 may deem necessary to protect the 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 agrees and understands this.

(E) The Board of Appeals may not grants 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 agrees and 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 agrees and 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 agrees and understands this.

(G) No use of activity permitted as a special exception shall be enlarged or extended beyond the limited 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 agrees and 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 agrees and understands this.

(I) A decision of the Board of Appeals granting a special exception will be void 5 years from the 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 the 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 time extension may be granted by the Zoning Administrator for a period not to exceed 6 months.

The Applicant agrees and understands this.

Sect. 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, RS, RS, R12, R16, VC, MXD, PUD and MX districts.

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

The Applicant states that the Boone Family Trust states Lot 1, on Parcel 0285 will contain only 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.

The Applicant states that the Boone Family Trust proposed Accessory Dwelling Units is greater than 800 square feet (960 Sqft proposed) and will be built on lot 1 parcel 0285 as shown on the plat.

(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, Teresa and Melvin Boone will reside, fulltime, in the principal dwelling currently located on lot 1, Parcel 0285. The proposed accessory dwelling will be used for their adult handicapped son.

(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 additional, off street parking spaces 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(8).

The Applicant states that the property owner fully understands and agrees to the requirements of the Frederick County Zoning Ordinance, Sect. 1-19-8.240, and the proposed Accessory Dwelling Unit meets all the requirements of Sect. 1-19-240(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, Airbnb, or seasonal temporary housing is not permitted.

The Applicant states the property owner will not rent, lease or otherwise use the proposed ADU for any short term rental, or short term stays of any kind. The proposed ADU is to be used for their adult handicapped son.

(G) The owner of the principle residence shall file an annual statement with the zoning administrator verifying that the conditions under which the special exception was granted remain the same.

The Applicant states that the Boone Family Trust, (Theresa and Melvin Boone, Trustees) the existing property owners, will file an annual statement with the Frederick County 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.

The Applicant agrees and understands this.

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

The Applicant agrees and understands this.

(J) An ADU meeting the provisions of Sect. 1-19-8.212 shall be considered a permitted accessory use and therefore not subject to this section.

The Applicant agrees and 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 Dwelling Unit Greater than 800 Square Feet) to construct an ADU to be located in a separate structure on the applicants property, totaling, 960 square feet in size and render a decision on the Applicant's request.

M-1665

Melvin L. Boone
10-28-1981
43.535 A. Contained
3.822 A. Lot 1
37.713 A. Reserve

NOTARY CERTIFICATION
The owner(s) have sworn to and subscribed before me the **20th**
day of **November**, 1987
Evel P. Rotherhoffer
Notary Public

TAX MAP PAGE 29 PARCEL 41
VICINITY MAP
SCALE: 1:1200

**OWNER'S CERTIFICATION AND
DEDICATION**
We (I), **Melvin L. Boone** and **Teresa F. Boone**, the owner(s) of the property shown and described herein, hereby adopt this plan of subdivision, and in consideration of the approval of this Final Plat by the Planning Commission, establish herein that the property is subdivided into lots, roads, easements, walkways, and other easements, to public use, unless otherwise noted on this plat.

We (I) certify that there are no suits, actions of law, leases, liens, mortgages, trusts, easements, or rights of way affecting the property included in this plan of subdivision, except as herein indicated, and that the requirements of the Annotated Code of Maryland, Real Property Book, Title 3, Subtitle 1, Section 3-108, 1974 Edition, and the requirements of the Frederick County Code Section 1-16-108, 1979 Edition, and any related or subsequent laws, as well as all laws relating to the making of this plat and the setting of monuments and markers have been complied with.

Nov. 10, 1987 **Melvin L. Boone**
Date
Notary Public of State
Nov. 10, 1987 **Teresa F. Boone**

SURVEYORS CERTIFICATION
I hereby certify that the Final Plat shown herein is correct, that it is a subdivision of **5.620 A.** of land, the lands covered, by **Joseph I. Gerner** to **Melvin Boone & Teresa F. Boone**, by deed dated **10-28-1981**, Folio **29**, recorded in the Deed Book of Frederick County, in Liber **104-178**, Folio **29**, and that the requirements of the Annotated Code of Maryland, Real Property Book, Title 3, Subtitle 1, Section 3-108, 1974 Edition, and the requirements of the Frederick County Code Section 1-16-108, 1979 Edition, and any related or subsequent laws, as well as all laws relating to the making of this plat and the setting of monuments and markers have been complied with.

Robert P. Rotherhoffer
Surveyor
FREDERICK COUNTY, MARYLAND

NOTES:
1. Dredge Access from Rd # 75 on # 30
Note: The Peaseant Community On Rd # 18
Approved the Covered Garage Site
Lot # 1 Reserve

MINIMUM BUILDING RESTRICTION LINE
FRONT 20
REAR 20
SIDE 10

SYMBOLS:
● PROPOSED WELL
■ SEPTIC AREA
■ MONUMENT
○ STEEL BAR & CAP

OWNER:
Mr. Melvin Boone
10442 LIBERTY RD
FREDERICK, MD 21701
301-678-7319

COMBINED PRELIMINARY / FINAL PLAT
BOONE'S FARM
LOT ONE SECT. ONE
SITUATED IN MD RT. # 28

FREDERICK COUNTY, MARYLAND

REVISIONS	ROTHENHOEFER ENGINEERS INC.	DWG NO
REVISIONS	102 WEST CHURCH STREET	870-610
REVISIONS	FREDERICK, MARYLAND 21701	
SCALE: 1/8 INCH	301-662-0302	DATE: 11/10/87
M-1665 59-0706	12-2-87	

SITE MAPS



