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## FREDERICK COUNTY BOARD OF APPEALS

### July 28th, 2022

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**TITLE:** **Toms Accessory Dwelling Unit (ADU)**

**CASE NUMBER:** **B-22-25 (B267828)**

**REQUEST:** 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 Code. The ADU is 1,400 sq. ft.

**PROJECT INFORMATION:**

ADDRESS/LOCATION: 7619 Blue Mountain Rd  
TAX MAP/PARCEL: Tax Map 25, Parcel 15325690  
ZONE: Agricultural (A)  
REGION: Thurmont  
WATER/SEWER: W-NPS/S-NPS  
COMP. PLAN/LAND USE: Agricultural/Rural

**APPLICANT/REPRESENTATIVES:**

APPLICANT: Paul & Penelope Toms  
OWNER: Paul & Penelope Toms  
ENGINEER: N/A  
ARCHITECT: N/A  
ATTORNEY: N/A

**STAFF:** Mike Paone, Zoning Planner

**RECOMMENDATION:** Based on the findings and conclusions in the staff report and the evidence presented at this meeting, Staff finds that the proposed Special Exception, to allow an ADU on the subject property, complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code.

**ATTACHMENTS:**

**Attachments 1-3: Location and Floor Plans of ADU**  
**Attachment 4: GIS Aerial of site**  
**Attachment 5: Comprehensive Plan designation**  
**Attachment 6: Environmental Features**  
**Attachment 7: Zoning**

## **Background:**

The Accessory Dwelling Unit (ADU) is to be constructed as a separate structure on the Property. The ADU is located on Agricultural zoned land with the total ADU size of 1400 sq.ft and a footprint of the same sq.ft. The size of the primary residence is 3512 sq.ft., with a footprint of 3,245 sq.ft. **(Attachments 1, 2 & 3)**

### **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 Applicants state that they are the owners 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 Applicants state that the requested ADU is consistent with the Frederick County Comprehensive Plan, in that it promotes affordable housing for senior citizens of the County's Livable Frederick Master Plan.

- (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 Applicants state that the proposed ADU will be harmony with the surrounding community and have no impact on the orderly growth and development of the community.

- (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 Applicants state 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. Lots are large and most people will not know its there.

- (4) Parking areas will comply with the off street parking regulations of this chapter (Chapter 119 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 Applicants state that there will be adequate parking to accommodate the main house and the ADU. We have not designated the specific location for the parking spot but we have ample room to provide multiple parking spaces.

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

The Applicants state that the ADU will have no adverse effect on the congestion along Blue Mountain Road. The existing access is adequate and safe.

- (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 Applicants state they understand 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 Applicants state they understand 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
- (2) The Applicants state they understand this requirement.
- (3) 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 Applicants state they understand 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 Applicants state they understand 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 Applicants state they understand 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 Applicants state they understand 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 Applicants state they understand this requirement.

**Staff finds the application meets the requirements of Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code and has no objections to the approval.**

#### **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 Applicants state that the parcel, zoned for agricultural 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 Applicants state that the ADU will be a separate accessory structure.

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

The Applicants state that they intend to live in the main house.

- (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 Applicants state that they will provide the required parking spot for the ADU and have room to provide even more if needed.

- (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 Applicants state 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 Applicants state that the ADU will not be for rental, lease, and any kind of short term stay.

- (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 Applicants state that they 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 Applicants state they understand 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 Applicants state they understand 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 Applicants state they understand this requirement.

