

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT FOR JUNE 25, 2020 @ 7pm

Case Number: B-20-11 (B260185)

Appellant: Shirley Miller

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. The ADU is 1,478 sq.ft.

Location: The property is described as 8528 Pete Wiles Road, Middletown, MD 21769, Tax Map 55, Parcel 0215, Tax ID# 03174220 , Zoned – Agricultural (A), Size 6.86 Acres

Planning Region: Middletown

Zoning District: Agriculture (A)

Comp. Plan Designation: Agriculture

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

Background:

The subject parcel is zoned Agriculture (A) and contains approximately 6.86 acres.

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

Proposal

The applicant is proposing to construct a single family home as an Accessory Dwelling Unit greater than 800 sq.ft. (Attachments 1& 2) The proposed accessory dwelling unit is 1,478 sq.ft. and will be constructed as a separate dwelling unit. The footprint of the existing home is 3,072 sq.ft. and the total size of the primary home on the lot is 5,383 sq.ft. ***(Per County Council Bill 20-10, the 800 sq.ft. changes to 1000 sq.ft. on September 21, 2020. It does not impact this application.)***

Special Exception

- 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 they are the owner of the subject 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 application for an accessory dwelling unit is consistent with the Housing elements of the Frederick County Comprehensive Plan because it promotes affordable housing opportunities and maximizes the efficient and function use of land; and promotes policies encouraging the use of accessory dwellings as a housing goal.

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 accessory dwelling unit is entirely within the harmony of the neighborhood because many agricultural properties in the area include small accessory structures, out-buildings, and the like. This one will be used as a small residence for a single occupant and from a visual and impact standpoint, it will be in character with a farm tenant house.

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 creation of this ADU does not expect to cause adverse effects such as noise, fumes, or vibration from the occupancy of the small accessory dwelling. Presently, Ms. Miller and her daughter occupy the primary residence. Ms. Miller will simply move into the ADU.

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 off-street parking is provided for at least seven vehicles, which is ample under the applicable parking criteria. The applicant has provided two spaces for the existing residence; and an additional space for the accessory dwelling unit. Parking is

well-situated and screened from adjoining residential uses as shown on the plans provided and the entrance and exit are the existing driveway. (Attachment 1)

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

The applicant states that Pete Wiles Road is a paved public road that is adequate to serve an accessory dwelling unit.

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 requirement.

- C. 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 requirement.

- D. 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
 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 requirement.

- E. 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 requirement.

- F. 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 requirement.

- G. 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 requirement.

- H. 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 requirement.

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, 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 this is the only accessory dwelling unit proposed for the lot.

- 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. (Attachment 1)

The Applicant understands this requirement.

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

The applicant states that the owner will reside in the accessory dwelling unit; her family will reside in the principal dwelling.

- 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 there adequate parking to accommodate the ADU.

- 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 subject property is zoned Agriculture and therefore the criteria applicable to residentially zoned properties do not apply. Nonetheless, the Applicant's request is within the spirit of the Zoning Ordinance because she meets these criteria anyway. (Staff does

not agree with the statement regarding “the criteria applicable to residentially zoned properties does not apply”, but agrees that the applicant meets the standards for an ADU approval)

- 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 understand this requirement.

- 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.

The Applicant understand this requirement.

- 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 understand this requirement.

- 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 requirement.

- 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 requirement.

Action Needed:

Staff requests that the Board review the application for Special Exception 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 1,478 sq.ft.in size, separate of the main home, and render a decision on the Applicant's request.

SITE MAPS



