

**FREDERICK COUNTY BOARD OF APPEALS**  
**STAFF REPORT FOR January 28, 2021 @ 7pm**

**Case Number:** B-20-22 (B260558)

**Applicant:** Paul Gouge

**Application:** Requesting approval of a Special Exception to permit an Accessory Dwelling Unit (ADU) Greater than 1,000 sq. ft. in accordance with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code. The ADU is 2,278 sq. ft.

**Location:** The property is identified as 4004 Bill Moxley Road, Frederick, MD 21771, Tax Map 98, Parcel 0172, Tax ID #09254730, 7.1 Acres

**Planning Region:** New Market

**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 1000 Square Feet.

**Background:**

The subject parcel is zoned Low Density Residential (R1) and contains approximately 7.1 acres.

Section 1-19-8.321 of the Frederick County Zoning Code, states that an Accessory Dwelling Unit (ADU) larger than 1,000 square feet requires a Special Exception from the Board of Appeals.

The Applicant recently purchased a home in Frederick County that has a pre-existing accessory structure (Attachment 1). The Applicant would like to modify this pre-existing accessory structure and apply for permits to create an ADU for his elderly mother to live in. The Applicant (son) will continue to dwell in the primary structure.

**Proposal**

The Applicant is proposing to create a 2,278 square foot ADU with a foot print of 1,131 sq. ft. (Attachment 2) The existing home is 6,304 square feet in size and has a footprint of 2,534 square feet.

### **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 he is the owner of the property requesting the Special Exception.**

- (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 (Chapter 1-19 of the Frederick County Code); and

**The Applicant states that the requested ADU is consistent with the Frederick County Comprehensive Plan in that it promotes affordable housing for senior citizens and maximizing the efficient and functional use of the County's infrastructure by creating housing opportunities without creating new developments or conversion of agriculture land. Granting this proposed ADU will encourage the use of accessory dwellings as a stated housing goal. Further, it is consistent with the intent and express language of Bill No. 18-16. That bill specifically articulates that "ADUs are a potential optional housing unit type for elderly parents..." In this instance, the Applicant's elderly mother will live in the ADU.**

- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relations 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 ADU will be used strictly as a residence with no business or commercial operation of any kind and in harmony with the surrounding residential homes. The currently existing structure, built over 20 years ago, is in harmony with the orderly development of the neighborhood. It is located on a large parcel (over 7 acres) of property and is not particularly visible from the road. It is located in a predominately agricultural area where many such properties include similar accessory structures. Visually, it will be in character with other nearby farm/tenant houses. Further, the exterior of the accessory structure is consistent with the exterior of the main dwelling unit.**

- (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, vibration or other ill effects on the neighboring properties, and will be consistent with the surrounding residential use. This single structure is located far away from neighboring properties and will not cause any adverse effects such as noise, fumes, or vibration from the occupancy of the ADU. The Applicant states that dwelling will be used by his elderly mother.**

- (4) Parking areas will comply with the off street parking regulations of this chapter (Chapter 1-19 of the County Code) 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 there will be plenty of parking to accommodate the main house and the ADU. This accessory structure already has ample off-street parking located in front of the proposed ADU structure. Current parking can accommodate 4 cars. Likewise, the main dwelling has parking that could accommodate (approximately) another 15 cars.**

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

**The Applicant states that the access to the property is already well established through the main property driveway apron located on Bill Moxley Road. Bill Moxley Road is a large, public, paved road that is infrequently travelled. The addition of an ADU on the property will have no adverse effect on the congestion of Bill Moxley Road.**

- (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 states he understands this requirement.**

- (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 (Chapter 1-19 of the County Code) 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 (Chapter 1-19 of the County Code) and may be grounds for termination of the special exception.

**The Applicant states he understands this requirement.**

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

- (1) A written application for a special exception is submitted indicating the section of this chapter (Chapter 1-19 of the County Code) under which the special exception is sought and stating the grounds on which it is requested; and

**The Applicant states he understands this requirement.** (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 states he understands this requirement.**

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

**The Applicant states he understands this requirement.**

- (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 states he understands this requirement.**

- (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 states he understands this requirement.**

- (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 states he understands this requirement.**

**Sect. 1-19-8.321 ACCESSORY DWELLING UNITS GREATER THAN 1000 SQUARE FEET.**

The following provisions shall apply to all accessory dwelling units greater than 1,000 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 4004 Bill Moxley Road parcel, zoned for residential use, will only contain 1 accessory dwelling unit as described in the submitted site plan.**

- (B) Accessory dwelling units greater than 1,000 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 ADU will be a separate accessory structure as shown on the site plan.**