## **RECOMMENDATION**

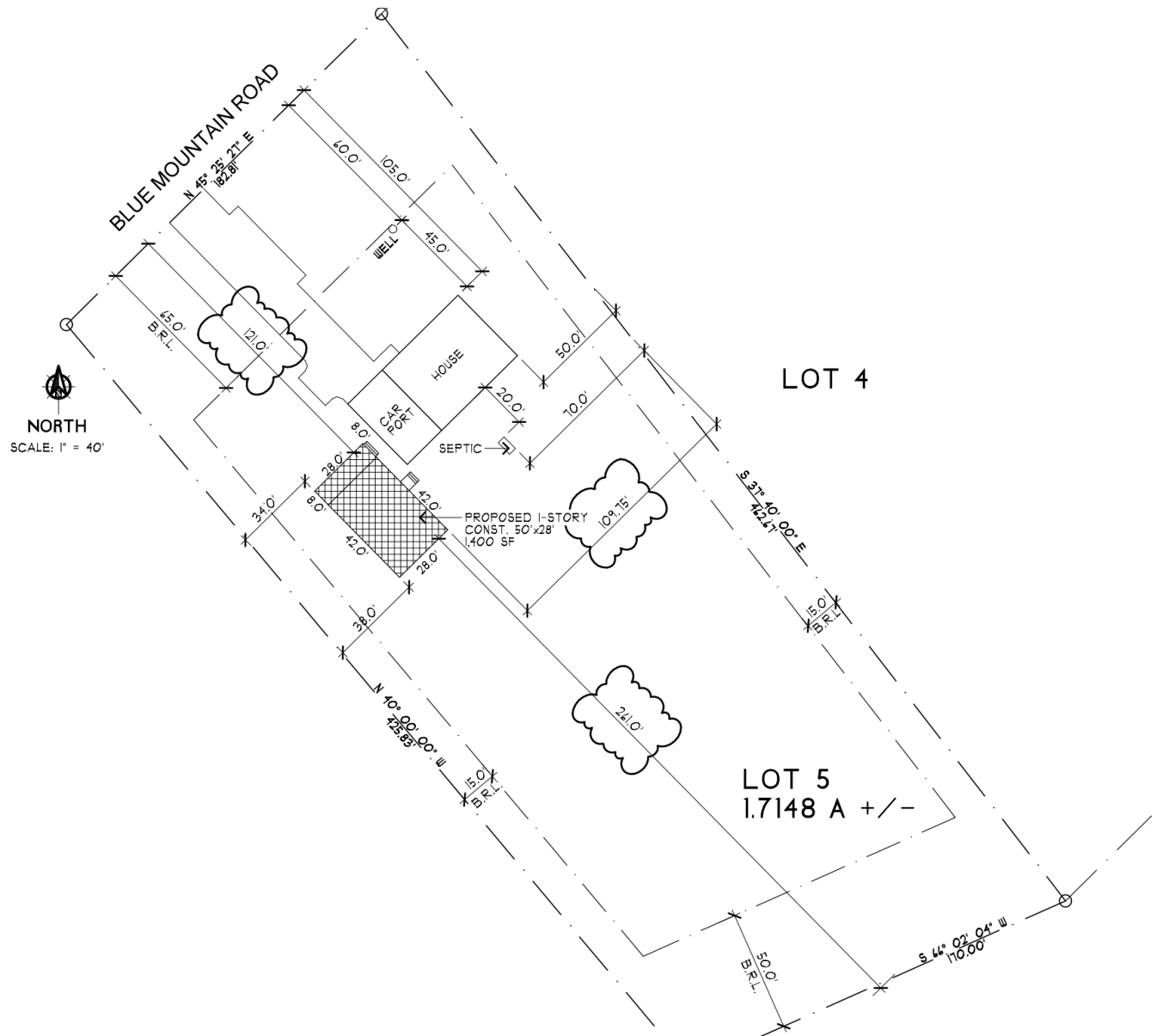
Based on the findings and conclusions in the staff report and the evidence presented at this meeting, Staff finds that the proposed Special Exception, to allow an ADU on the subject property, complies with Section 1-19-3.210 and Section 1-19-8.321 of the Frederick County Zoning Code.

**The Board shall consider approval of a Special Exception 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.**

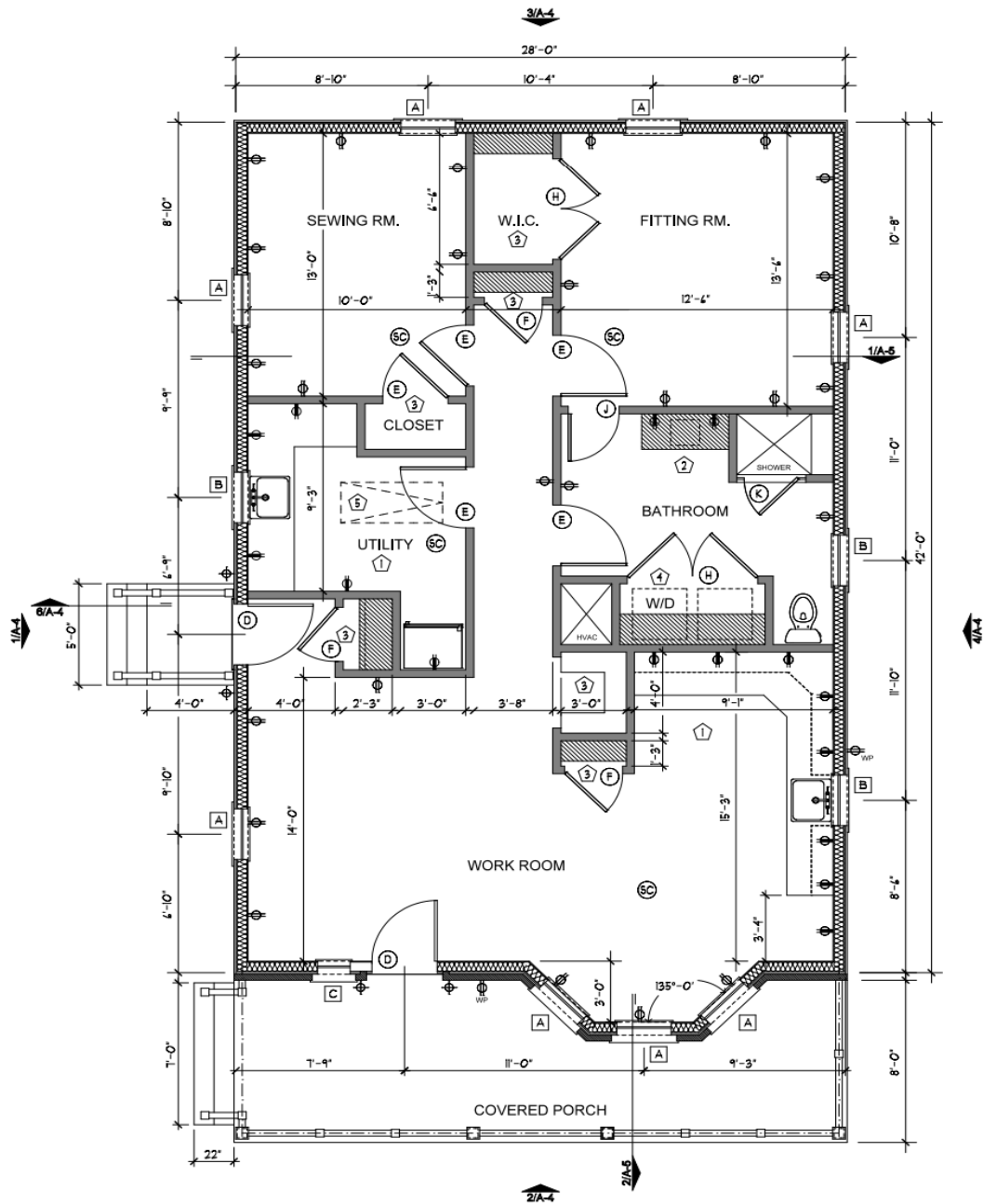
**A decision of the Board of Appeals granting a special exception will be void 5 years from the date of approval by the Board of Appeals unless the use is established, a building permit is issued, construction has begun, or final site development plan approval has been received in the accordance with 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**