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

**The Applicant states that he and his family intend to live in the main house at 4004**

**Bill Moxley Road.**

- (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 are plenty of off street parking spaces to accommodate the ADU on the area directly in front of the ADU. Parking in front of the proposed ADU will accommodate up to 4 cars.**

- (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 he 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(B).**

- (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 that the ADU will not be for rental, lease, and any kind of short term stay. The main purpose of the ADU is to provide housing for his mother.**

- (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 states that he 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 states he understands this requirement.**

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

**The Applicant states he understands this requirement.**

- (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 states he understands this requirement.**

**Action Needed:**

Staff requests that the Board review the request for Special Exception as per Sections 1-19-3.210 and 1-19-8.321 of the Frederick County Zoning Code to approve an ADU to be located in a separate structure on the Applicant's property, totaling 2,278 square feet in size and render a decision on the Applicant's request.

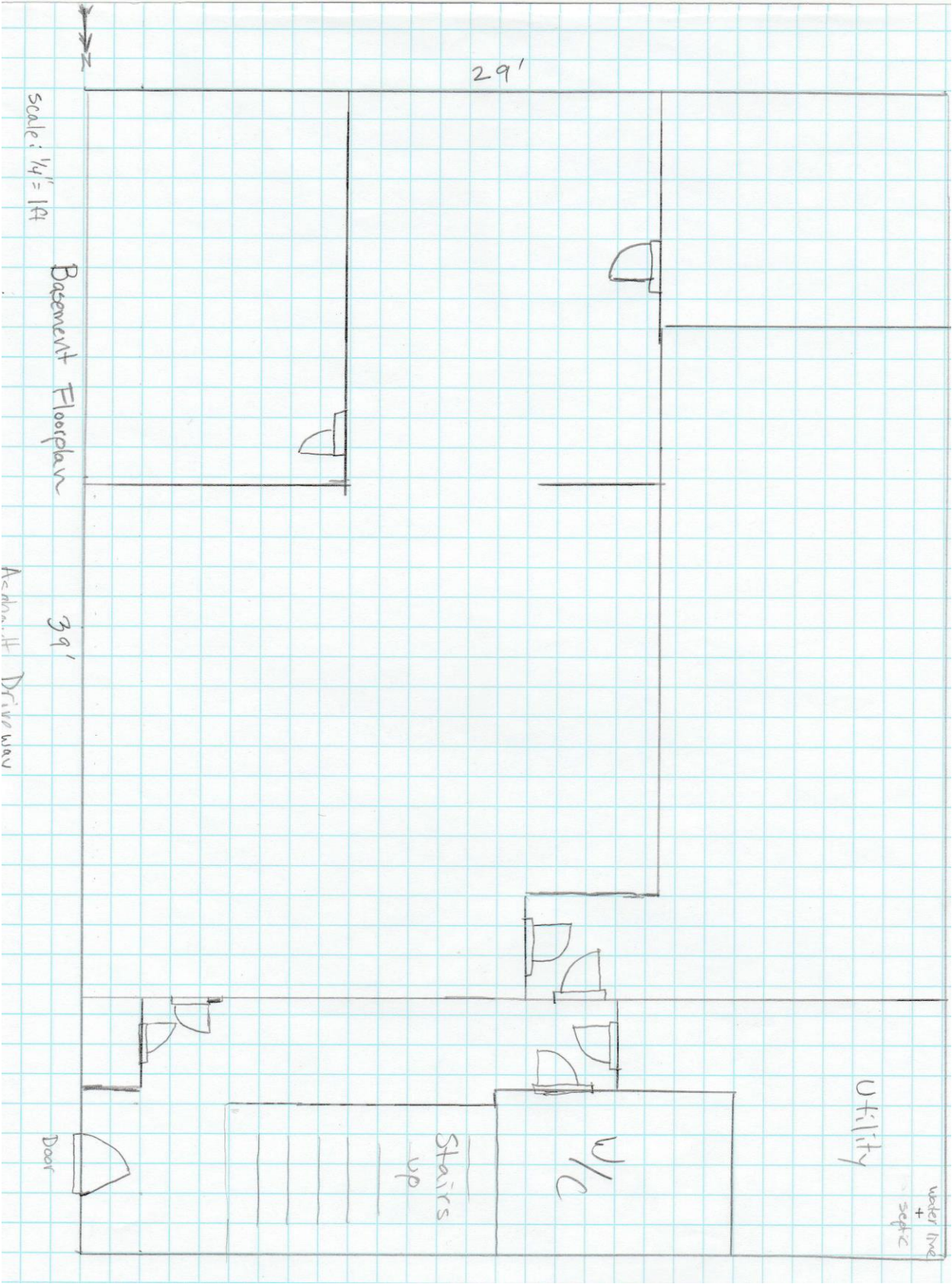


**Attachment 1**





Attachment 2



## GIS MAPS