# Site Plan

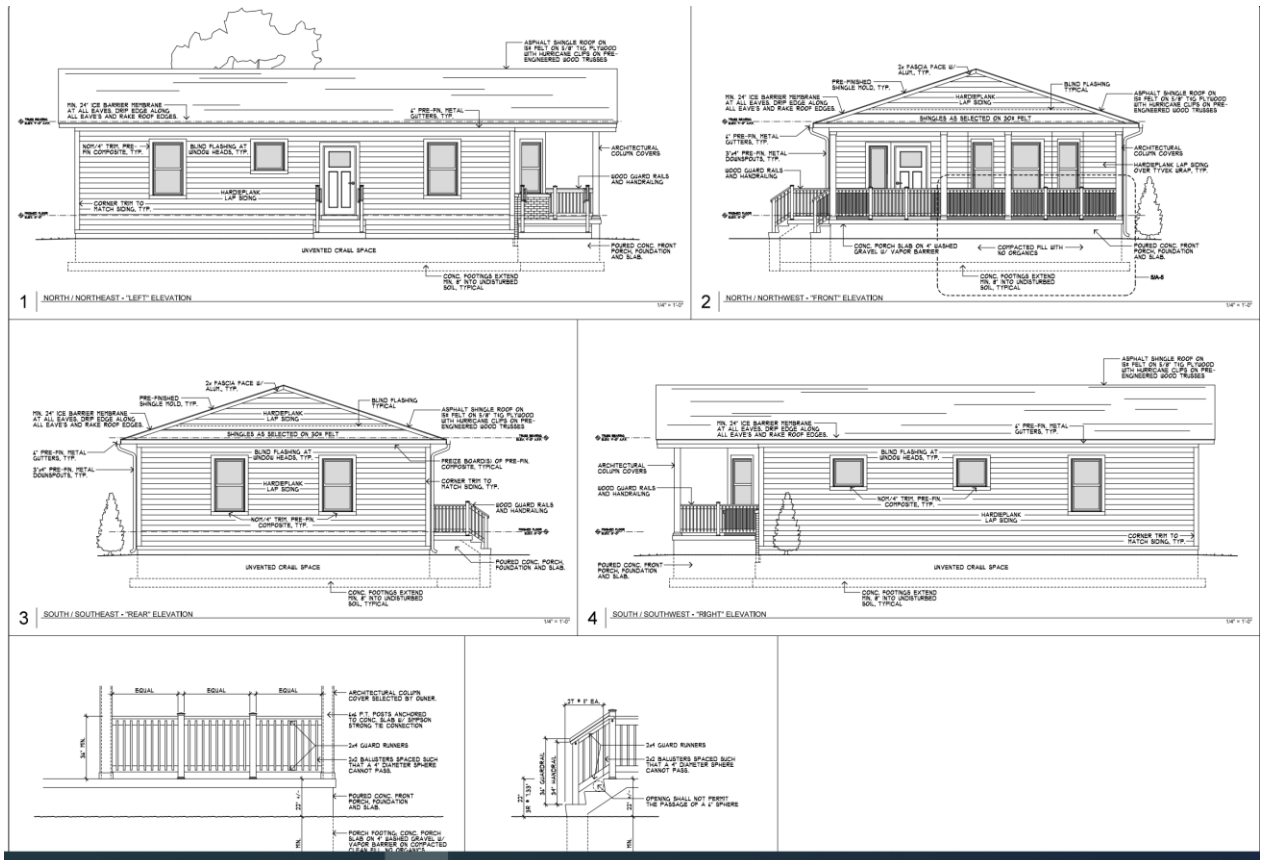
## Attachment 1: Location of ADU.



Attachment 2: ADU Floor Plans



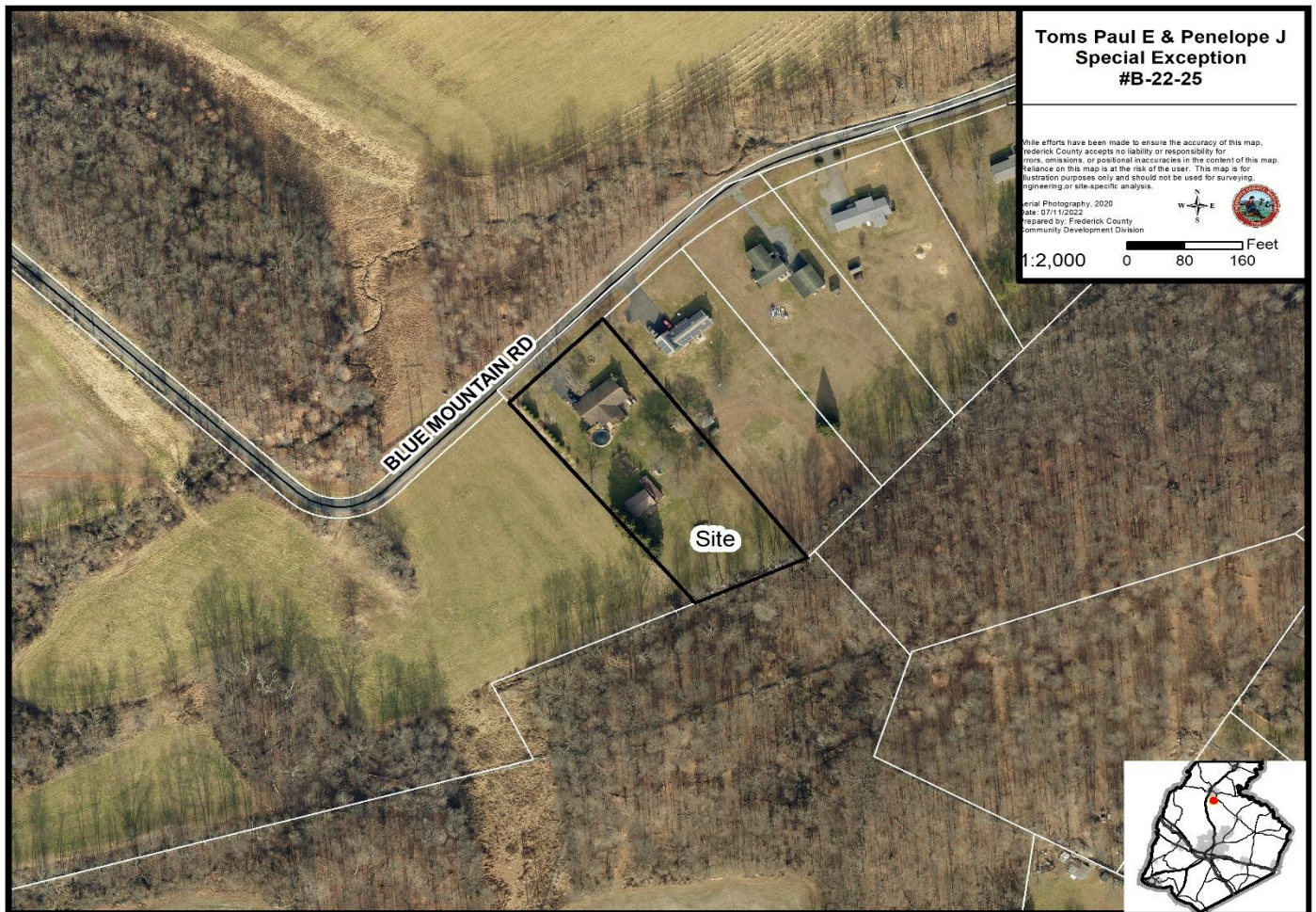
## Attachment 3: ADU Floor Plans





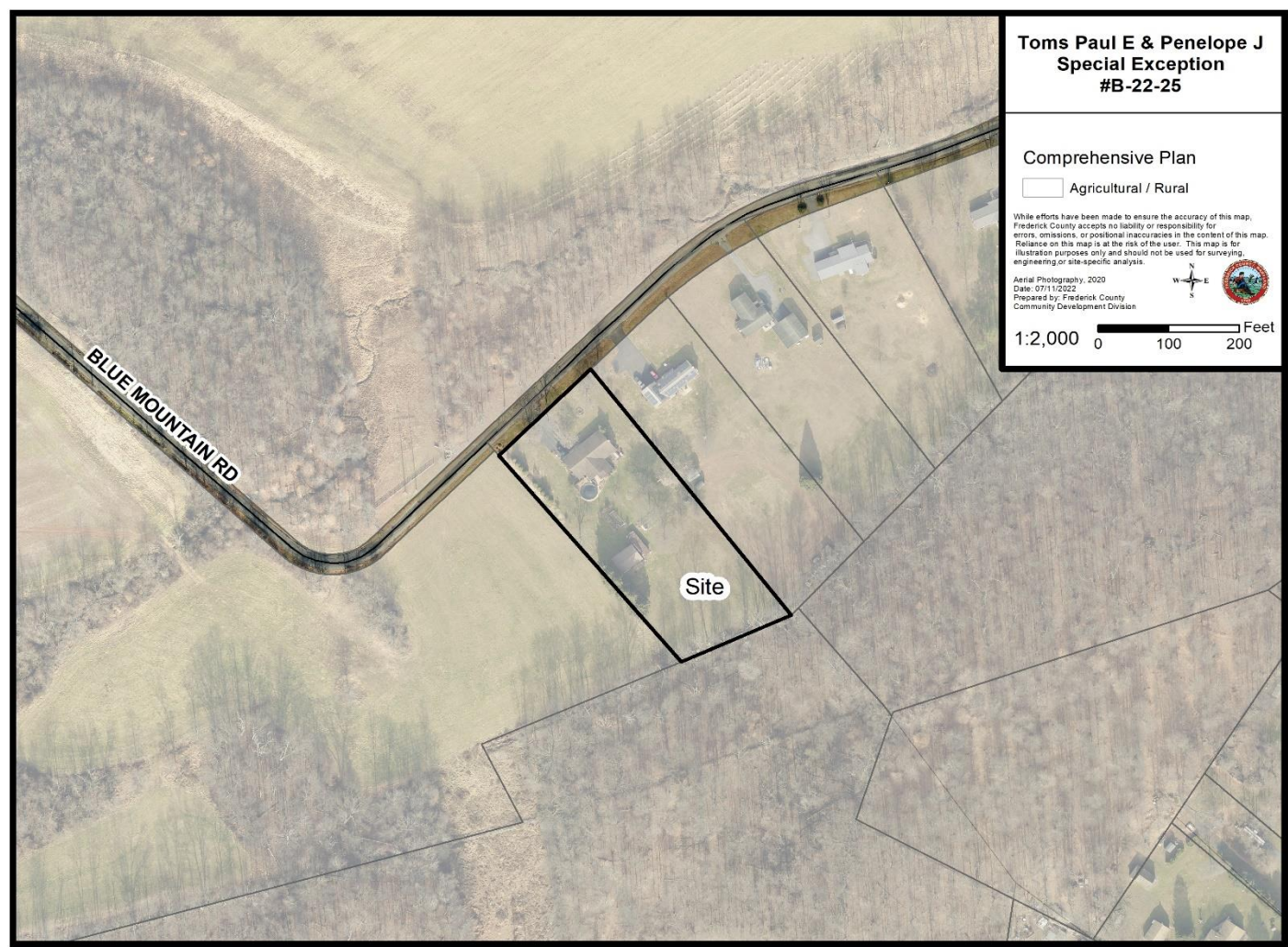
## GIS Maps

### Attachment 4: Aerial Map of the site & surrounding community



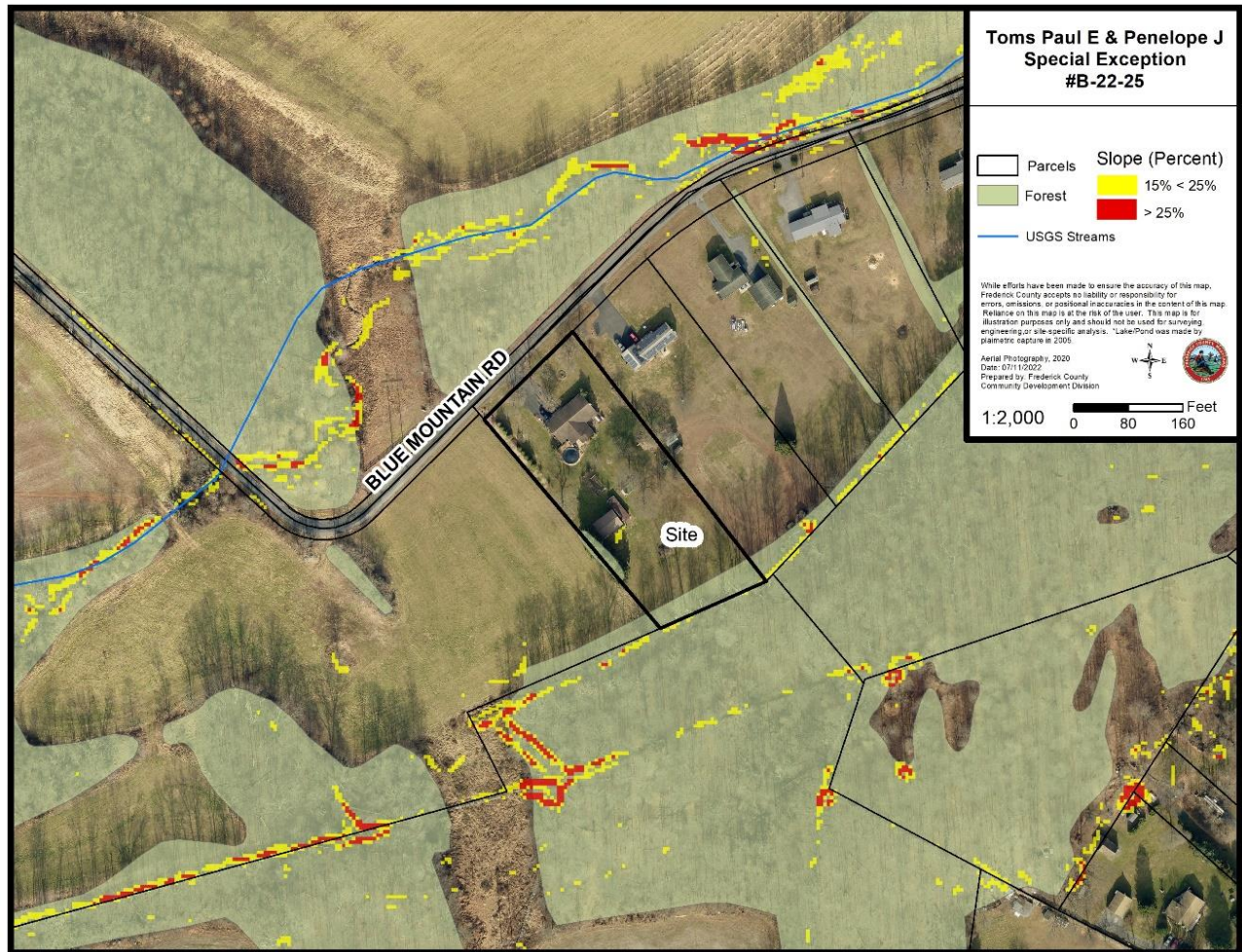


Attachment 5: Comprehensive Plan designation is Agricultural (A)





Attachment 6: Environmental Features



Attachment 7: Site Zoning: Agricultural (A)

